MSRB Data Subscription Services and Products.

The MSRB's Electronic Municipal Market Access (EMMA®) website provides access to municipal trade data and disclosure documents associated with municipal bond issues. These materials are available at no charge on our EMMA website or on a subscription basis in real-time for a fee. Municipal market trade data are available at no cost to academic researchers.

Download the MSRB Subscription Services Price List to learn more about our subscription services and their rates. You may also learn about any of our subscription services by clicking on the links below:

- MSRB Transaction Subscription Service: All municipal trade data reported to the MSRB by municipal securities dealers. Subscriptions to periodic reports are also available.
- MSRB Short-term Obligation Subscription Service: All variable rate securities data and documents.
- MSRB Primary Market Subscription Service: All primary market disclosure documents provided by municipal bond dealers.
- MSRB Continuing Disclosure Subscription Service: All continuing disclosure documents and related information.

Read about how to subscribe to MSRB Data Subscription Services.

Academic Research Data
To support academic research about the municipal securities market, the MSRB makes municipal securities trade data available to universities and other research institutions in two ways.

First, the MSRB makes trade data available through a partnership with Wharton Research Data Services (WRDS), a service of the Wharton School of the University of Pennsylvania, which provides electronic access to data across finance, marketing and economic disciplines to over 400 institutions globally. Contact WRDS for more information on accessing academic research data.

Second, the MSRB makes available to academic researchers its Academic Historical Transaction Data Product, which comprises post-trade municipal securities transaction data collected through the Real-Time Transaction Reporting System (RTRS). The Academic Historical Transaction Data Product is available to researchers at institutions of higher education for a fee of $500 per year, plus a one-time set up fee of $500. One-year data sets can be requested for consecutive 12-month periods. The data product enables researchers to draw conclusions about patterns of trading in the municipal market by distinguishing transactions executed by different dealers through the use of anonymized identifiers. List offering price and takedown transactions (in general, primary market transactions) are excluded from the data. Contact MSRB Support at 202-838-1330 or MSRBSupport@msrb.org for more information.

The Coming Transparency Wave: GASB 77

In 2017, there will be a convergence of factors that will raise the awareness, profile and scrutiny of economic development activities undertaken by state and local governmental entities. Specifically, Governmental Accounting Standards Board (GASB) Statement 77 requires state and local governments to disclose the revenue forgone through tax abatements, a common, but not exclusive, form of business attraction and retention incentive. While Statement 77 is only now being implemented by governments, the Trump Administration's workforce, tax and trade policies have placed intense focus and widespread publicity on new investments by companies, which often have significant tax abatements approved. The extensive data required to be disclosed by Statement 77, along with national media attention on each new announcement by the White House, will drive greater demand for transparency and accountability from governments on the use of tax abatements and their impact on other programs and priorities.

BACKGROUND OF STATEMENT 77

Statement 77 requires state and local governments to disclose, as a note to the financial statements, the amount of lost revenue they have incurred as a result of entering into tax abatement agreements. Statement 77 not only requires the approving government to disclose its own lost revenue, but all taxing authorities (school districts, cities, states and counties) impacted by the abatement are required to disclose their lost revenue irrespective of the approving body. Governments are required to disclose the actual lost revenue from all outstanding agreements, aggregated by program. And finally, the disclosure must be calculated based on an accrual basis of accounting for the fiscal year. The calculation of the revenue forgone can be complex alone, but with the accrual basis being applied, the difficulty is magnified.

TIMING AND COMPLEXITIES

The prevalent belief is Statement 77 appears to be straightforward, but governments may experience timing difficulties and unexpected complexities as they start to gather the information needed to calculate the revenue lost from tax abatements. These may include the following:

1. Coordination will be needed among multiple agencies to assemble the myriad information required to be disclosed, including economic development agencies, property assessors, treasury departments, community housing agencies, port authorities, convention authorities, natural resources agencies, etc.
2. Coordination will be needed among all of the governmental units that have been impacted by agreements approved by the reporting government. Conversely, if other governmental units have approved abatements that impact the reporting government's tax revenue, it will be necessary to identify those governments and work with them to gather the requisite information for the reporting government's disclosure.
3. Some agreements have been outstanding for many years. The relevant information may not be readily available for the reporting unit to gather, review and analyze, thus delaying the ability to include the information in the disclosure.
4. Many jurisdictions do not currently calculate the actual lost revenue from their approved abatements. Rather, they project the total lost revenue from estimates made at the time of the original application. Care must be taken to ascertain that the information submitted by various agencies is the actual lost revenue from the current year's activities, based on actual capital expenditures, job creation, etc. Estimates from the original application are not sufficient for this disclosure.

5. The disclosure is required to be made on an accrual basis of accounting. Identification of cash versus accrual adjustments that will be needed could be difficult. For example, an abatement recipient could claim the abatement on a calendar-year basis, the reporting government could have one fiscal year or other impacted governments could have different fiscal year-ends.

Statement 77 forces state and local governments to identify the true impact of approved abatement agreements on tax revenue. Timing can be the biggest challenge, with most governments already in their affected fiscal year for disclosures.

TRANSPARENCY TRENDING IN 2017

Statement 77 had been in process well before President Trump was elected and had been eagerly awaited, primarily by several watchdog groups. Now, with President Trump's mission to encourage businesses to expand operations in the United States a topic of daily news articles, tax abatements have become a frequent discussion item in newspapers across the country. The announcement by then President-Elect Trump of the $7m incentives package used to entice Carrier to retain part of its manufacturing operations in Indiana received immense media attention and resurrected many discussions and perspectives on the use of incentives. Public officials were scrutinized and forced to justify the deal negotiated.

As businesses are pressured to increase investments and job creation in the United States, the demand for incentives is expected to increase. These projects, including the incentives' packages, will continue to receive extensive press coverage, questioning whether these companies should receive such incentives packages. The expanded press coverage, along with the newly required financial statement disclosures, will increase the pressure on public officials to justify the lost revenue from economic development programs, and may deter or otherwise make economic development efforts difficult. The information disclosed by Statement 77 will be widely disseminated and compared readily.

NOW IS THE TIME TO PREPARE

As mentioned, many government units are in their fiscal year for Statement 77 disclosures. As public attention increases the profile of economic incentives, state and local governments should be prepared to address the scrutiny that will fall on their economic development programs. First, governments and economic development organizations should assess how effective their economic development programs are. For example, are the programs accomplishing their stated purpose? If not, what changes should be made to make the programs more effective? Second, governments and economic development organizations need to substantiate the benefits they receive from the programs; to that end, consider an economic analysis of programs to assess the return on investment. And third, clear, complete and accurate documentation and support should be prepared to be in compliance with Statement 77. All calculations should be readily supported because the numbers will be analyzed, scrutinized and widely reported by the media and watchdogs. An organized and comprehensive approach to complying with disclosures and managing public scrutiny of incentive programs will empower all governments to face the coming media wave head on.

NASACT

by: Daniel P. Domenicucci and Javi Borges

Monday, February 27, 2017

Morgan Stanley Fined Over Excessive Pricing of Munis.

WASHINGTON – Morgan Stanley has agreed to pay $170,284 over Financial Industry Regulatory Authority findings that the firm sold municipal securities, including some from Puerto Rico, to customers at prices that were not fair or reasonable.

The firm will pay $115,000 of the $170,284 as a FINRA fine and the remaining $55,284 as restitution to its customers. Morgan Stanley was responsible for a total of $57,159 in restitution but has already paid some to address the violations, FINRA said.

The transactions FINRA found took place from July 1, 2013 through March 31, 2014, according to the settlement document. The findings are the result of reviews that FINRA's fixed income investigations staff carried out.

Morgan Stanley consented to the settlement without admitting or denying the findings. Christine Jockle, a spokesperson for the firm, said the settlement "involves a very small number of municipal bond trades from 2013 and 2014."

"Morgan Stanley is committed to providing fair and reasonable prices to its clients for their municipal bond transactions," she said. "The firm has agreed to improve its prices for these trades, and has enhanced its processes around reviewing bond trade prices for its wealth management clients."

FINRA found that from Oct. 1, 2013 through Dec. 31, 2013, Morgan Stanley purchased munis in 14 pairs of transactions for its own account from a customer or sold munis for its own account to a customer at aggregate prices, including markups or markdowns that were not fair and reasonable. The determination that the aggregate prices were not fair or reasonable took a variety of factors into consideration, including: the best judgment of the dealers as to the fair market value of the securities at the time of the transactions and of any securities exchanged or traded in connection with the transactions; the expenses involved in carrying out the transactions; the fact that the dealers are entitled to a profit; and the total amount of the transactions.

The firm's actions, which led to percentage profits of between 3.03% and 5.89%, violated Municipal Securities Rulemaking Board Rules G-17 on fair dealing and G-30 on prices and commissions, FINRA said.

Morgan Stanley also violated the MSRB rules in six muni transactions from July 1, 2013 through Dec. 31, 2013, and 13 from Jan. 1, 2014 through March 31, 2014, according to the settlement documents. The transactions included bonds issued by the Puerto Rico Sales Tax Financing Corp., the commonwealth of Puerto Rico, and the Puerto Rico Electric Power Authority.

Additionally, FINRA found that Morgan Stanley violated Rules G-17 and G-30 through two muni transactions from Jan. 1, 2014 through March 31, 2014 when the firm purchased or sold munis as agent for a customer for an excessive commission or service charge. The agent activity violated a separate portion of Rule G-30 than the other violations. The two transactions involved bonds from Puerto Rico's Highway and Transportation Authority and the Puerto Rico Aqueduct and Sewer Authority.

This isn't the first time Morgan Stanley has been hit with FINRA fines for unfair prices. In August 2013, the firm was fined $1 million for charging unfair prices, some of which violated G-30. In October 2011, it was fined $1 million, of which $650,000 was related to unfair markups and

markdowns.

The Bond Buyer

By Jack Casey

February 22, 2017

Getting Serious About Government Fraud.

In April, an unprecedented criminal trial will kick off in federal court in New York, with two representatives of the town of Ramapo facing multiple counts of securities fraud.

Prosecutors have frequently indicted public officials for embezzling taxpayer money or taking bribes, but this case marks the first attempt to convict officials for fabricating a town's financial statement to raise money in the bond market — in this instance, to pay for a new minor-league-baseball stadium.

Ramapo Town Supervisor Christopher St. Lawrence and Ramapo Local Development Corp. Executive Director N. Aaron Troodler "kicked truth and transparency to the curb," alleges the indictment, by misleading investors about the town's finances.

The trial will receive intense scrutiny in government circles. Tens of thousands of local government entities issue bonds, and some employ dubious accounting techniques "that obscure their true financial position," according to a 2015 report of the Volcker Alliance, a good-government group led by former Federal Reserve Chairman Paul Volcker.

For decades, officials rarely paid a price for using such suspect fiscal moves, and some have even grown bold in the practice. But since the middle of the last decade, the Securities and Exchange Commission and the Department of Justice have started to crack down on misleading financial reporting by local governments. The potentially groundbreaking outcome of the Ramapo trial could shake up municipal finance across America.

Consecutive acts of Congress, passed in 1933 and 1934, fashioned securities law in the United States and created the Securities and Exchange Commission, which required firms that issued securities to register with the commission and to produce periodic financial reports.

Congress exempted municipalities that issued securities from the same disclosure rules, however. But the SEC did warn state and local officials that anti-fraud statutes made it illegal to mislead investors by making untrue statements in, or omitting significant facts from, financial reports.

Since then, the SEC and some elected officials and investor groups have lobbied to tighten restrictions on municipalities that issue debt, but they've made little progress.

Increased Scrutiny

In a 2007 speech, former SEC Chairman Christopher Cox warned about the inadequacy of investor protections in the increasingly complex municipal bond market. For decades, he noted, the SEC could intervene in cases only after evidence of fraud emerged.

He warned about the "lack of uniformly applied, generally accepted accounting standards" for

governments, which he argued threatened “the integrity of the municipal market.”

In the aftermath of rising defaults in the municipal market that began in late 2007, the SEC began scrutinizing what governments said in their financial statements and whether it matched their actual practices.

The commission first signaled its intentions in April 2008, when it charged five San Diego officials, including the former city manager and auditor, with fraud in connection with a pension scandal. Investigators accused the officials of certifying financial statements in 2002 and 2003 that they knew were false; they had failed to disclose that the city was purposely underfunding its pension system.

The accused eventually agreed to pay penalties ranging from $5,000 to $25,000 — the first such fines levied against officials in a muni-fraud case.

The commission broke new ground in 2010 by establishing a unit to investigate misconduct in municipal finance, with an emphasis on pension funding.

In August of that year, for the first time, it charged a state with fraud, contending that New Jersey had issued documents during bond offerings between 2001 and 2007 that gave the impression that its government-employee pension system was well-funded; in reality, the state couldn’t afford to make adequate contributions to the system.

In March 2013, the commission similarly charged Illinois with fraud — again, largely due to misrepresentations about pensions. The SEC again chose not to fine the state, and it singled out no one in government as responsible for the mess. Instead, the commission blamed poor staff training and accepted Illinois’ pledge to rectify the situation.

Since then, the SEC has started to more frequently file actions against municipal officials.

From 2008 through 2010, the Chicago suburb of Harvey, Ill., floated several bond offerings to raise money to help investors develop a hotel in town.

When the investors ran into trouble advancing the project, Harvey used some of the money instead to fund the city’s payroll and other operating costs, which violated bond covenants. For his role in the affair in May 2016, Harvey Mayor Eric Kellogg agreed to pay a $10,000 fine and never participate again in a bond offering.

Regulators have taken a particularly tough stand against municipalities with a pattern of wrongdoing. In September, SEC lawyers won an unprecedented trial seeking fines and penalties against Miami and its former budget director over allegations that they misled investors in 2009 bond offerings.

Afterward the SEC warned that “We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws.”

Ramapo’s Field Of Dreams

In Ramapo, federal prosecutors have turned a municipal securities case into a criminal conspiracy indictment.

The U.S. attorney for the Southern District of Manhattan, Preet Bharara, alleges that former Ramapo supervisor St. Lawrence and Troodler, who ran the town’s local development nonprofit

organization, colluded to hide the town's involvement in a $58 million minor-league-stadium project, after voters had overwhelmingly rejected a resolution to back bonds to help build the facility. The defendants have pleaded not guilty, claiming that they relied on the advice of professionals for the various moves made.

With a Republican-led SEC under President Trump about to debut, the question is whether investors and, by extension, taxpayers should demand more reforms and greater supervision of local government accounting.

Among potential reforms that might offer better protection would be giving the SEC the right to designate what information municipal governments should include in their financial reports, and how they should present it.

It may also be time to designate an independent body to set proper accounting standards for governments with public debt — something that the Financial Accounting Standards Board does for private firms that issue securities.

A shake-up is overdue.

INVESTOR'S BUSINESS DAILY

STEVEN MALANGA

2/22/2017

Supreme Court Midterm Review for Local Governments 2017.

The Supreme Court's 2016-2017 Docket is Now Set – And a Number of Cases Will Directly Impact Local Governments.

This article covers cases of interest to local governments which the Court accepted after September 15, 2016 and agreed to hear this term. (Here is a summary of cases of interest to local governments which the Court agreed to hear before September 15, 2016.) The Court is still down a Justice, but has accepted as many cases as usual (about 75) on its 2016-2017 docket. In theory, all the cases discussed below will be decided by June 30, 2017.

The Supreme Court's decision from this term most likely to receive significant media attention involves a transgender student who wants to use the bathroom consistent with his gender identity. However, *Gloucester County School Board v. G.G.* will not directly affect local governments.

Provocation

In *Los Angeles County v. Mendez*,* the Supreme Court must decide whether to accept or reject the Ninth Circuit's "provocation" rule. Per this rule, "where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation, he may be held liable for his otherwise defensive use of deadly force."

It is undisputed that police officers used reasonable force when they shot Angel Mendez. As officers entered, unannounced, the shack where Mendez was living they saw a silhouette of Mendez pointing what looked like a rifle at them. Yet the Ninth Circuit awarded him and his wife damages because

the officers didn't have a warrant to search the shack, thereby "provoking" Mendez.

The Mendezes also argue that, putting the provocation theory aside, the officers are liable in this case because their unconstitutional entry "proximately caused" them to shoot Mendez. Many Americans own guns, so the Court argued it is reasonably foreseeable that, if officers barge into a shack unannounced, the person in the shack may be holding a gun.

Qualified Immunity

United States Border Patrol Agent Jesus Mesa, Jr., shot and killed Sergio Adrian Hernandez Guereca, a fifteen-year-old Mexican national, who was standing on the Mexico side of the U.S.-Mexico border. At the time of the shooting, Agent Mesa didn't know that Hernandez was a Mexican citizen.

One question in *Mesa v. Hernandez* is whether qualified immunity may be granted or denied based on facts unknown to the officer at the time of the incident, such as the victim's legal status. The Fifth Circuit granted Agent Mesa qualified immunity based on the fact that Hernandez was a Mexican citizen even though Agent Mesa didn't know that at the time of the shooting.

Given the rapid pace of police work, it is not unusual for officers to learn a variety of information after they have used force, which supports their qualified immunity claim (i.e. the person they shot had a gun, had threatened another officer or citizen, etc.). Considering this kind of after-the-fact information in the qualified immunity analysis would be favorable to officers.

But the question in this case is whether qualified immunity may be granted or denied based on facts discovered later. In some cases, officers may learn after-the-fact information that undermines their claim for qualified immunity (i.e. the person they shot stated he had a weapon but did not, had been mistakenly perceived to have threatened another officer or citizen, etc.). Considering this kind of after-the-fact information in the qualified immunity analysis would be unfavorable to officers.

Free Speech

During the fall, the Supreme Court accepted three First Amendment free speech cases. This is not good news for local governments, as the Supreme Court routinely and sometimes unanimously votes against states and local governments in First Amendment free speech cases.

*Packingham v. North Carolina** is probably the First Amendment case of most interest to local governments as the Supreme Court is likely to discuss whether the statute at issue in the case is content-based or content-neutral.

The issue in this case is whether a North Carolina law prohibiting registered sex offenders from accessing commercial social networking websites, where the registered sex offender knows minors can create or maintain a profile, violates the First Amendment.

Lester Packingham was charged with violating the North Carolina statute because he accessed Facebook. In the posting that got him in trouble, Packingham thanked God for the dismissal of a ticket.

If a statute limits speech based on content, it is subject to strict (nearly always fatal) scrutiny. In Reed v. Town of Gilbert, Arizona (2015), the Supreme Court held that the definition of content-based is very broad.

The North Carolina Supreme Court concluded that the statute is a "content-neutral" regulation

because it “imposed a ban on accessing certain defined commercial social networking websites without regard to any content or message conveyed on those sites.”

Waters of the U.S.

The Supreme Court has agreed to decide whether federal courts of appeals versus federal district courts have the authority to rule whether the “Waters of the United States” (WOTUS) regulations are lawful in *National Association of Manufacturers v. Department of Defense*.

Per the Clean Water Act, a number of decisions by the Environmental Protection Agency (EPA) Administrator must be heard directly in federal courts of appeals, including agency actions “in issuing or denying any permit.”

A definitional regulation like the WOTUS regulation does not involve the issuing or denying of a permit. Nevertheless, the Sixth Circuit Court of Appeals concluded that it has jurisdiction to decide whether the WOTUS regulations are lawful.

Judge McKeague, writing for the court, relied on a 2009 Sixth Circuit decision National Cotton Council v. EPA, holding that this provision encompasses “not only… actions issuing or denying particular permits, but also… regulations governing the issuance of permits.” The definition of WOTUS impacts permitting requirements.

…and more

The work of the Supreme Court never ends. The Court has already accepted one case for next term involving a local government. In *District of Columbia v. Wesby*, the Supreme Court will decide whether, when the owner of a vacant house informs police he has not authorized entry, an officer assessing probable cause to arrest those inside for trespassing may discredit the suspects’ claims of an innocent mental state.

*Indicates a case where the SLLC has filed or will file an amicus brief.

The National League of Cities

by Lisa Soronen

Executive Director, State & Local Legal Center

About the author: Lisa Soronen is the Executive Director of the State and Local Legal Center (SLLC), which files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments. She is a regular contributor to CitiesSpeak.

SIFMA Submits Comment to the MSRB on Draft Amendments to Modernize MSRB Rule G-26 on ACATS.

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on draft amendments to MSRB Rule G-26, on customer account transfers. SIFMA and its members support the stated purpose of the draft amendments, but do not agree that the draft amendments are the optimal way to achieve that goal.

Read the comment letter.

February 17, 2017

Issuers Giving Themselves More Time to Disclose Financials.

WASHINGTON – Municipal market analysts are concerned that Municipal Securities Rulemaking Board data shows more issuers are giving themselves 270 days after the end of their fiscal years to file annual financial information.

Meanwhile, fewer issuers are taking 180 days to disclose their continuing disclosure information (CDAs) the board said. Issuers with CDAs agreeing to file financials within 180 days of the end of their fiscal years were still the most common in 2016 at roughly 34% of all CDAs. But that is a drop from the roughly 37% of CDAs that had 180-day deadlines in 2012, according to data. CDAs with 270-day commitments climbed to about 27% of all CDAs in 2015 from about 23% in 2011. The percentage dropped slightly in 2016 to 25% from 2015.

The data comes from an MSRB report on the timing of annual financial disclosures by issuers in the municipal market released on Tuesday. The report, which uses submissions to the MSRB's EMMA system and calculates its numbers based on the date of receipt and end of the fiscal year, is an update on similar reports the self-regulator has done in the past.

Julie Egan, chair of the National Federation of Municipal Analysts, said she is "disappointed but not really surprised that the CDA timeframes have lengthened." Richard Ciccarone, president and chief executive officer of Merritt Research Services, also said a longer time before disclosure is disappointing.

"Having current disclosure information is vital to the secondary market and liquidity," Egan said. "The absence of timely information is an impediment for bond purchasers. It can result in bond buyers either looking elsewhere or seeking higher yields to compensate for the lack of information."

Egan, who is a senior vice president and portfolio manager with Community Capital Management, said many issuers are making "prompt and thorough disclosures and are doing a great job," but some are not. NFMA, which has made prompt disclosure a key focus for years, also encourages issuers to post more frequent financial updates on their websites.

"In my opinion, the issuer or their advisors should help look for solutions to provide prompt and full disclosure, not lengthen the reporting requirements to improve compliance with their continuing disclosure agreements," Egan said.

The report also found that it took issuers an average of 311 days to submit their audited financial statements, the least amount of time since 2011 when the average was 307 days. The average number of days to submit audited financial statements spiked in 2014 when the number rose to 447. The MSRB attributes that spike to the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, under which issuers and underwriters self-reported lapses in issuers' disclosure compliance. Many issuers made efforts to amend their previous disclosures after the MCDC announcement.

Michael Decker, managing director and co-head of munis for the Securities Industry and Financial Markets Association, said the MSRB's analysis provides a "useful and interesting snapshot of issuer

disclosure filing activity" and added that a possible area for further research could be the frequency and severity of delinquent filings among issuers both before and after the MCDC initiative.

Jessica Giroux, general counsel and managing director of Bond Dealers of America said BDA supports the MSRB's continued efforts at enhancing the understanding of issuers of their responsibilities under the federal securities laws.

The MSRB found it took issuers an average of 260 days to file their annual financial information in 2016, which includes information outside of audited statements, such as quarterly data. The 260-day period is far below the 373 days it took issuers on average in 2014.

The MSRB also reported averages for a category of submissions it said excluded "catch-up" submissions, which are made more than a year after the end of a fiscal year to fill in earlier gaps in disclosures. Those submissions were prevalent after MCDC when issuers realized they needed to fix their disclosures. The MSRB said the catch-up submissions can at times skew the data.

The self-regulator found that it took issuers that reported within a year an average of 199 days after the end of the fiscal year to file their audited financial statements in 2016, just under the recent average of 200 days. It took 189 days for issuers that reported within a year to file their annual financial information.

The Bond Buyer

By Jack Casey

February 14, 2017

FINRA Says UBS Must Pay $9M to Puerto Rican Muni Investor.

The case comes just one month after an $18 million ruling, with more regulatory decisions expected

In the ongoing resolution of multiple claims brought against UBS for sales of Puerto Rican bonds, a regulatory panel has awarded some $9 million to an investor.

On Friday, the Financial Industry Regulatory Authority panel awarded Luiz Romero close to $8 million in compensatory damage plus interest, as well as $1 million in punitive damages plus interest.

"Respondent UBS exercised extreme recklessness and indifference to the consequences of loan recycling by failing to utilize a supervisory system which would have alerted upper management that claimant Romero and taken $8 million from his non-purpose loan account one day and redeposited the exact same amount less than two weeks later to buy securities," the regulatory panel explained in its decision.

According to the panel, it opted to fine the wirehouse over its "intentional and willful provision of a 'non-purpose' loan, which was either knowingly encouraged to be 'recycled in violation of Regulation U or provided with a reckless indifference to the consequences of the loan recycling."

The loan, the regulatory group says, led to "additional excessive leverage, so that when there was a

downturn in the market, claimants lost more money than they would have had they been suitably invested with less leverage."

Romero bought municipal bonds and closed-end bond funds from UBS. He filed his complaint against UBS in November 2013. Several pre-hearing sessions were held in 2015, followed by 24 hearings in 2016 and 2017.

The $70 billion market for these investments collapsed in 2013 and has resulted in more than $1.5 billion in customer claims.

"Although the arbitrators awarded significantly less than the full damages claimants requested, UBS is disappointed and disagrees with the decision to award any damages," the firm said in a statement. "Mr. Lopez was an experienced investor who made a fully informed decision to leverage his investments and concentrate his portfolio in Puerto Rico bonds and UBS Puerto Rico closed-end funds because of their long history of providing excellent."

Prior Cases

In January, just one month after a regulatory panel awarded over $18 million to two clients of UBS over sales of Puerto Rican municipal bonds and closed-end funds tied to these securities, a separate panel issued a similar award to three other clients — including $4 million in punitive damages.

UBS has challenged the December award in a U.S. district court with claims that arbitrators failed to disclose key material facts before the case began.

In January, UBS accepted the FINRA panel, which included three arbitrators, says attorney Lloyd R. Schwed of Schwed Kahle & Kress in Palm Beach Gardens, Florida, and raised no objections to it.

The panel issued a $18.2 million decision, ruling that the Gomez family — well known on the island for their car businesses and charitable activities — should receive $9.63 million in compensatory damages, $4 million in punitive damages, nearly $4.5 million in attorneys' fees, and $86,550 in other costs.

The three members of the Gomez family (parents Victor and Socorro, along with daughter Madeline), argued that they had been subjected to securities fraud, elder abuse and other violations of the law.

According to their attorneys, this arbitration decision appeared to be the first entailing the imposition of punitive damages on UBS in connection with its sales of Puerto Rico municipal bonds and closed-end bond funds.

In the December decision, an attorney for a claimant — Timothy J. Dennin of Northport, New York — said there may be as many as a thousand similar claims pending in Puerto Rico.

ThinkAdvisor

FEBRUARY 17, 2017

Morgan Stanley Pays FINRA Fine Over Municipal Bond Trades.

Law360, New York (February 16, 2017, 5:05 PM EST) — Morgan Stanley's brokerage arm settled the Financial Industry Regulatory Authority's allegations that it bought or sold municipal bonds for its own accounts at prices that were not fair and reasonable, according to a deal filed Wednesday.

Morgan Stanley Smith Barney LLC agreed to pay a $115,000 fine, plus more than $55,000 in investor restitution, to end FINRA's claims that some of its municipal bond transactions from July 2013 to March 2014 violated rules from the Municipal Securities Rulemaking Board by being priced unfairly or reasonably.

The company neither admitted nor denied the allegations.

During the specified time period, the brokerage firm violated MSRB rules 33 times when purchasing municipal securities from customers for its own account, or when selling these securities from its own account to customers, according to the deal.

FINRA alleged that the aggregate prices of these transactions, including any markups or markdowns, were not reasonable when taking into account judgment of fair market value, the transactions' expenses, Morgan Stanley's profits on the deals and the total amount of the transactions.

Additionally, Morgan Stanley Smith Barney twice charged customers excessive fees for purchasing or selling municipal securities as the clients' agent, FINRA said.

A representative for the firm said the settlement involves a "very small number of municipal bond trades" and that it is committed to providing fair and reasonable prices to clients.

"The firm has agreed to improve its prices for these trades and has enhanced its processes around reviewing bond trade prices for its wealth management clients," the representative said.

The settlement listed the brokerage company's relevant history with FINRA, including its agreement in 2011 to pay $1 million for allegedly charging unfair markups and markdowns for fixed income transactions and its deal in 2013 to pay another $1 million penalty to settle similar allegations.

The company agreed in October to pay a $2.2 million fine to settle another FINRA action, which alleged it submitted tens of millions of inaccurate or incomplete reports on its large options positions to the Options Clearing Corp. On the same day, the bank also reached a separate settlement in which it paid $102,500 for allegedly failing to report numerous securities transactions to FINRA.

FINRA does not comment on pending litigation.

Counsel information for Morgan Stanley Smith Barney was not immediately available on Thursday.

FINRA is represented by Robert A. Marchman.

The case is Re: Morgan Stanley Smith Barney LLC, case number 149777, in the Financial Industry Regulatory Authority.

By Cara Mannion

CA Bond Watchdogs Don't Have Much Bite, Says New Report.

Since 2000, local bond measures that pay for school construction require only 55 percent local voter approval, instead of two-thirds. With that change came a new requirement that a citizen watchdog group monitor bond expenses to ensure projects promised were built.

Other governments also turn to citizen groups to police voter-approved bonds that pay for things like roads and transit.

In 2016 alone, Californians approved local school bond measurers totaling $28 billion, plus another $7.2 billion in local government debt for other public projects, according to a report released Tuesday by the Little Hoover Commission, a state entity that provides independent government oversight. The commission suggests Gov. Jerry Brown and the Legislature "should update and overhaul" the state law that created the bond oversight groups to clarify their authority.

The oversight groups, "By and large … have proven ineffective and some committee members have told the Commission that is at least in part, by design," wrote the Little Hoover Commission. "Most of the concerns revolved around bond oversight committee members who lack training, have conflicts of interest, either real or perceived, and the difficulty committee members have receiving required documents from the districts."

Those same issues have surfaced in San Diego County, where some appointees represent workers building bond projects and others get paid to lobby the very government officials they oversee.

Among other things, the Little Hoover panel proposed county treasurers review and comment on bond sales before they occur to help prevent poor debt financing decisions by local government agencies.

The commission also recommended changing the oversight committee appointment process, currently handled by district officials the group oversees. The report also recommends committee members play a larger role in selecting bond auditors, and that audits measure effectiveness and results, as well as compliance.

The commission also believes oversight groups should receive a minimal budget to hire independent counsel when needed. Such requests by the oversight committee watching San Diego Unified's $4.9 billion bond program have been denied.

In addition, the commission called on the state Treasurer's office to provide online trainings about bond sales to elected officials, and suggested state leaders allocate one-time funding for the state's school business advisory group, known as the Fiscal Crisis & Management Assistance Team, to put together online training for bond oversight committee members.

Former San Diego Unified school board member Scott Barnett was appointed to the 13-person Little Hoover Commission last year by then-Assemblywoman Toni Atkins. Nick Marinovich, chair of Sweetwater Union High School District's bond oversight committee, recently testified before the commission about improved oversight following the criminal convictions of district leaders accused of pay-to-play contracting.

Voice of San Diego has examined several issues and potential conflicts facing local bond oversight committees in recent years.

Contractors can't legally serve on bond committees, but public agencies are interpreting the word

“contractor” as they see fit and have repeatedly appointed contracted union chiefs and contractor lobbyists to the group.

Union leaders contracted with San Diego Unified to supply workers through a project labor agreement have served on the district’s independent bond oversight committee for years. Similar decisions were made at Southwestern College and Los Angeles Unified School District:

> Mike Magallanes, business representative of the Southwest Regional Council of Carpenters, signed San Diego Unified’s project labor agreement on behalf of the union group in 2009. He was appointed to the oversight committee in 2012 and his term doesn’t expire until 2017.
>
> Matt Kriz, trustee of the San Diego Building & Construction Trades Council – another major party to the PLA – joined the oversight committee in 2013. His oversight term also doesn’t expire until 2017, according to the district’s website.

San Diego Unified’s bond oversight group was also chaired for years by Andy Berg, chief executive of the San Diego chapter of the National Electrical Contractors Association. Here’s how we described that conflict:

> Berg lobbies public and private agencies for electrician jobs by day, and by night he chairs the bond oversight committee, a group tasked with ensuring the district’s $4.9 billion in bond dollars are spent as promised to voters without waste.
>
> Berg has held these dual roles – advocating for contractors and taxpayers alike – for years, and not just at San Diego Unified. He’s also served on school bond oversight committees at Poway Unified, the Sweetwater Union High School District and the San Diego Community College District over the last decade.

Regional planning agency SANDAG has also appointed contractor lobbyists to its committee overseeing TransNet, a 40-year sales tax bond that’s supposed to pay for $14 billion in transportation and infrastructure projects countywide, we reported last year:

> Brad Barnum heads the TransNet Independent Taxpayer Oversight Committee, a role that involves receiving staff reports, hiring and overseeing an auditor, advising public officials periodically – and, as needed – about the program’s efficiency and project costs, schedule and bond debt.
>
> He’s also a registered lobbyist with the city and county in his role as government relations director for the San Diego chapter of the Associated General Contractors of America.
>
> Barnum lobbies for 1,100 contractors, who he says perform 85 percent of the region’s commercial, industrial, general engineering and heavy highway construction.
>
> A decent chunk of that work comes from SANDAG, and millions from the TransNet bond measure specifically, public records show.
>
> AGC San Diego contributed $500,000 to help pass TransNet in 2004, and Barnum

> recently met with officials to discuss campaign strategy for a new tax hike and bond measure that may go on the ballot as early as this year.

That same committee recently expressed no concern when Voice of San Diego revealed TransNet's revenues are expected to come up billions of dollars short, which could result in fewer projects being built. In fact, the chair said monitoring revenues is not the oversight group's job:

> The chair of the committee, Stewart Halpern, says the group's responsibilities don't include monitoring the growing disparity between the projected revenue and the actual revenue it's brought in so far.
>
> He said he was not aware of the discrepancy between the revenue SANDAG anticipated and the revenue it's actually collected.
>
> "To put it succinctly, the concept of comparing current revenues to the revenues that were forecast in 2004, that actually isn't really our mandate," said Halpern, whose expertise is in municipal finance.
>
> He said the group is primarily focused on making sure the money collected is spent expeditiously and responsibly and on the projects promised to voters.

What exactly bond oversight committees are supposed to monitor and where the job stops is interpreted differently from group to group, resulting in varying levels of oversight.

The Little Hoover Commission is calling on state officials to provide training and legislative fixes to clear up these issues left ambiguous in state law.

Voice of San Diego

By Ashly McGlone | February 15, 2017

Will President Trump's Regulation Cuts Reduce Ongoing Disclosure for Bond-Financed Projects?

HIGHLIGHTS:

- President Donald Trump's recent executive order entitled "Core Principles for Regulating the United States Financial System" directed the Treasury Secretary to consult with financial regulators, including the U.S. Securities and Exchange Commission (SEC), as to whether or not existing regulations "promote the core principles" outlined in the order, including, among others, the directive to "make regulation efficient, effective, and appropriately tailored."
- Participants in the municipal bond industry are hoping that the push for more "efficient" and "appropriate" regulations might lessen the regulatory burden under the Dodd-Frank Wall Street Reform and Consumer Protection Act of issuing municipal bonds.
- A significant part of the cost of issuance involves the elaborate disclosure that must be provided to investors, often on a quarterly basis and often for as long as a single bond of a particular issuance remains outstanding.

President Donald Trump on Feb. 3, 2017, signed an executive order entitled "Core Principles for Regulating the United States Financial System," which directed the Treasury Secretary to consult with financial regulators, including the U.S. Securities and Exchange Commission (SEC), as to whether or not existing regulations "promote the core principles" outlined in the order. Those principles include, among others, the directive to "make regulation efficient, effective, and appropriately tailored."

One of the targets of this order is the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted in 2010 in the wake of the 2008 recession. Among its many impacts, Dodd-Frank resulted in more abundant and elaborate disclosure regulations imposed by the Municipal Securities Rulemaking Board (MSRB) and the SEC on municipalities and their conduit borrowers – i.e., developers and nonprofit charitable organizations. Participants in the municipal bond industry are hoping that President Trump's push for more "efficient" and "appropriate" regulations might lessen the regulatory burden, and therefore the cost, of issuing municipal bonds. A significant part of the cost of issuance involves the elaborate disclosure that must be provided to investors, often on a quarterly basis and often for as long as a single bond of a particular issuance remains outstanding.

A Brief History of Continuing Disclosure for Muni Bonds

Municipal securities generally are exempt from the regulatory and reporting requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. In the late 1980s, following significant turmoil in the municipal bond industry that included the default of $2.45 billion in tax-exempt revenue bonds issued by the Washington Public Power Supply System, the SEC adopted Rule 15c2-12 under the 1934 Act.

Rule 15c2-12 generally obligates bond underwriters to obtain from an issuer, and to review and distribute to investors, a preliminary official statement (POS) describing the securities being offered. The issuer must deem the POS final as of its date, except for certain information that may be added upon the consummation of the bond sale, such as the aggregate principal amount and interest rates. The underwriter is also obligated to provide a complete, final official statement to all investors within seven business days following the bond closing.

Since its Jan. 1, 1990, effective date, Rule 15c2-12 has been amended several times. For instance, in 1994, in response to growing concerns among investors about the adequacy of secondary market disclosure, the SEC amended Rule 15c2-12 to prohibit underwriters from purchasing municipal securities unless the issuer signed a written agreement to provide ongoing disclosure, including financial information and notices of material events. This obligation extends to "obligated persons" (i.e., persons or entities responsible for paying any of the underlying revenues securing the bonds). For obligated persons, however, the obligation generally may be terminated when the entity's financial responsibility falls below a certain threshold. For instance, in California, developer-landowners who borrow proceeds from an issuance of Mello-Roos bonds – i.e., bonds secured by special taxes levied within a community facilities district – generally may terminate their continuing disclosure obligation once their special tax obligation falls below 20 percent of the total tax levy for a given fiscal year.

How Did Dodd-Frank Impact Continuing Disclosure?

Dodd-Frank imposed additional fiduciary duties on municipal securities issuers and underwriters, and it extended the regulatory umbrella to cover financial advisors. It also augmented the regulatory authority of the MSRB and the SEC. Several new municipal securities regulations and enforcement initiatives were implemented as a result of Dodd-Frank, including the Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative).

The MCDC Initiative, implemented in 2014, represented the SEC's first step in a plan to tighten its regulatory reigns on municipal securities in compliance with Dodd-Frank. The MCDC Initiative provided issuers and underwriters the opportunity to self-report any instances of material omissions or misstatements in prior offering documents. In return for this self-reporting, the SEC agreed to mitigate penalties for such disclosure violations. Under the MCDC Initiative, the SEC charged 71 issuers for selling municipal securities with deficient disclosure relating to compliance with ongoing disclosure requirements under Rule 15c2-12. The SEC settled those actions without requiring admissions of guilt but requiring that the parties agree to cease future violations as well as establish policies and procedures that will ensure such violations do not occur in the future.

What Will a Dodd-Frank Overhaul Mean to Continuing Disclosure?

At this point, it is impossible to predict how President Trump's efforts to streamline financial regulation will impact continuing disclosure obligations for municipal securities. Now that issuers, developers and nonprofits have instituted procedures for disseminating information to the bond market, and investors have become accustomed to receiving such information, an effort to reduce that data flow may potentially be met with resistance. Moreover, disclosure of salient information to the marketplace is equally as appropriate for municipal issuers as it is for corporate issuers. Nevertheless, it remains to be seen if President Trump, who seems to favor a more laissez-faire approach to regulating private businesses, will establish an environment in which private companies – the so-called "obligated persons" – might be relieved of some of their current continuing disclosure burden.

by Robert Haight Jr., Douglas Praw | Holland & Knight LLP

2/14/2017

MSRB Proposes New Ad Rule for MAs, Revised One for Dealers.

WASHINGTON — The Municipal Securities Rulemaking Board is proposing an advertising rule for municipal advisors as well as revisions to its existing dealer advertising rule so that it is in line with other regulators' rules.

The MSRB released the proposals late Thursday, asking for public comments on them to be submitted by March 24.

The MSRB's proposed new Rule G-40 on MA advertising is part of the self-regulator's efforts to create a regulatory regime for MAs and follows efforts to reach out to some MAs for information about MA advertising.

The board's proposed amendments to Rule G-21 on dealer advertising are the result of market participants urging the self-regulator to harmonize the rule with the Financial Industry Regulatory Authority's Rule 2210 on communication with the public.

"The changes we are proposing today would standardize advertising requirements for dealers and municipal advisors, and reinforce protections for the investors and municipal securities issuers that rely on their products and professional services," said MSRB executive director Lynnette Kelly. "We think the changes we are seeking comment on would improve consistency of advertising standards across the financial services sector and would be appropriately tailored to the business needs of

municipal finance professionals."

The amendments to Rule G-21 would make explicit and enhance many of the MSRB's fair dealing obligations by mandating six requirements be met, including that an advertisement be fair and balanced as well as provide a sound basis for evaluating the municipal security. They also would require that an advertisement provide a balanced treatment of the benefits and risks associated with a municipal security.

The enhanced fair dealing provisions harmonize the rule with FINRA Rule 2210's content standards for advertisements, according to the MSRB.

The amendments would also prohibit dealers from using testimonials in their advertisements to avoid misleading investors. The revisions would also expand on guidance the MSRB gives in its registration rule explaining that a dealer can only state it is MSRB registered it if is in compliance with MSRB rules and does not indicate that the MSRB endorses the dealer's practices.

Additionally, the revisions would harmonize language explaining general standards in the current rule as well as the definition of a form letter with language in FINRA's Rule 2210. A form letter would be defined as a written letter or electronic mail message distributed to more than 25 persons.

Rule G-40 would be substantially similar to the amended Rule G-21 but would have specific language altered to align with MA practices and would not address product advertisements, new issue product advertisements, and municipal fund security product advertisements because the MSRB said it does not think MAs prepare those.

The proposed rule, which would apply to advertisements by non-solicitor and solicitor MAs, would define an advertisement as any promotional literature distributed or made generally available to a municipal advisory client by a municipal advisor. Like the amended Rule G-21, Rule G-40 would exclude certain documents from the definition of advertisement such as preliminary official statements, official statements, preliminary prospectuses, summary prospectuses, and registration statements.

The definition of form letter in Rule G-40 would be the same as it is in the amended version of Rule G-21. The MSRB said in its notice that an MA responding to a request for proposals or qualifications from an issuer for services in connection with a municipal finance product would most likely not be making an advertisement because the response would likely be made to no more than 25 people.

Rule G-40 would also set forth similar content standards to those in the revisions to Rule G-21. That would ensure consistent regulation between regulated entities in the muni market as well as level the playing field between dealer MAs and non-dealer MAs, the MSRB said. The rule would also prohibit MAs from using testimonials in advertisements for similar reasons as the ones given to dealers. Additionally, G-40 would define the term professional advertisement in part as an advertisement concerning the services of the MA. It would also require that each advertisement that is subject to the rule be approved in writing by a municipal advisor professional before its first use. The MA would have to keep a record of all such advertisements.

The Bond Buyer

By Jack Casey

February 16, 2017

MSRB: Continuing Disclosure Timing Remains Stable.

Washington, DC — Audited financial statements of municipal bond issuers reach investors an approximate average of 200 days after the end of the issuer's fiscal year, based on an updated report from the Municipal Securities Rulemaking Board (MSRB). In the six years since the MSRB began analyzing data on the timeliness with which municipal securities issuers and other obligated persons make their audited financials available to the public, the typical timing has remained stable, averaging between 196 and 202 days after the end of the issuer's fiscal year.

The *Timing of Annual Financial Disclosures by Issuers of Municipal Securities* report analyzes submissions of annual financial information and audited financial statements made by issuers and obligated persons to the MSRB's Electronic Municipal Market Access (EMMA®) website between January 2010 and December 2016. Consistent with previous years, the timing of audited financial statement disclosures made in 2016 averaged approximately 199 calendar days after the end of the applicable fiscal year. Annual financial information submissions averaged 189 calendar days after the end of the applicable fiscal year. These averages do not include what the MSRB's methodology assumes to be "catch-up" submissions made by issuers to correct a prior year's failure to make a timely submission.

When comparing timing by the bonds' source of repayment in 2016, revenue bond disclosures were typically filed the soonest, averaging 179 days after the end of the fiscal year for audited financial statements, compared to 201 days for general obligation bonds and 213 days for double barrel bonds. Similarly, revenue bonds offered the most timely disclosure of annual financial information compared to general obligation and double barrel bonds.

Issuers in the health and housing sectors typically filed their audited financial statements the most timely in 2016, averaging 138 and 146 days, respectively. That same year, issuers of improvement, tax revenue and various purpose bonds exceeded an average of 200 days before the audited financial statement was filed. The health and housing sectors also led with timeliness of their annual financial information submissions.

Issuers establish the deadline by which they commit to make their filings in a contract known as a continuing disclosure agreement. The MSRB's report finds that the majority of issuers had a commitment date of 180 days or 270 days from the end of the issuer's fiscal year. Over the last several years, the number of commitments of 180 days has generally decreased while there has been an upward trend in commitments of 270 days.

The MSRB does not regulate issuers of municipal securities or other obligated persons and therefore does not establish requirements or set recommended timeframes for the content or timing of disclosures. It does, however, operate the EMMA website as the official repository for municipal market disclosures, including issuers' annual financial information. As part of its mission to protect investors and enhance market transparency, the MSRB provides a set of guiding principles for timely and complete disclosure, as well as educational resources and free tools such as a financial disclosure email reminder service to assist submitters in making on-time disclosures.

The MSRB's market data publications like today's updated report ensure municipal market stakeholders have access to objective, factual information about disclosure practices, trade activity and other aspects of the market.

Date: February 14, 2017

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

HFS Committee to Review Muni Regulators, Others.

WASHINGTON – The House Financial Services Committee intends to review municipal bond regulators and other aspects of the capital markets with an eye toward rolling back certain programs, according to an oversight plan from the committee.

The plan, which broadly lays out parameters for the session, "contains oversight initiatives that will be undertaken for the purpose of identifying cuts to or the elimination of programs that are inefficient, duplicative, outdated, or more appropriately administered by state and local government," the committee said.

It specifically mentions the Securities and Exchange Commission the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority among other agencies and programs.

The committee said the SEC received $1.605 billion in fiscal year 2016 appropriations even though its authorization lapsed in fiscal 2015. The SEC's Office of Inspector General's authorization lapsed after fiscal year 2011, though it was appropriated $11.3 million in fiscal 2016. The committee said it will perform the necessary oversight to support activities related to reauthorizing the SEC.

It also plans to "monitor all aspects of the [SEC's] operations, activities, and initiatives to ensure that it fulfills its congressional mandate to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation," according to the committee document. The Municipal Securities Rulemaking Board will get similar treatment as the committee intends to review the self-regulator's operations, initiatives, and activities.

Dealers and others have complained about the rising cost of compliance the muni market is now facing as a result of a slew of new rulemaking from the SEC and MSRB to implement the Dodd-Frank Act in recent years. Muni market groups have asked the regulators to better assess how their rules are impacting costs and burdens for market participants, especially smaller dealers and municipal advisor firms.

The Financial Services Committee plan includes a section that broadly outlines the reduction of regulatory burdens as a goal for the congressional session.

The committee has promised to explore financial regulators' implementation of the Volcker Rule and how it has affected the strength and international competitiveness of U.S. capital markets. Muni groups, along with the MSRB, had raised concerns the rule would bifurcate the market by only exempting certain issuers' bonds.

The committee's oversight plan also includes an exploration of bank regulator standards developed in conjunction with the international Basel Committee on Banking Supervision. Muni market participants have complained about bank regulators' liquidity rule, which mandates that banks hold enough high quality liquid assets (HQLA) to deal with periods of financial stress. Except for the Federal Reserve Board, the bank regulators' definition of HQLA does not include any municipal bonds. Legislators introduced two bills last session to try to remedy the exclusion of munis but they

never became law.

The committee's oversight plan was released after recent executive orders from President Trump encouraged the SEC, among other agencies, to review the cost of Dodd-Frank mandated and other regulations.

Financial Services Committee chair Rep. Jeb Hensarling, R-Texas, applauded the president's order on Dodd-Frank last week, saying he was "very pleased" that Trump was following through on his promise to dismantle the legislation. Hensarling is reportedly planning to reintroduce his alternative to Dodd-Frank within the next few weeks. The legislation, called the Financial CHOICE Act, would address many of the areas of concern outlined in the Financial Services Committee's oversight plan.

The Bond Buyer

By Jack Casey

February 8, 2017

MSRB Enhances EMMA Alerts Tool.

Washington, DC – Investors and others who track municipal bonds with email alerts from the Electronic Municipal Market Access (EMMA®) website can now further customize their notifications and see more detail about the securities they follow.

As part of an ongoing effort to improve the usability of its EMMA website, the Municipal Securities Rulemaking Board (MSRB) has enhanced EMMA's automated email alerts so that users can specify the types of continuing disclosure filings to trigger a notification. For example, an investor can choose to receive email alerts only when new audited financial statements or notices of bond calls are posted. Previously, users could opt to receive alerts for every financial disclosure or all event filings for one or more securities but could not narrow their selection to specific documents or events.

EMMA's automated alerts have also been improved to include more useful details about the relevant bond and its associated trade activity or filing that triggered the alert.

"Thousands of investors and other EMMA users rely on the alerts feature to stay up to date with the latest available information on their securities," said MSRB Executive Director Lynnette Kelly. "These enhancements allow users to be more selective about the types of alerts they wish to receive and provide more descriptive information about the nature of the alert."

EMMA alerts are available for trade activity and when new disclosure documents are filed for one or more securities. Disclosure filings include annual financial information that provides an updated view of the issuer's financial health and notices of events that can have an impact on the bonds. To access EMMA alerts, create a free MyEMMA account on the EMMA website.

The MSRB is continuing to consider additional changes to the alerts function to support website performance and usability. For unlimited real-time access to trade data and disclosure filings, the MSRB offers paid subscription services.

The MSRB's EMMA website is the official source of data and disclosure documents on more than one

million outstanding municipal securities. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal market.

Date: February 8, 2017

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

Munis Could be Caught Up in Revised CHOICE Act's Mandated SEC Reviews.

WASHINGTON – House Financial Services Committee Republicans have floated a revised version of their Financial CHOICE Act that would require the Securities and Exchange Commission to review municipal market and other self-regulatory organizations' inefficiencies as well as reform its enforcement process.

The memo dated Feb. 6 from committee Republicans includes many Dodd-Frank Act and other changes that may be proposed in the new version of the Financial CHOICE Act, which is expected to soon be introduced.

Committee chair Rep. Jeb Hensarling, R-Texas, introduced a version of the CHOICE Act during the last session that was approved by the committee but not taken up by the full House. Democrats have made clear they intend to fight Republican reforms to Dodd-Frank during the session.

Rep. Maxine Waters, the top Democrat on the committee, said Hensarling is trying to destroy protections that stop Wall Street from "ripping off hardworking Americans" and that the changes indicated in the memo show a new Financial CHOICE Act that "is even worse than the original." The committee's Republican staff would not return calls to verify and expand upon the memo.

One proposal in the memo is to have the SEC chair "provide a report within one year on eliminating duplication and inefficiencies amongst the various self-regulatory organizations." Sources said that language could mean exploring possible opportunities to roll back regulations and streamline rulemakings between the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority.

Executive orders from President Donald Trump have already directed the SEC to play a role in identifying how Dodd-Frank's implementation has not worked as well as how existing regulations could be streamlined.

Dealer groups have welcomed the attention to rulemaking and enforcement as they have consistently complained about the increasing costs and burdens of the many rules during the last few years that implemented Dodd-Frank provisions. The act subjected non-dealer municipal advisors to federal regulation for the first time and directed the MSRB to protect issuers as well as investors. The memo also proposes to prohibit the SEC from undertaking "rulemaking by enforcement."

One source said a large segment of the muni market saw the SEC's Municipalities Continuing Disclosure Cooperation initiative as rulemaking by enforcement because the commission had not directly spoken to issuers in recent years about their responsibilities under SEC Rule 15c2-12 on disclosure. MCDC promised underwriters and issuers that they would receive lenient settlement

terms if they self-reported instances over the last five years where issuers falsely stated in offering documents that they were in compliance with their continuing disclosure agreements.

Another proposal would direct the SEC to establish a "Wells Committee 2.0 to reevaluate its enforcement program." Sources said the "Wells Committee 2.0" likely refers to a requirement to conduct similar analyses to what the SEC's Wells Committee did in the 1970s. That committee reviewed commission enforcement activity and recommended, among other things, that the SEC implement the practice of giving an individual or firm that may face a commission civil action an opportunity to explain why the action should not be brought. The notice given to the potential parties in the actions is called a Wells Notice.

There were several muni-related portions of the previously introduced CHOICE Act that are not mentioned in the memo, that sources said may still be in the bill when it is reintroduced.

One would move the SEC's Office of Municipal Securities back into the commission's trading and markets division, where it was before Dodd-Frank required it to be independent and report directly to the SEC chairman. Another would divert the funding the MSRB regularly receives from SEC and FINRA enforcement actions over muni rule violations to the Treasury for deficit reduction. Of the MSRB's roughly $35.4 million in revenue in its fiscal year 2016, $1.2 million came from fines for muni rule violations.

The original CHOICE Act also would have allowed the SEC to triple monetary fines in administrative and civil actions where penalties are tied to illegal profits as well as in enforcement cases dealing with repeat violators of laws and rules.

The Bond Buyer

By Jack Casey

February 10, 2017

Trump Executive Order Encourages SEC to Review Cost of Regulations.

WASHINGTON – President Donald Trump's executive order to decrease regulations and the costs they impose encourages independent agencies like the Securities and Exchange Commission to review their rules, even though the order does not directly apply to them, according to guidance issued Monday.

Trump's order, signed on Jan. 30, mandates executive departments and agencies to repeal two rules for the adoption of every new rule that imposes costs. It requires the savings from the repealed rules to fully offset the costs of the new action, according to the guidance published by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

OIRA makes clear in its guidance that independent agencies are not covered, but notes that "nevertheless, we encourage independent regulatory agencies to identify existing regulations that, if repealed or revised, would achieve cost savings that would fully offset the costs of new significant regulatory actions."

The Jan. 30 executive order is connected to another order Trump signed on Feb. 3 that directs the Treasury secretary to meet with major financial regulators, including the SEC, and report within 120

days on what Dodd-Frank Act provisions are working and not working.

Municipal market participants have consistently said they are concerned about the high cost of implementing and complying with the slew of regulations that the Municipal Securities Rulemaking Board and SEC have adopted over the last several years, many of which implemented Dodd-Frank provisions. The act put non-dealer municipal advisors under a federal regulatory regime for the first time and also made the MSRB responsible for protecting issuers as well as investors.

Bond Dealers of America welcomed the Feb. 3 order as a chance for a "critical reassessment" of Dodd-Frank regulations and the Securities Industry and Financial Markets Association commended the Trump administration for taking the action.

"It is imperative to ensure that our financial regulatory framework does not unnecessarily impede capital formation that drives job creation, economic growth and investor opportunity in this country," SIFMA president and CEO Ken Bentsen said in a release late last week.

The SEC is currently working with only two commissioners, but Trump has nominated Jay Clayton, a Wall Street lawyer, to succeed Mary Jo White as chair. Market participants see Clayton as someone who will work with the Trump administration to focus on deregulation where possible, suggesting he will likely follow the Jan. 30 executive order.

In announcing his nomination of Clayton as SEC chair in early January, Trump said the administration needs to "undo many regulations which have stifled investment in American businesses, and restore oversight of the financial industry in a way that does not harm American workers."

The Senate has yet to schedule a hearing for Clayton but several Senate Republicans have released statements and tweets about successful meetings with the nominee.

The Bond Buyer

By Jack Casey

February 6, 2017

MSRB Plans to Codify CUSIP Requirements for Private Placements.

WASHINGTON – The Municipal Securities Rulemaking Board plans to propose codifying its long-time regulatory interpretation that dealers are required to apply for CUSIP numbers when conducting private placements.

MSRB executive director Lynnette Kelly told reporters on Monday that the board, during its quarterly meeting here late last week, decided to issue the proposal and seek comment on it within the next few months.

The proposed changes to MSRB Rule G-34 on CUSIP numbers would harmonize the definition of underwriter in that rule with the definition under MSRB Rule G-32 on disclosure in connection with primary offerings. The definition of underwriter in G-32 tracks the one used in Securities and Exchange Commission Rule 15c2-12 on disclosure. Whether bank loans are included as private placements that need CUSIP numbers would still depend on whether they are considered loans or

securities, MSRB staff said.

The rule changes to G-34 will be the first proposed amendment coming from the MSRB's multi-year initiative to review primary market practices. Kelly said the review of dealer rules in the primary market will continue.

The MSRB is also planning to file a continuing education requirement for municipal advisors with the SEC after receiving requests from MAs to more carefully evaluate and explain the requirements the board had previously circulated for comment. The circulated requirements would create a single-pronged approach similar to one of the two prongs that dealers are currently required to satisfy for their continuing education requirements. All associated persons of MAs who engage in MA activities as well as those who manage, direct, or supervise the firm's municipal advisor activities and its associated persons would be required to participate.

The National Association of Municipal Advisors had emphasized the need for the MSRB to keep small MAs in mind as it pursues the requirements so that there isn't an overwhelming economic or administrative burden on those MAs.

Kelly said that the proposed amendments, which would require MAs to conduct annual needs analyses and develop a written training plan, would call for the analyses to be customized to the size and scope of a firm's business activities. She said the board expects that customization to mitigate negative effects on small MAs. The board will also be giving examples of needs analyses as part of its effort to help guide implementation.

The MSRB also plans over the next few months to create a new MA advertising Rule G-40 that would apply the core principles of current MSRB Rule G-21 for dealers on advertising in aiming to ensure accuracy and balance in promotional materials, according to the MSRB.

Kelly said the board will ask for comments on the proposal, which will also include updates to the dealer rule. The board felt that there were enough differences in the ways that dealers and MAs advertise that two separate rules made the most sense, Kelly said.

Two days of the three-day meeting were devoted to strategic planning for the next two to four years, according to Kelly. The strategic planning discussion included numerous letters the self-regulator got from market participants after it circulated a call for comments in October on where it should focus moving forward. The commenters made suggestions like asking the MSRB to improve its EMMA system, increase transparency of board operations and costs, do more cost-benefit analyses of its rulemaking, and study the complexities and burdens that have arisen from the board's rulemaking over the last several years.

EMMA has drawn attention recently as seven municipal bond groups sent a letter on Jan. 23 asking the MSRB to improve the system's accessibility and usefulness. The recommendations fell into four areas: searchability; ease of data imputing and uploading; improving linkages among related data; and the ability to correct information already on the EMMA platform.

Some suggestions included: permitting the search of a borrower and a project; standardized templates for the submission of financial information, customized by sector; and a quality assurance process or enhanced uploading processes to reduce categorization errors.

One other area the board touched on during its meeting was the way it could help to improve continuing disclosure in the market. Continuing disclosure has been discussed often in recent years. It was the focus of the SEC Enforcement Division's Municipalities Continuing Disclosure

Cooperation initiative, which promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The MSRB said it is evaluating how it can do more to help issuers meet their disclosure obligations in a timely way. It is expecting to update a report issued in May 2015, which, among other things, detailed the amount of time it takes issuers to file their disclosures.

The Bond Buyer

By Jack Casey

January 30, 2017

Trump Order on Dodd-Frank Opens Possibility for Muni Rule Review.

WASHINGTON – President Trump's executive order to scale back the Dodd-Frank Act could initiate what dealers see as a "critical reassessment" of the slew of muni rules implementing the act, although any substantive changes to the act would have to be left to Congress, market participants said.

The executive order, signed Friday, directs the Treasury secretary to meet with major financial regulators and deliver a report within 120 days detailing what provisions are working and not working with Dodd-Frank. The report would also make recommendations about legal and regulatory changes that should be made to the law. Observers see the order, which cannot overturn portions of the statute, as the start to Trump's stated goal of dismantling the law, which was enacted in July 2010 as a response to the financial crisis.

While the Securities and Exchange Commission is an independent agency and farther removed from executive orders than executive branch agencies, the order could still spur the SEC to re-evaluate its muni market rules implementing Dodd-Frank, sources said. However, they added, it remains to be seen whether those regulations will warrant a review.

Dodd-Frank was responsible for numerous regulatory developments in the muni market, including imposing a fiduciary duty on municipal advisors (MAs) and creating a federal regulatory framework for MAs. The act required MAs to register with both the SEC and Municipal Securities Rulemaking Board. Dodd-Frank's fiduciary duty requirement and MSRB authority are not affected by Friday's order, but the SEC has the ability to review how it undertook the directives and implemented them, participants said. Those reviews could focus on decisions that were made while carrying out the act's directives, such as creating the Independent Registered Municipal Advisor exemption for dealers. The IRMA exemption allows dealers to give advice to issuers without having to register as an MA if the issuer has proof that it has an IRMA.

John Vahey, managing director of federal policy for Bond Dealers of America, said BDA members "believe a critical reassessment of the regulations associated with Dodd-Frank and the fiduciary duty rule is a welcome first step" but added that attention to other rules outside the scope of Dodd-Frank are also necessary.

"For smaller broker-dealers, it is absolutely necessary to assess the negative impact on competition that has been caused by the onslaught of regulations, like best execution, retail confirmation

disclosure rules, and other rules that are outside the scope of Dodd-Frank, but threaten to bury non-systemically risky U.S. firms with tremendous compliance burdens," Vahey said.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said NAMA believes the SEC's MA Rule and other MA regulations stemming from Dodd-Frank "are appropriate and should stay in place" as Trump and others contemplate changes to the wide-ranging law.

"The idea that all regulations would go away a) is hard to believe and b) would have a significant impact on both practice and costs for MA firms to have to readjust," she added, referring to the significant costs firms incurred coming into compliance with Dodd-Frank's requirements. "Those seem to be issues that are cropping up but as an organization we have not yet discussed."

The order is a pre-cursor to the Financial CHOICE Act that House Financial Services Committee chairman Jeb Hensarling, R-Texas, is expected to reintroduce in revised form later this month. The CHOICE Act is Hensarling's alternative to Dodd-Frank and was approved by the committee during the last congressional session. The legislation contains multiple provisions that would affect the muni market, including a requirement to move the SEC's Office of Municipal Securities from directly reporting to the SEC chair to instead fall within the commission's trading and market division. It also would prevent the MSRB from obtaining some of the revenues collected by the SEC and Financial Industry Regulatory Authority from enforcement actions over muni rule violations.

The CHOICE Act would also allow certain municipal securities to qualify as high quality liquid assets (HQLA) for purposes of banking regulator liquidity rules.

It would additionally repeal the Volcker Rule, which prohibits banks from trading on a proprietary basis and restricts their investments in hedge funds and private equity. Muni groups and the MSRB warned at the time the Volcker Rule was proposed that it would bifurcate the market by exempting bonds issued by states, counties, cities, and other units of general government from the rule while not exempting bonds issued by entities like water and sewer districts, school districts, and housing authorities.

Hensarling said Friday that he is "very pleased" that Trump signed the executive action that "closely mirrors provisions that are found in the Financial CHOICE Act."

"Dodd-Frank failed to keep its promises, but President Trump is following through on his promise to the American people to dismantle Dodd-Frank," he said. "That's not what Wall Street wants, but it is what hardworking Americans need to have a healthy economy with more opportunities so they can achieve financial independence."

Any changes to Dodd-Frank are likely to meet heavy resistance from Democrats in Congress.

Senate Minority Leader Chuck Schumer, D-N.Y., said in a statement Friday that Democrats will do everything in their power not to let Dodd-Frank be repealed, "no ifs ands or buts."

"The President's attempts to repeal Wall Street reform will be met with a Democratic firewall in Congress," he said.

Sen. Elizabeth Warren, D-Mass., said in a Friday statement that Trump's order makes it easier for investment advisors to cheat investors out of their retirement savings and puts two former Goldman Sachs executives in charge of gutting the rules that protect investors from financial fraud and economic meltdown.

"The Wall Street bankers and lobbyists whose greed and recklessness nearly destroyed this country

may be toasting each other with champagne, but the American people have not forgotten the 2008 financial crisis – and they will not forget what happened today," Warren said.

The Bond Buyer

By Jack Casey

February 3, 2017

FINRA Expels BD, Bars CEO for Fraudulent Muni Bond Sales.

Robert Lawson transferred millions of dollars from a deceased client's trust to hide muni-bond borrowers' poor financial conditions and the bonds' risks

The Financial Industry Regulatory Authority said Thursday that it expelled Phoenix-based Lawson Financial Corp. from the organization and barred CEO and President Robert Lawson from the securities industry due to fraud.

Lawson and others with his firm sold millions of dollars of municipal revenue bonds to clients, which were underwritten by LFC and related to an Arizona charter school and two assisted living facilities in Alabama — borrowers that Robert Lawson and LFC knew faced financial difficulties.

For the fraudulent transactions, Lawson transferred millions of dollars to the borrowers and associated parties from a deceased customer's trust account, according to FINRA, in order to hide the borrowers' financial conditions and the risks associated with the bonds.

When LFC clients bought the bonds, LFC and Lawson "hid the material fact that Lawson was improperly transferring millions of dollars from the trust account to various parties when the borrowers were not able to pay their operating expenses or required interest payments on the bonds," according to FINRA.

In addition, the regulatory body found that Lawson and his wife Pamela, who was LFC's chief operating officer, were co-trustees of the trust account — in violation of FINRA rules, since they acted as trustees and engaged in self-dealing with the trust account. Robert Lawson also misused client funds.

Robert Lawson was in the securities industry for 40 years, according to FINRA BrokerCheck. He had nine disclosures during this time, including payments of damages to clients of about $238,000 in 2009 and $295,000 in 2001.

FINRA suspended Pamela Lawson from associating with any FINRA member firm for two years and fined her $30,000. Her BrokerCheck records show that she has been in the industry for 30 years.

This disciplinary action settles a May 2016 complaint filed against LFC, Robert Lawson and Pamela Lawson. In the complaint, FINRA explains that one muni-bond sale was for a $10.5 million offering in October 2014; the size of secondary market bond sales between January 2013 and July 2015 were not disclosed.

Pamela Lawson's BrokerCheck records show that complaint involved making payments of $14 million from a trust account for which she was a co-trustee.

In settling the matter, LFC, Robert Lawson and Pamela Lawson neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Calls to LFC were not returned as of press time.

THINKADVISOR

FEBRUARY 2, 2017

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting January 24-26, 2017 where it engaged in strategic planning and discussed several initiatives aimed at protecting investors and municipal entities, and promoting a fair and efficient municipal securities market.

The Board periodically conducts formal strategic planning to ensure that decisions regarding its priorities and resource allocation are informed by an analysis of market risks, trends, enforcement actions and other developments. At its meeting, the Board began to establish strategic goals for the next two to four years, consistent with its mission. The Board's planning session included discussion of comments received following a 2016 public request for comment on long-term priorities and initiatives, as well as strategy considerations for enhancements to market transparency and information provided primarily through the Electronic Municipal Market Access (EMMA®) website. The Board and staff will refine input from the strategic planning session and develop a road map to ensure the MSRB continues to fulfill its mission.

Municipal Advisor Rulemaking
Consistent with the MSRB's mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop a comprehensive regulatory framework for municipal advisors, the Board advanced two rules related to municipal advisors. The rules are part of the MSRB's mission to help ensure that the state and local governments and other municipal entities for whom municipal advisors provide services are adequately protected in their engagements with those municipal advisors.

One new rulemaking focuses on the content and accuracy of municipal advisor advertising. Municipal securities dealers have since the 1970s been subject to an advertising rule that seeks to ensure accuracy and balance, among other things, in promotional materials. The Board agreed to seek to apply the core principles of the MSRB's dealer rule to municipal advisors while adding specific provisions tailored to municipal advisors. The Board also agreed that the existing dealer rule, MSRB Rule G-21, on advertising, merits updating as well as harmonization with certain of the provisions contained in the advertising rules of other financial regulators.

The next step in the rulemaking process will be a request for comment on new draft Rule G-40, on municipal advisor advertising, and draft amendments to Rule G-21.

The Board also advanced its plan to amend MSRB Rule G-3, on professional qualification requirements, to establish continuing education requirements for municipal advisors. The proposed amendments would require municipal advisors to annually conduct a needs analysis and develop a written training plan based on that analysis. The analysis would be customized to the size and scope of the firm's business activities, among other things, which would serve to mitigate the burdens of

training requirements on small municipal advisors. The next step in the rulemaking process will be a proposed rule filing with the Securities and Exchange Commission.

Dealer Rulemaking
In another rulemaking matter, the Board discussed the first step in a multi-year initiative to review dealer rules on primary offering practices. The Board discussed the MSRB's longstanding interpretation that dealers, under MSRB Rule G-34, must apply for CUSIP numbers when conducting private placements—including direct purchase transactions—of municipal securities. The Board agreed to seek public comment on amendments to Rule G-34, on the assignment of CUSIP numbers, to, among other things, further codify that interpretation and harmonize the definition of underwriter with that contained in Rule G-32, on primary market disclosures. The MSRB will continue its holistic review of primary offering practices rules with a view to enhancing existing protections for investors and issuers.

Continuing Disclosure
In addition to its rulemaking work, the Board discussed market transparency issues, specifically municipal market disclosure practices and how the MSRB might facilitate improved timeliness of annual financial and operating information submitted to the MSRB's EMMA website. The Board plans to continue to evaluate what the MSRB might do further to assist issuers in meeting their disclosure obligations, in addition to its existing outreach, education and email reminders for issuers.

Date: January 30, 2017

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

MSRB Files Minimum Denomination Rule With SEC.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a proposed new rule, Rule G-49, on Transactions Below the Minimum Denomination of an Issue. The proposed new rule incorporates from MSRB Rule G-15(f) the existing prohibition regarding below-minimum denomination transactions with customers, without substantive amendment, and the two exceptions to the prohibition, with certain amendments.

Proposed Rule G-49 includes a new third exception to permit a dealer to sell a below-minimum denomination position to one or more customers that have a position in the issue and any remainder to a maximum of one customer that does not have a position in the issue. Proposed Rule G-49 also would significantly amend, in the existing exception regarding dealer sales to customers, the requirement that a dealer determine, by receipt of a written statement provided by the party from which the dealer purchases the below-minimum denomination securities position, that the position acquired from such dealer and being sold to a customer is the result of a customer's liquidation of its entire below-minimum denomination position (the "liquidation statement").

Regarding the liberalization of that requirement, proposed Rule G-49 would apply restrictions to inter-dealer transactions in below-minimum denomination positions. Proposed Rule G-49 would also eliminate, for a narrowly defined group of below-minimum denomination transactions, a dealer's obligation to provide a minimum denomination sale disclosure to its customer on or with the

confirmation of the transaction. Based on the organization of these related provisions in proposed Rule G-49, the existing minimum denomination provisions in Rule G-15(f) would be rescinded. Read the SEC filing.

MSRB Filing with the SEC

Hawkins Advisory (Final Issue Price Regulations)

This issue of the Hawkins' Advisory is dealing with Final Treasury Regulations regarding "issue price", which were published in the Federal Register of December 9, 2016.

12/27/2016

MSRB Files Standalone Minimum Denomination Rule With SEC.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve its slightly revised proposal for a standalone minimum denomination rule that is designed to help liquidity and respond to concerns from dealers.

The new standalone MSRB Rule G-49 would contain requirements added to Rule G-15 in 2002 that prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities that are set by issuers. It would also include two exceptions to the prohibition added in 2002, as well as one more exception proposed in April 2016.

The April proposal originally contained two new added exceptions to the rule, but subsequent concerns from the Securities Industry and Financial Markets Association that one was redundant led the MSRB to only include one of the new exceptions in its SEC filing. 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 other, more restrictive exception that the MSRB chose to eliminate would have allowed a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to, or past, the minimum denomination. The dealer would then have been able to sell the remaining below-minimum position to any number of customers that already held the bonds.

The MSRB said its filing keeps the purpose of the existing rule and exceptions – to decrease the number of customers holding minimum denomination positions while maintaining liquidity. The filing also helps dealers by eliminating a prior requirement they had said hurt trading in below minimum positions, the board said.

The minimum denomination is the lowest amount of bonds that can be bought or sold, as determined by the issuer in its official statement for the bonds.

The MSRB's SEC filing met with some resistance from dealers.

Mike Nicholas, chief executive officer of Bond Dealers of America, said BDA is opposed to the MSRB's "complex rule filing" that will "harm the very investors it is purportedly designed to protect

and impose entirely unnecessary compliance costs on overburdened small and medium-sized dealers."

"We look forward to having the opportunity to convey our views to the commission," he said.

Leslie Norwood, managing director and co-head of municipal securities with SIFMA, said the group is still reviewing the rule filing but is "disappointed that at first blush the amendments appear to eliminate flexibility in the rule regarding transactions with dealers." She added that SIFMA anticipates filing a comment letter with the SEC responding to the MSRB's filing.

Rule G-49 would eliminate the current requirement 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 liquidation statement must 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.

The liquidation statement is key to one of the existing exceptions adopted as part of Rule G-15. Under that exception, a dealer could sell a below-minimum denomination 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.

The elimination of the liquidation statement requirement would also affect the new exception that the MSRB proposed in April and decided to keep in the version of the rule filed with the SEC.

The MSRB's proposal to eliminate the liquidation statement follows prior comments from dealers to the MSRB that said the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum denomination positions.

Dealers were concerned that they could be subject to disciplinary action if they could not prove a liquidation had occurred. They would need to rely on another dealer, an ATS, or a broker's broker to obtain such a statement and were wary of such reliance. They were also concerned it discourages traders from bidding on below-minimum positions.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its proposal that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The MSRB has also proposed a new "safeguard" in light of its liquidation statement changes. The safeguard would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum denomination 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 denomination positions, the MSRB has said.

The other current exception to the MSRB's minimum denomination rule would not be affected by the liquidation statement changes. That exception allows dealers to buy munis below the minimum denomination from customers if the dealer determines, based on the customer's account information or written statement, that the customer is selling its entire position in the bonds.

The proposed rule now filed with the SEC carries over provisions that applied to past exceptions and requires a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send

to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

However, the MSRB is also changing its proposed rule by not requiring a dealer to make such a written statement to a customer who is brought up to, or past, the minimum denomination for the municipal issuance in a transaction. The requirement would otherwise not make sense as a customer in that situation would no longer have a below-minimum position and would not have the accompanying potential consequences.

The Bond Buyer

By Jack Casey

January 24, 2017

Muni Groups Push for EMMA Improvements.

WASHINGTON – Seven municipal bond groups are urging the Municipal Securities Rulemaking Board to improve the accessibility and usefulness of its Electronic Municipal Market Access (EMMA) platform for market participants.

"The MSRB has made great strides from its initial goal of establishing a central repository for municipal bond disclosure and EMMA has become an indispensable tool for all industry market participants" the dealer, issuer, bond lawyer and analyst groups said in a five-page letter sent on Monday to Colleen Woodell, the MSRB's chair.

But they added, "We believe the MSRB can improve the user interface for how information is searched and displayed."

The groups suggested the board hire "technology and user-experience professionals" to work with market participants to design "a more efficient and intuitive front end" for information providers, such as issuers and their designees, as well as end users, including investors and others.

The groups made suggestions for improvements in four areas: searchability; ease of data imputing and uploading; improving linkages among related data; and the ability to correct information already on the EMMA platform.

They suggested the MSRB improve EMMA's search function, such as by permitting a search of a borrower and a project as well as implementing a "standardized naming convention" to account for variations of names of issuers and borrowers.

The groups also want the MSRB to provide standardized templates for the submission of financial information, customized by sector.

The groups also asked for specific descriptive information in alerts that would also be included on the issuer homepage. For variable rate demand obligations (VRDOs), they asked the board to attach CUSIP numbers for investors who did not have the related letter of credit numbers.

The board should implement a quality assurance process or enhanced uploading processes to reduce

categorization errors, the groups said. They said there is some inconsistency in names for issuers and borrowers.

The groups also want the MSRB to correct erroneous information that is already on the system. For example, some audited financials have been filed under event notices rather than in the "Audited Financials" category.

They recommended the MSRB create a linkage between a VRDO issue and subsequent remarketings so they can be tracked on EMMA. They asked the board to improve the way EMMA handles archived filings. Some issuers have reported that filings older than several years do not appear to be available.

They also want EMMA to provide an option for taxable municipal securities to be excluded from trade activity inquiries.

The groups want to be able to download data from EMMA. They also asked that MSRB change the platform to provide rating histories in addition to current bond ratings of issuers and borrowers.

The groups included the Government Finance Officers Association, the National Association of State Treasurers, the National Association of State Auditors, Comptrollers and Treasurers, the National Federation of Municipal Analysts, the National Association of Bond Lawyers, Bond Dealers of America and the Securities Industry and Financial Markets Association.

The Bond Buyer

By Lynn Hume

January 23, 2017

MSRB Holds Quarterly Board Meeting.

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The Board periodically conducts formal strategic planning to ensure that decisions regarding its priorities and resource allocation are informed by an analysis of market risks, trends, enforcement actions and other developments. At its meeting, the Board began to establish strategic goals for the next two to four years, consistent with its mission. The Board's planning session included discussion of comments received following a 2016 public request for comment on long-term priorities and initiatives, as well as strategy considerations for enhancements to market transparency and information provided primarily through the Electronic Municipal Market Access (EMMA®) website. The Board and staff will refine input from the strategic planning session and develop a road map to ensure the MSRB continues to fulfill its mission.

Municipal Advisor Rulemaking
Consistent with the MSRB's mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop a comprehensive regulatory framework for municipal advisors, the Board advanced two rules related to municipal advisors. The rules are part of the MSRB's mission to help

ensure that the state and local governments and other municipal entities for whom municipal advisors provide services are adequately protected in their engagements with those municipal advisors.

One new rulemaking focuses on the content and accuracy of municipal advisor advertising. Municipal securities dealers have since the 1970s been subject to an advertising rule that seeks to ensure accuracy and balance, among other things, in promotional materials. The Board agreed to seek to apply the core principles of the MSRB's dealer rule to municipal advisors while adding specific provisions tailored to municipal advisors. The Board also agreed that the existing dealer rule, MSRB Rule G-21, on advertising, merits updating as well as harmonization with certain of the provisions contained in the advertising rules of other financial regulators.

The next step in the rulemaking process will be a request for comment on new draft Rule G-40, on municipal advisor advertising, and draft amendments to Rule G-21.

The Board also advanced its plan to amend MSRB Rule G-3, on professional qualification requirements, to establish continuing education requirements for municipal advisors. The proposed amendments would require municipal advisors to annually conduct a needs analysis and develop a written training plan based on that analysis. The analysis would be customized to the size and scope of the firm's business activities, among other things, which would serve to mitigate the burdens of training requirements on small municipal advisors. The next step in the rulemaking process will be a proposed rule filing with the Securities and Exchange Commission.

Dealer Rulemaking
In another rulemaking matter, the Board discussed the first step in a multi-year initiative to review dealer rules on primary offering practices. The Board discussed the MSRB's longstanding interpretation that dealers, under MSRB Rule G-34, must apply for CUSIP numbers when conducting private placements—including direct purchase transactions—of municipal securities. The Board agreed to seek public comment on amendments to Rule G-34, on the assignment of CUSIP numbers, to, among other things, further codify that interpretation and harmonize the definition of underwriter with that contained in Rule G-32, on primary market disclosures. The MSRB will continue its holistic review of primary offering practices rules with a view to enhancing existing protections for investors and issuers.

Continuing Disclosure
In addition to its rulemaking work, the Board discussed market transparency issues, specifically municipal market disclosure practices and how the MSRB might facilitate improved timeliness of annual financial and operating information submitted to the MSRB's EMMA website. The Board plans to continue to evaluate what the MSRB might do further to assist issuers in meeting their disclosure obligations, in addition to its existing outreach, education and email reminders for issuers.

Date: January 30, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500

Bond Dealers of America Launches Small Firm Division.

The BDA, in partnership with Hilltop Securities Clearing, is pleased to announce the formation of the

BDA's Small Firm Division which will provide direct, tangible advocacy for smaller broker-dealers and banks active in the US fixed income markets and which, until today, had no voice and no representation in Washington, DC. It's time Federal policy makers understand and appreciate the issues facing "Main Street" issuers, investors and dealers. The BDA's Small Firm Division will facilitate this direct advocacy.

Hilltop Securities Clearing is the 2017 sponsor of the Small Firm Division and has been instrumental in the Division's formation and leadership.

2017 leadership of the Small Firm Division:

Lana Calton, Chair
Managing Director – Head of Clearing
Hilltop Securities

Heath Hawk
President
First Southern Securities, LLC

Marco Listrom
President
Valdes & Moreno

Randy Nelson
President
Wells Nelson & Associates, LLC

Paige Pierce
President
R.W. Smith

Dwayne Calton
President
Calton & Associates, Inc.

Members of the Small Firm Division (SFD) will be given a forum to identify issues of common interest – whether regulatory, legislative or market practice – and together with BDA staff will work with DC policy makers on common sense, market driven solutions which benefit "Main Street" investors, issuers and tax-payers. SFD members will also be invited to all BDA events including the BDA's National Fixed Income Conference which has become the "must-attend" event for fixed income leadership at middle-market, regional and small firms headquartered nationwide.
For more information on the BDA's Small Firm Division please contact Mike Nicholas at mnicholas@bdamerica.org or 202-204-7900, or go to the BDA website at www.bdamerica.org.

Bond Dealers of America

January 26, 2017

SIFMA with Other Associations Submit Comments to the MSRB with Recommendations to Improve the EMMA Platform.

SIFMA in a joint letter with other organizations provide comments to the Municipal Securities Rulemaking Board (MSRB) to offer suggestions that, we believe, would enhance the ability of issuers and users to more successfully utilize the MSRB's Electronic Municipal market Access (EMMA) platform.

SIFMA co-signed with:

- Bond Dealers of America
- Government Finance Officers Association
- National Association of Bond Lawyers
- National Association of State Auditors, Comptrollers and Treasurers
- National Association of State Treasurers
- National Federation of Municipal Analysts

January 23, 2017

MSRB Hires Chief Economist.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that Simon Wu will become its Chief Economist on February 6, 2017. Wu, who has nearly two decades of experience applying economic expertise to securities policymaking, will oversee economic analysis of MSRB rulemaking and municipal market transparency initiatives, and lead related statistical, econometric and financial analysis.

"Simon brings a wealth of economic and regulatory experience with him to the MSRB," said MSRB Executive Director Lynnette Kelly. "He will help the MSRB continue to apply its policy on the use of economic analysis in rulemaking and provide quantitative support to the MSRB's efforts to increase transparency and efficiency in the municipal market."

Wu comes to the MSRB from Berkeley Research Group (BRG) where as Director he provided financial economic expertise on many aspects of securities and banking issues. Prior to BRG, Wu was Vice President at NERA Economic Consulting where he served as a financial economic expert on securities trading, market structure, best execution, investment management, and financial institution risk management. Wu also served as Chief Economist at the Federal Housing Finance Agency, Office of Inspector General, where he won the Inspector General Award in 2012 and 2014. Wu began his career as senior economist at the Financial Industry Regulatory Authority (FINRA) where he led economic studies in support of securities rule proposals and policy impact analysis.

Mr. Wu has a bachelor's degree from Belmont University and master's and doctorate degrees from Vanderbilt University.

Date: January 24, 2017

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

MSRB Announces Regulatory Topics to be Discussed at January Board Meeting.

The Municipal Securities Rulemaking Board will host a meeting of its Board of Directors on January 24-26, 2017, in Washington, DC. The board will participate in a strategic planning session and discuss the following topics: continuing education requirements for municipal advisors, advertising rules, CUSIP numbers, and continuing disclosure. Additional rulemaking and policy topics will also be addressed.

MSRB Board of Directors Meeting Discussion Items

SEC Approves New Complaint Process for MAs; Update for Dealers.

WASHINGTON – The Securities and Exchange Commission has approved Municipal Securities Rulemaking Board changes to complaint processes for dealers and municipal advisors, saying they are consistent with the MSRB's authority and are not overly burdensome for market participants.

The changes to MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records will take effect on Oct. 13, according to the MSRB. The self-regulator had originally proposed setting an effective date of six months after approval but decided on nine months after dealers raised concerns.

The changes amend the current complaint process for dealer customers and then extend that process to municipal advisor (MA) clients.

"These positive changes will improve the ability of investors and state and local governments to understand what to do if they have a complaint about their municipal finance professional," said MSRB executive director Lynnette Kelly. "They also align the MSRB's customer complaint requirements more closely with those of other regulators and provide greater regulatory consistency for dealers and municipal advisors."

However, the changes did not come without some criticism from market participants. Groups and firms, including the National Association of Municipal Advisors, Bond Dealers of America, and non-dealer advisory firm The PFM Group, complained about the MSRB's decision to directly file the changes with the SEC before obtaining public comments. NAMA also characterized the extension of dealer rules to MAs in this case as "trying to fit a square peg into a round hole" because of the differences in the relationships between dealers and their customers and MAs and their clients.

The commenters also said the changes lacked some necessary detail and would be difficult to comply with if more guidance wasn't provided. In response, the MSRB made several technical changes in an amendment that will, among other things, clarify the definition of "municipal advisory client" for solicitor and non-solicitor MAs as well as the definition of "complaint."

The SEC, in its approval order, found that despite some of the concerns, the changes were reasonably designed to achieve the MSRB's goals and did not impose an undue burden on competition that would conflict with the Securities Exchange Act of 1934. The commission also concluded that the rule "does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate" to the public interest.

“Although the proposed rule change would affect all municipal advisors, including small municipal advisors, the proposed rule change is a necessary and appropriate regulatory burden in order to protect municipal entities and obligated persons,” the SEC wrote in its order.

The changes to Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint, eliminates the need to send a brochure and instead requires other disclosures for dealer customers and MA clients. Dealers and MAs are required to give notification of: their registration with the MSRB and the SEC; the MSRB’s website address; and the brochure available on the MSRB’s website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers will be required to notify customers with that information annually and MAs will have to share the information promptly, but no less than once a calendar year over the course of the MA relationship. The MSRB defined “promptly” as “promptly, after the establishment of a municipal advisory relationship.”

While the rule does not require the notifications to come in any specific documents, the MSRB said MAs can include them along with the conflicts of interest and disciplinary disclosures required under MSRB Rule G-42 on core duties of municipal advisors.

The changes to Rule G-8 require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log will have to include: the identities of the dealer customer or MA client; the date the complaint was received; the date of the activity that gave rise to the complaint; and the person whom the customer or client names in the complaint. The log would also have to include a description of the complaint and the action, if any, the dealer or MA has taken in response.

The codes will be based on FINRA’s codes but will be tailored to municipal securities and municipal advisory activities, according to the MSRB. The board will coordinate with FINRA about the codes and will make them available by posting them on its website.

The changes to Rule G-9 will require both dealers and MAs to retain their complaint records for six years. MAs would have otherwise only had to keep records for five years. MAs had urged the MSRB to keep the MA requirement at five years, but the MSRB defended its proposed amendments by saying the changes would level the playing field and help regulators with their inspections and surveillance of MAs.

The Bond Buyer

By Jack Casey

January 19, 2017

MSRB to Apply Customer Complaint Rules to Municipal Advisors and Modernize Existing Rules for Dealers.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission to apply its customer complaint rules to municipal advisors while also modernizing the rules, which currently apply to municipal securities dealers. The updated rules, which take effect in nine months, will more clearly focus on customer and municipal advisory

client education and protection.

“These positive changes will improve the ability of investors and state and local governments to understand what to do if they have a complaint about their municipal finance professional,” said MSRB Executive Director Lynnette Kelly. “They also align the MSRB’s customer complaint requirements more closely with those of other regulators and provide greater regulatory consistency for dealers and municipal advisors.”

The MSRB’s updated MSRB Rule G-10 and related interpretive guidance require dealers and municipal advisors to provide annual written notifications to customers and municipal advisory clients about their registration status, the MSRB’s website address, the availability of a brochure that describes regulatory protections in place under MSRB rules and how to report a complaint to a regulator. Those notifications may be made electronically and may be included with other materials. The updates include changes to MSRB recordkeeping rules, and both dealers and municipal advisors will be required to retain an electronic complaint log of written complaints from customers or municipal advisory clients for six years.

Updates to the MSRB’s customer complaint and related recordkeeping rules are part of its ongoing effort to promote regulatory efficiency, consistency and clarity in municipal securities regulation. With many MSRB rules in place for more than 35 years, the MSRB recognizes the need to regularly review rules to identify potential changes to ensure that they function as efficiently as possible, reflect current market practices and are consistent with rules of other regulators, where appropriate.

Date: January 18, 2017

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

UBS Hit With Second $18M Ruling Over Puerto Rican Munis.

Wednesday’s ruling includes $4 million in punitive damages, while the prior award is being challenged in court

A month after a regulatory panel awarded over $18 million to two clients of UBS over sales of Puerto Rican municipal bonds and closed-end funds tied to these securities, a separate panel issued a similar award to three other clients — including $4 million in punitive damages.

But while UBS is challenging the December award in a U.S. district court with claims that arbitrators failed to disclose key material facts before the case began, attorneys representing the three clients set to benefit from the latest award believe this award will not be challenged.

UBS accepted the Financial Industry Regulatory Authority panel, which included three arbitrators, says attorney Lloyd R. Schwed of Schwed Kahle & Kress in Palm Beach Gardens, Florida, and raised no objections to it.

The panel issued its $18.2 million decision on Wednesday, ruling that the Gomez family — well known on the island for their car businesses and charitable activities — should receive $9.63 million in compensatory damages, $4 million in punitive damages, nearly $4.5 million in attorneys’ fees, and

$86,550 in other costs.

The three members of the Gomez family (parents Victor and Socorro, along with daughter Madeline), argued that they had been subjected to securities fraud, elder abuse and other violations of the law.

According to their attorneys, this arbitration decision appears to be the first entailing the imposition of punitive damages on UBS in connection with its sales of Puerto Rico municipal bonds and closed-end bond funds; the $70 billion market for these investments collapsed in 2013 and resulted in more than $1.5 billion in customer claims.

The $18.2 million award is among the 20 largest securities arbitration awards given to public clients in the past decade, the attorneys say.

“We are so grateful that these three [FINRA] arbitrators had the courage and integrity to punish UBS for its wrongful conduct that literally destroyed the life savings of the Gomez family and hundreds of other Puerto Rico citizens,” said Schwed, in a statement. “In this case, the system worked: A Wall Street giant was made to pay for its reckless disregard for the rights of its customers.”

It came after nine days of hearings and testimony which took place in San Juan, Puerto Rico, in November and December; the arbitrators then had up to 30 business days to deliberate and issue their decision after the hearings wrapped up on Dec. 9.

(The separate case now being challenged by UBS involves former clients Rafael Vizcarrondo, an attorney and businessman, and his wire Mercedes Imbert de Jesus.)

A ‘Whopper’

The Gomez family alleged that former UBS Vice President Jose “Whopper” Ramirez violated both federal and state securities laws and committed fraud through the sale of some $50 million in Puerto Rican closed-end funds and municipal bonds to the family, which lost over $25 million through these investments in 2013, their attorneys say.

FINRA records state that Ramirez was fired by the company and barred from the securities industry by both the Securities and Exchange Commission and FINRA.

In addition, the clients say UBS failed to properly supervise Ramirez and was “reckless” in allowing him to concentrate so much of family’s savings in “unsuitably risky” Puerto Rico closed-end bond funds underwritten, managed and marketed by UBS.

“Although the arbitrators awarded less than the full damages claimants requested, UBS is disappointed and strongly disagrees with the decision to award any damages,” UBS said in a statement.

“Mr. Gomez was an experienced investor who made a fully informed decision to leverage his investments and concentrate his portfolio in UBS Puerto Rico closed end funds because of their long history of providing excellent returns and substantial tax advantages. UBS is considering its options to overturn the award,” it explained.

UBS has stated in financial documents that investor claims seek some $1.5 billion in damages tied to these and related products. The bank agreed to pay $34 million to regulators in 2015.

ThinkAdvisor

January 12, 2017

MSRB Net Assets of $70M in FY-2016 Almost Triple Those of 2010.

WASHINGTON – The Municipal Securities Rulemaking Board's net assets in fiscal 2016, similar to those for the previous year, are still close to triple where they were in 2010, even after a $5.5 million rebate the self-regulator gave dealers this past year.

The MSRB's $69.3 million in net assets in its fiscal year 2016, which ran from Oct. 1, 2015 through Sept. 30, 2016, was slightly below the $69.5 million it had in its fiscal year 2015, according to MSRB financial documents. The $200,190 decrease in 2016 is the first the MSRB has experienced since 2010, when its net assets dropped $451,000 and the board ended with $26 million in net assets.

The figures are from MSRB financial statements for fiscal years 2012 through 2016. The 2016 data was in an annual report the self-regulator released on its work during the fiscal year.

MSRB executive director Lynnette Kelly said in a letter included in the report that the MSRB aims to keep a financial reserve target that is approximately 12 months of operating expenses plus three-times annual capital needs. The self-regulator determined in July 2016 that its reserves had risen above the targeted levels and decided to issue a $5.5 million rebate to dealers who were assessed underwriting, transaction, or technology fees during the year.

"As we head into 2017, you have my commitment that we will continue the strict financial oversight that enables the MSRB to protect the $3.8 trillion municipal market while striving to allocate the associated costs as fairly and equitably as possible," Kelly wrote.

Leslie Norwood, managing director, associate general counsel and co-head of munis for the Securities Industry and Financial Markets Association, said that as regulatory and other costs of doing business increase for dealers, the fees "serve as a tax on the efficiency of business and a challenge for broker dealers."

She reiterated a past SIFMA request that the MSRB undertake a comprehensive review of its fee structure and budgeting process.

"Among other things, we feel concerned about the amount of financial reserves the MSRB has charged the industry to fund," Norwood said.

The review should focus on allocating costs among all segments of regulated entities, long-term budgeting to let dealers better plan for costs, and attention to the need for fee rebates, according to Norwood.

"While we acknowledge and appreciate the MSRB fee rebates, it would be rational for the MSRB to set fees at a level that does not result in excessive surpluses, necessitating the need for rebates," she said. "Rebates can be problematic for the industry, and instead we strongly prefer the MSRB reduce fees up front, and raise fees if necessary."

The MSRB drew in about $35.4 million in revenue in 2016. That number does not include the $5.5 million rebate. The majority of the self-regulator's revenue in 2016 came from underwriting

assessment fees and transaction fees, which brought in $10.3 million and $11.6 million respectively. Those numbers do not include $4 million of the rebate.

All of the fee revenues fell from their 2015 levels except for those encompassing annual and initial fees as well as data and subscriber fees and other revenue. Annual and initial fees nearly doubled to $2.1 million in fiscal 2016 from $1.1 million the year before. Data subscriber fees and other revenue rose to $3.2 million, a 23% increase from the $2.6 million the year before.

The increases are likely from changes the MSRB decided on in 2015 to better distribute costs among regulated entities based on their level of involvement in market activities. The self-regulator raised its initial fee to $1,000 from $100 and its annual fee to $1,000 from $500. It also dropped its underwriting fee to $0.0275 per $1,000 of par value of primary offerings from $0.03 per $1,000.

MSRB expenses rose to $35.6 million in 2016 from $32.2 million in 2015 as spending in four of its five key operational areas increased.

In addition to its annual report, the MSRB has also announced it will add a new issue calendar to its EMMA website. The calendar will list munis scheduled for sale to investors as well as pricing of recently sold issues, the MSRB said. Kelly said that investors will be able to use the calendar to research upcoming offerings and that state and local governments can use it for information about timing on new bonds. Users will be able to filter upcoming bond issues by state, tax status, and whether the offering is bank qualified.

The MSRB is also seeking applicants to fill five positions on its board starting on Oct. 1. The board has 11 public and 10 regulated members. Three of the five positions to be filled are public and two are regulated. One of the regulated seats is for a non-dealer municipal advisor.

The MSRB said in its call for applicants that it is particularly interested in individuals with strong knowledge of muni sales and trading desk operations as well as those with experience in underwriting or syndicate practices. It is also interested in retail and institutional investor applicants.

Three current board members — one public and two regulated — will receive a one-year extension for the MSRB's fiscal year 2018 as part of the self-regulator's transition to four year board terms by 2020.

The Bond Buyer

By Jack Casey

January 9, 2017

Port Authority Pays $400,000 for Not Disclosing Bond Risks.

- SEC investigation continues as Christie spared embarrassment
- Lawyers had internally opposed financing before 2011 bonds

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 doing so, the Port Authority became the first municipal issuer to admit wrongdoing in a Securities

and Exchange Commission enforcement action.

The SEC said the investigation is continuing. The Port Authority failed to mention in bond-offering documents whether the agency "ventured outside its mandate" while the projects, including a renovation of the Pulaski Skyway, "potentially weren't legal to pursue," according to the SEC.

The SEC investigated whether the bi-state agency improperly financed renovations after New Jersey Governor Chris Christie pushed the authority to back a funding arrangement in 2011 that its lawyers initially opposed. The settlement spares Christie from potentially embarrassing revelations if the SEC were to sue the Port Authority.

"The Port Authority represented to the investors that it was authorized to issue bonds while not disclosing known risks that its actions were not legally permitted," Andrew Calamari, director of the SEC's New York regional office, said in a statement. "Municipal-bond issuers must ensure that their disclosures are complete and accurate."

An SEC statement cited an internal Port Authority memo saying, "There is no clear path to legislative authority to undertake such projects." Another memo identified "the risk of a successful challenge by the bondholders and investors" to the funding.

Roadway Projects

In a separate statement on Tuesday, the Port Authority said no bondholders suffered a loss "as a result of this failure to disclose" because the agency "did not ultimately use bond proceeds to fund the roadway projects."

The Port Authority hired a law firm to handle the SEC investigation and gave more than 20,000 documents to the federal agency, according to the statement. The law firm concluded that the roadway projects were within the statutory authority of the Port Authority, but "the risk that this conclusion might have been erroneous was not conveyed" to the board or bondholders.

Port Authority lawyers had questioned whether the agency could finance improvements to the Pulaski Skyway, which connects Newark to Jersey City. It leads to the Holland Tunnel, and the lawyers argued that the agency isn't legally authorized to build access roads to the Hudson River crossing, records show.

In internal discussions over several months, lawyers said the agency was permitted to improve access roads only to the Lincoln Tunnel, several miles to the north. After months of debate among officials from the agency, New Jersey's transportation department and its attorney general, authority commissioners in March 2011 approved the funding as a Lincoln Tunnel improvement.

Brian Murray, a spokesman for Christie, didn't immediately respond to an e-mail asking for comment.

In April 2014, Christie said publicly that "dozens and dozens of lawyers from both sides of the river reviewed that financing plan and approved it, as did the commissioners at Port Authority. So I relied upon the advice of lawyers from both sides of the river to come to that conclusion and I'm confident that if the SEC reviews it — that's what they're doing — they'll come to the same conclusion."

Bloomberg

by David Voreacos and Elise Young

January 10, 2017, 10:40 AM PST

Port Authority Will Pay $400,000 to Settle Federal Securities Charges.

The Port Authority of New York and New Jersey violated federal securities laws when it borrowed money to repair a bridge and roads in New Jersey that its lawyers thought were beyond its bounds, securities regulators said on Tuesday.

The agency, which operates bridges, tunnels and airports in and around New York City, agreed to pay a $400,000 fine in a settlement with the Securities and Exchange Commission. The commission, which polices sales of stocks and bonds, said the Port Authority had admitted to wrongdoing in the matter, making it the first issuer of municipal bonds to do so.

But John J. Degnan, the chairman of the Port Authority, said the agency had not admitted to willful wrongdoing, only to negligence in its failure to disclose all of the risks faced by buyers of its bonds. “I was shocked when I saw the release,” Mr. Degnan said, referring to the commission’s announcement of the settlement.

A lawyer representing the Port Authority, James Sottile, sent a letter to the commission demanding a retraction of its news release.

Mr. Degnan also questioned the timing of the announcement, which came just as Gov. Chris Christie of New Jersey was delivering his State of the State address in Trenton. For Mr. Christie, it was another case of intrigue involving a bridge that could tarnish his legacy.

A spokesman for the governor referred a request for comment to the Port Authority.

The federal investigation stemmed from Mr. Christie’s decision in 2010 to halt the construction of a commuter train link across the Hudson River to New York City, a project that was known as the ARC tunnel. Mr. Christie wanted $1.8 billion of Port Authority funds redirected from the canceled tunnel to repairs on the state-owned Pulaski Skyway bridge and other road projects in northern New Jersey.

But Port Authority lawyers were leery of that proposed shift, saying the alternative projects did not fall within the agency’s purview. An internal Port Authority memo at the time said, “There is no clear path to legislative authority to undertake such projects.”

One big problem was that the projects involved roadways that carry vehicles to and from the Holland Tunnel, which connects New Jersey to Lower Manhattan. The Port Authority operates the tunnel, but according to one of its internal memos, there was no law that allowed it to “construct, own, maintain or operate any of the approaches to the Holland Tunnel.”

However, it was permitted to work on roads leading to the Lincoln Tunnel, which connects New Jersey to Midtown Manhattan and which the agency also operates.

So, before the Port Authority’s commissioners voted in March 2011 to authorize the road projects, the agency adopted the view that the roads in question also led to the Lincoln Tunnel. An internal memo proposed a “traffic study” to bolster that position.

That was more than two years before allies of Mr. Christie at the Port Authority told tales of another traffic study. That study was the purported reason for the September 2013 closing of lanes of traffic

that led to tollbooths at the George Washington Bridge.

The lane closings, which came to be known as Bridgegate, resulted in the convictions last year of Bill Baroni, who was Mr. Christie's top executive appointee at the Port Authority, and Bridget Anne Kelly, a former deputy chief of staff to the governor. Another of Mr. Christie's allies at the Port Authority, David Wildstein, pleaded guilty over his central role in the closings.

Neither the commissioners of the Port Authority nor investors were ever informed of the internal debate over the legality of using Port Authority money for the road projects, the securities commission said. From 2012 to 2014, the Port Authority raised $116 million through bond sales whose proceeds were intended for the road projects, the commission added.

"The Port Authority represented to investors that it was authorized to issue bonds while not disclosing significant known risks that its actions were not legally permitted," said Andrew M. Calamari, director of the commission's New York office.

THE NEW YORK TIMES

By PATRICK McGEEHAN

JAN. 10, 2017

Choice of Clayton for SEC Fits With Deregulation.

WASHINGTON – President-elect Donald Trump's pick of New York lawyer Jay Clayton to lead the Securities and Exchange Commission is in line with his focus on deregulation, but municipal participants will have to wait and see what impact he may have on the municipal securities market, individuals and groups said.

While several lawyers praised his broad experience on Wall Street, consumer advocates and some Democrats worried whether he will be a strong investor advocate.

Trump announced his intention to nominate Clayton, a partner with Sullivan & Cromwell who has worked extensively with Wall Street but seems to lack muni experience, on Wednesday. The lawyer, who has primarily worked with mergers and acquisitions as well as initial public offerings, would fill the role left open after current chair Mary Jo White steps down after President Obama's departure later this month. He would have to be confirmed by Congress. In addition, there are still two open commissioner positions at the SEC.

Paul Maco, a partner with Bracewell here, said Clayton appears to be "a very well-rounded lawyer" and someone whose background "is one that easily lends itself to the full plate of challenges an SEC chair is presented with." Clayton's background of dealing with M&A and IPOs as well as regulated entities in regulatory and enforcement matters is suitable for an environment where a key focus would be on what level of regulation is appropriate and what deregulation may be appropriate, he said.

Trump has made clear he plans to focus on deregulation during his tenure.

"We need to undo many regulations which have stifled investment in American businesses, and restore oversight of the financial industry in a way that does not harm American workers," Trump

said in his statement announcing his choice of Clayton. The president-elect called Clayton a “highly talented expert on many aspects of financial and regulatory law.”

Trump’s choice of Clayton comes after he had considered Debra Wong Yang, a partner with Gibson, Dunn & Crutcher and a former U.S. attorney under George W. Bush, for the post.

The shift away from Wong, who has a similar background to chair White, is an indication that regulatory issues, and particularly deregulation, will play more of a role for the SEC under Trump, according to market participants. Elaine Greenberg, a partner with Greenberg Traurig here, said Clayton’s background may mean he will give equal weight to the SEC’s mandates of facilitating capital formation and maintaining fair, orderly, and efficient markets, as well as providing investor protection. White, with her background as a federal prosecutor, was believed to have focused more on investor protection.

But participants are less sure of what Clayton’s nomination would mean specifically for munis. They generally agree that his background with IPOs and regulated entities will allow him to understand and work with the muni market, but they add it will be important to wait for him to make more public statements about his intended agenda.

Maco said he “certainly doesn’t see anything that stands in the way” of Clayton working on muni issues but added that “the real signals will come in the confirmation hearing” he would have in the Senate.

“You usually get a fairly good preview of the agenda that the SEC chair nominee intends to pursue” during the hearing, Maco said.

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said GFOA intends to continue having meetings with the SEC and maintaining its relationships during any transition so it can stay up to speed on what may be expected.

Bond Dealers of America similarly said it is ready to engage with the next SEC chair about the future regulatory environment.

Trump’s plans to nominate Clayton received some criticism from legislators and observers who are concerned about his ties to Wall Street.

“This nomination of a Wall Street insider to regulate Wall Street proves that Donald Trump has no intention of getting tough on Wall Street,” said Maxine Waters, the top Democrat on the House Financial Services Committee.

Dennis Kelleher, president and chief executive of Better Markets, said that “while Mr. Clayton may be an excellent lawyer representing Goldman Sachs and Wall Street’s too-big-to-fail banks, America’s families need to know that he will represent them as zealously and as effectively.”

The Bond Buyer

By Jack Casey

January 4, 2017

FINRA 2017 Exam Priorities Include MA Registration, Best Execution.

WASHINGTON – The Financial Industry Regulatory Authority's enforcement priorities for 2017 include ensuring municipal advisors are properly registered with regulators, checking broker-dealers' compliance with best execution requirements, and monitoring firms' efforts to avoid unsuitable recommendations of securities.

FINRA's new president and chief executive officer Robert Cook laid out the priorities in a letter released this week that he said is meant to give firms a framework under which to review their compliance and supervisory programs as well as address their internal training and communications. FINRA arrived at the priorities after taking input from member firms, regulators, and investor groups, among others.

Cook announced in the letter that, starting this year, FINRA will be publishing a report that outlines key findings from examinations in selected areas, after numerous prior requests for such summaries. The report will be designed to show firms what the self-regulator is seeing from a national perspective so that the firms can adjust their own processes, he said.

The letter said one of the enforcement priorities will be monitoring municipal advisor registration. FINRA is responsible for examining dealer MAs while the Securities and Exchange Commission examines non-dealer MAs.

"FINRA has found that some firms are not registering correctly with both the SEC and Municipal Securities Rulemaking Board or are not properly updating their registration information as it changes," Cook wrote in the letter. "Further, firms may not be identifying all individuals who are engaged in municipal advisor activity as required for submission to EDGAR on SEC Form MA-I."

FINRA will be monitoring firms that choose not to register as MAs but still provide MA services under statutory exclusions or regulatory exemptions, like the exception given when an issuer has an independent registered municipal advisor, Cook said.

"We will assess whether these firms properly apply the exemptions and exclusions to municipal advisory registration under SEC rules," he said.

FINRA's examinations will also touch on best execution, a long-time requirement for taxable securities but something that only took effect for munis on March 21 of last year. MSRB Rule G-18 on best execution requires dealers, whether acting as agents or principals, to use "reasonable diligence" to determine the best market for a security and to then buy or sell the security in that market so the price for the customer is as favorable as possible under prevailing market conditions. The best execution standard does not necessarily mean a dealer must find the best price.

Dealers are exempted from the rule if their customer is considered a sophisticated municipal market professional under MSRB rules. The rule also does not apply to trades between dealers, but it covers trades that are cleared through other dealers.

"Firms should consider … how recent advances in trading technology and communications in the fixed income markets affect their order-handling decisions and factor those changes into their review of the execution quality they provide customers," Cook wrote.

FINRA additionally will focus on concerns about the suitability of investments that Cook said can arise in connection with numerous products.

“Firms should make sure that they perform and supervise customer-specific suitability determinations,” he wrote. “More generally, firms should carefully evaluate their supervisory programs in light of the products they offer, the specific features of those products, and the investors they serve.”

One area of particular interest for FINRA over the last several years has been the over-concentration of Puerto Rico residents’ investments in closed-end funds that hold a significant amount of the commonwealth’s bonds. FINRA has found that some firms, including UBS, ignored investors’ risk profiles when concentrating investors’ assets into funds that held a lot of these increasingly risky bonds. When the commonwealth’s economy started its steep decline over the last few years, many of the investments suffered losses.

The largest FINRA award to date related to the failed investments from overconcentration was $18.5 million that went to two individuals. Mercedes Imbert De Jesus and Rafael Vizcarrondo had originally requested UBS pay more than $20 million over losses the two Puerto Rico residents experienced after investing in closed-end mutual funds concentrated in Puerto Rico bonds.

UBS has since challenged the $18.5 million arbitration finding in Puerto Rico federal court, arguing that the award should be vacated because two of the three individuals who sat on the FINRA arbitration panel had engaged in misconduct before sitting on the panel.

One panel member, Susan Meek, had not disclosed that a jury had found her guilty of fraud while the other, Frances Wright, did not disclose that she had been a lead plaintiff in a securities fraud class action, according to the UBS filing.

“Wright’s failure to disclose her involvement as a plaintiff in a securities fraud case similar to Vizcarrondo’s not only supports [vacating the finding and award] … but is strong evidence of partiality toward claimants in general,” UBS said in its filing. The bank added that Meek and Wright’s failures “prevented UBS from selecting a neutral and qualified panel to which it was entitled, and from receiving a fundamentally fair hearing.”

The Bond Buyer

By Jack Casey

January 5, 2017

OUTLOOK: Markup Disclosure, MA Rules On Tap for 2017 Despite SEC Uncertainty.

WASHINGTON – In the regulatory and legislative arenas next year, dealers will have to grapple with how to set up compliance programs for markup disclosure rules while municipal advisors try to adjust to the many rules adopted in 2016 and issuers work to improve disclosure to stave off legislation.

Their actions will come against a backdrop of uncertainty with new leadership at the Securities and Exchange Commission and a more powerful Republican Congress focused on deregulation.

Much of the uncertainty stems from questions about who President-elect Donald Trump will name to chair the SEC. The commission has been working with only three of five commissioners for roughly a

year and SEC chair Mary Jo White has said she will step down as President Obama leaves in January.

The individuals named to fill the vacated positions will control how much the SEC focuses on the municipal market as well as efforts to roll back the Dodd-Frank Act.

The amount of time it takes to fill the SEC positions will also affect regulatory actions in 2017, participants said.

“At this moment, we’re barely a month after the election and the idea that everything is possible in 2017 is in obvious conflict with the amount of time” regulators and Congress will have, said John Vahey, managing director of federal policy for the Bond Dealers of America. “For the regulatory agencies to get in there and organize and adopt a new regulatory agenda there’s obviously some natural constraints as to what is likely to happen in the next 12 months.”

Officials in the SEC’s Office of Municipal Securities declined to comment, citing the large number of unknowns at the commission.

Dave Sanchez, senior counsel with Norton Rose Fulbright in San Francisco and a former SEC muni official said that he does not see anything “big picture” like new rules happening at the SEC in 2017.

“But the kind of stuff like staff guidance and coordination with the Office of Municipal Securities and Division of Trading and Markets at the staff level, I think that can be accomplished for sure,” Sanchez said.

He added that munis are not really partisan and that the “determinative factor” for whether there is action in the muni market is whether those who are appointed to fill the empty SEC slots have an interest in munis.

“That’s the best test of whether you will see action,” Sanchez said. The other question, he said, is whether the SEC’s OMS staff will be able to get enough of the commissioners’ attention to take certain steps such as producing guidance for muni rules.

Ernesto Lanza, senior counsel with Clark Hill here, said that despite the challenges the changeover and possible deregulation may present for rulemaking, there will be rules that will get through either because they need to or because they are not controversial.

However, he added that a regulatory slowdown could extend to self-regulatory organizations like the Municipal Securities Rulemaking Board.

“SROs are one step removed so there’s more of an ability to move forward,” Lanza said. “I’m not sure how much harder it is going to be at the SRO level, but I do think it will trickle down to an SRO basis.”

Colleen Woodell, chair of the MSRB, said the board stays apolitical and has worked with a number of different administrations and parties throughout its existence. She said she expects that the MSRB will work similarly with the new administration.

Lynnette Kelly, the MSRB’s executive director, echoed Woodell, saying the self-regulator’s mandate of protecting investors and issuers “is kind of mom-and-apple-pie so it’s hard to disagree with a lot of it.”

Market participants said that some of their uncertainty about the new year also rests with Congress. They pointed to one piece of legislation, the Financial CHOICE Act, as a potentially important bill for

financial regulation.

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said that if Congress decides to dedicate some energy to revisiting financial regulation, it may not enact the CHOICE Act, but the legislation "is an indication of where they might start."

The bill, proposed by Rep. Jeb Hensarling, R-Texas, would, among other things, divert funding the MSRB gets from enforcement actions over its muni rules to the Treasury Department, move the Office of Municipal Securities back under the Division of Trading and Markets, and repeal the Volcker Rule, which prohibits banks from trading on a proprietary basis and restricts their investments in hedge funds and private equity.

It is a wide-ranging piece of legislation designed to roll back Dodd-Frank regulations and implement other changes that Republicans have been considering.

Hensarling, who chairs the House Financial Services Committee, was able to shepherd the bill through his committee but the measure did not move any further during the congressional session. The Texas lawmaker has since said he intends to review and improve on the bill before reintroducing it in the next congressional session. It is unclear whether the parts of the bill affecting munis will remain and it is also possible that he could add new sections with implications for the muni market.

Paul Maco, a partner with the law firm Bracewell here, said the bill shows a focus on controlling and winding back regulation to some degree, but that he believes most Dodd-Frank cutbacks would not directly impact the muni market.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said the group wants to make sure that there are no changes to Dodd-Frank or the SEC's MA Rule that would water down the fiduciary duty for all MAs. She added that NAMA would also like to see OMS kept independent as it believes the office has done well in its standalone capacity.

BDA hopes the bill will bring "reasonable regulatory relief" from Dodd-Frank as well as other improvements like requiring regulators to put more emphasis on cost-benefit analyses.

Muni market participants are also watching to see if there will be further movement on a proposed bill from Rep. Gwen Moore, D-Wis., that was introduced earlier this month. The bill would follow the SEC's 2012 Report on the Municipal Market in shifting municipal disclosure responsibilities to issuers and borrowers from underwriters. The SEC cannot currently directly regulate issuers' disclosures. It can only take enforcement action under federal securities antifraud laws and rules.

The Moore measure would give the SEC authority over the content and timing of muni issuers' bond-related disclosures as well as the accounting systems they use.

While many muni participants said the bill in its current form will not get traction, they noted that it sends a message to the industry, and specifically issuers, about the real possibility of such a shift. The idea follows in the wake of the SEC's Municipalities Continuing Disclosure Cooperation initiative, which showed continuing disclosure violations were widespread in the market.

Leo Karwejna, chief compliance officer with The PFM Group, said the proposed legislation is "a bit of a test balloon" but that he ultimately thinks "the drumbeat has continued to grow louder … on how to more directly regulate issuers themselves."

"I think people take that as a shot across the bow as what could happen," he added. "It's probably in

everyone's collective best interest for [the disclosure] focus to continue."

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said that the bill wasn't "a gigantic surprise and punch to the gut" because of the group's knowledge of the 2012 report recommendations. GFOA will continue to have comprehensive conversations about disclosure and will be "sure to mobilize if the threat does pop up," Brock said.

The SEC, despite the turnover, may also reasonably be expected to open up its Rule 15c2-12 on disclosure in the municipal market, some said.

Sanchez said that MCDC showed the difficulty that existing SEC staff guidance creates for issuers that are trying to keep a uniform continuing disclosure regime. Those issuers may be monitoring continuing disclosure agreements that span a 20 to 30-year period.

"The information provided [and] the way it is provided, just even the agreements themselves, are all going to change in minor ways," Sanchez said. "That makes it very hard to be in 100% compliance."

He added that he thinks the updated guidance "has a really strong chance of happening" and that "there's no reason not to do it."

"It's something the entire market is looking for the SEC to do," Sanchez said. "As a matter of good faith, the SEC should undertake to provide that kind of clarifying guidance."

Market participants, along with the MSRB, have also been urging the SEC to address the issue of bank loan disclosure in the market. Bank loans have become a more attractive debt vehicle for issuers in recent years, but analysts, rating agencies and others have expressed concern that the lack of disclosure of these loans has clouded issuers' finances. An issuer may have obligations that are hidden from the rating agencies and investors.

Many market participants would like the use of bank loans to be disclosed as material events under the SEC's Rule 15c2-12. Several market participants said the SEC may open the rule up next year to make that change.

Aside from the speculation about what a new administration and Congress can accomplish, there are several areas of regulation that participants believe they will be working with in 2017.

The MSRB plans to continue with its steps toward rulemaking related to syndicate practices and pre-trade price transparency, both of which Woodell and Kelly have said will be complex, multi-year initiatives.

The self-regulator will also focus on modifying its existing prohibitions on trading below a bond's stated minimum denomination. Other plans include work on: continuing education requirements for municipal advisors; an advertising rule that could affect both MAs and dealers; development of an exam for MA principals; guidance for solicitor MAs; and further improvements to its EMMA website.

The MSRB will add a new issue calendar to EMMA starting in January and Woodell said there is a possibility the system will include third-party yield curves by the end of 2017.

Bill Oliver, industry and media liaison for the National Federation of Municipal Analysts, said EMMA improvements will continue to be a focus for the NFMA next year.

"I think [EMMA] has exceeded its original goal of being a repository but it's been so successful that it has pointed out the need to go to the next level and become a more sophisticated database with

better technology," he said.

One item that stands the most chance to take up participants' attention in the new year is the implementation of the MSRB's recently approved rule changes requiring dealers to disclose their markups and markdowns on certain transactions.

Leslie Norwood, managing director and co-head of munis for SIFMA, compared dealer efforts to come into compliance with the markup rule by its effective date on May 14, 2018 as a "full court press."

Vahey said the rule is going to require "a very big build from a tech, personnel, operational, and compliance standpoint for all dealers."

The markup requirements are the culmination of a years-long process that came to fruition this year through changes to MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The rule changes mandate that a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security in an amount that in aggregate equals or exceeds the size of the customer trade, discloses its markups and markdowns in the confirmation it sends the customer. The amendments also establish a waterfall of factors for determining prevailing market price, which dealers are to use to calculate their compensation.

Dealers have expressed concern that it will be difficult and costly to automate compliance with the waterfall of factors.

Lanza agreed that there will be a lot of work in 2017 to get the markup disclosure rule implemented correctly and added the requirements exhibit a concern he has with rulemaking while reliance on technology is expanding. He said the rule is "fundamentally backward-looking" in that it is based in the tradition of notification by paper.

"I just get worried that it is going to be a costly effort that [dealers] are going to have to rebuild five years from now anyway because the entire underlying structure of how things are done is going to change," he said.

Municipal advisors in 2017 will continue their adjustments to the still relatively new regulatory structure that applies to them while asking the regulators for additional guidance, according to MAs.

"Continued implementation of G-42 will be one of, if not the biggest, thing for the next year," Karwejna said. "When you think about G-42, there's a lot of room for interpretation and inconsistency."

MSRB Rule G-42 on core duties of MAs says municipal advisors owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

Karwejna said that he and other MAs are hoping for more specific guidance on G-42 and other rules, as advisors are often relying on their own rule interpretations to get through examinations by the

SEC's Office of Inspections, Compliance, and Examinations (OCIE).

"As compliance officers, we can interpret and say what we believe the rule says and write policies based on that, but really the more guidance we can get from the regulators themselves, the better the consistency at which we all can deliver the end result," Karwejna said. "The last thing you want to do is be sitting at a table with an examiner saying, 'That's not really how we think about it.'"

Karwejna and Gaffney both said it would be helpful if the OCIE examiners put an alert or other document together explaining their findings in their first rounds of examinations.

The end of the year-long window in which already practicing MAs can take the Series 50 professional qualification exam will also be a major development for MA regulation in 2017, Gaffney and Karwejna said. The exam program, which gives MAs a year from September 2016 to take and pass the test, is expected to lead to some decrease in the amount of advisors practicing in the muni market, but the exact change that it could help precipitate remains to be seen.

One other development MAs may see is some regulator guidance or indication of how they should handle work with issuers that are pursuing bank loans or private placements. There has been concern in the past that an MA's work with such products could place it in situations where it is actually engaging in broker-dealer activities without being registered to do so.

Sanchez said he thinks the SEC will need to give additional guidance on the whole exemption from broker-dealer registration for MAs. He said it could be done through a no-action letter or some other staff-level guidance, either of which would be an easy way to accomplish the important goal.

The Bond Buyer

By Jack Casey

December 27, 2016

MSRB Seeks Board of Directors Applicants.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.8 trillion municipal securities market, is accepting applications for its Board of Directors. The Board sets the strategic direction of the organization, makes policy decisions, authorizes rulemaking and market transparency initiatives, and oversees MSRB operations.

The MSRB is seeking individuals with broad municipal market expertise able to apply their knowledge to policymaking related to market structure, transparency and transactions. Ideal candidates possess the ability to shape rules for municipal finance professionals and to guide the continued development of the MSRB's Electronic Municipal Market Access (EMMA®) website — a vital tool used by market participants to monitor municipal security trade price and disclosure information.

The MSRB Board consists of 11 independent members that are representative of the public, including investors, municipal entities and other non-MSRB regulated entities. The Board also has 10 members that represent MSRB-regulated entities, including broker dealers, bank dealers and municipal advisors. The MSRB is seeking applicants to fill three public and two regulated-entity

positions, one of which is a non-dealer municipal advisor. New Board members will begin their four-year terms on October 1, 2017.

Qualified individuals from around the country representing diverse experiences and market perspectives should consider applying. Of particular interest are applicants with strong knowledge of municipal securities sales and trading desk operations, and those with experience in underwriting or syndicate practices. The MSRB is also interested in retail and institutional investor applicants. MSRB Rule A-3 outlines requirements for all applicants to the Board, including specific eligibility requirements to serve as a public or regulated Board member. As always, qualified candidates representing the municipal market's gender and minority diversity are encouraged to apply.

To be considered for a position on the MSRB Board of Directors, submit an application, which is available on the MSRB Board of Directors Application Portal, no later than February 17, 2017. Questions can be directed to Mallory Bucher, Board Administrator, at 202-838-1349 or at mbucher@msrb.org.

Date: January 9, 2017

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

MSRB Publishes 2016 Annual Report and Audited Financial Statements.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its 2016 Annual Report, which describes the organization's initiatives to increase fairness, transparency and efficiency in the municipal securities market.

In a year in which the MSRB addressed key retail investor protections and consistent standards for all municipal finance professionals, it also worked collaboratively with fellow regulators to ensure cross-market consistencies in rulemaking to provide appropriate continuity in the securities regulation framework.

The annual report documents the MSRB's implementation of a best-execution rule and the finalization of mark-up disclosure rule, which are aimed at ensuring municipal bond prices are fair and transparent for investors. The report also details the MSRB's completion of foundational rules and standards for municipal advisors consistent with those that have long applied to municipal securities dealers.

The MSRB also focused on improvements to its Electronic Municipal Market Access (EMMA®) website, aimed at enhancing transparency of municipal market disclosures. On the education front, a key event in 2016 was the MSRB's launch of MuniEdPro, the first suite of interactive, online courses about municipal market activities and regulations. The courses complement significant existing educational resources for market stakeholders.

Each MSRB annual report presents financial highlights for the fiscal year, with a link to full audited financial statements on the MSRB's website. The 2016 Annual Report includes a message from Executive Director Lynnette Kelly that speaks to the seriousness with which the MSRB approaches financial stewardship of the organization. In 2016, the MSRB rebated $5.5 million to brokers and dealers and recalibrated several of its fees to appropriately allocate funding across the diverse

universe of regulated entities in a manner that ensures long-term organizational stability.

Read the report.

Date: January 6, 2017

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

MSRB Requests Comment on Modernization of Customer Account Transfers.

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to modernize MSRB Rule G-26, on customer account transfers. The draft amendments are designed to promote market efficiency and reduce risk by creating a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers that are engaged in municipal securities activities. Comments should be submitted no later than February 17, 2017.

Read the request for comment.

BDA to Submit Petition for SEC Rulemaking: Amendments to Form ADV.

Today, Bond Dealers of America will submit a letter that petitions the SEC to engage in a rulemaking to amend Form ADV. BDA's recommendations, if adopted, would make client prospecting more efficient for dealer sales personnel.

BDA's letter recommends three changes to Form ADV:

Recommendation 1: Harmonize the client and client-related asset under management percentages in Item 5, section D2 with the percentage-breakdowns in section D1. This would allow for a more detailed understanding of not only who an adviser's clients are, but what percentage of AUM is related to each client type.

Recommendation 2: Often investment advisers will input AUM attributable to credit unions in the section (m) for "other". BDA believes it would be more valuable to report those assets under (c) so that all AUM attributable to financial institutions be reported in a single line item. Therefore, BDA recommends 'credit unions' be explicitly added to section (c).

Recommendation 3: BDA recommends adding a new section titled F3 to Item 5, which would add a percentage breakdown of adviser AUM by asset type. While it is important to have the total value of AUM reported in section F, BDA believes that adding a section that shows the types of assets, including fixed-income assets, held would be valuable.

We hope this information is helpful. Please contact the BDA with questions or comments.

Jessica Giroux at jgiroux@bdamerica.org
John Vahey at jvahey@bdamerica.org

Justin Underwood at junderwood@bdamerica.org

rcrodriguez

December 19, 2016

Municipal Advisors: Mark Your Calendars with Annual Compliance Dates.

As regulated entities, municipal advisors have multiple obligations throughout the year to maintain their registration status with the MSRB and ensure compliance with MSRB rules. Municipal advisors should be aware of the following key compliance dates in 2017.

2017: Rule G-44 Compliance Certification
On an annual basis, the chief executive officer or equivalent officer at each municipal advisor firm must certify that it has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable rules. See MSRB Rule G-44.

January 1-26, 2017: Annual Registration Affirmation
Each January, all municipal advisor firms registered with the MSRB are required to affirm or correct their registration information on MSRB Form A-12. See MSRB Rule A-12.

January 31, 2017: Form MA-I
Recognizing that the MSRB's professional fees are calculated based on the number of Forms MA-I a municipal advisor firm has on file with the Securities and Exchange Commission as of January 31 each year, the MSRB recommends firms verify the accuracy of their Forms MA-I by January 31, 2017. See MSRB Rule A-11.

April 30, 2017: Annual Municipal Advisor Professional Fee
Invoices for the MSRB's municipal advisor professional fee, which is equal to $300 per Form MA-I on file with the SEC as of January 31 of each year, are sent the first week of April, and payment is due by April 30. See MSRB Rule A-11.

September 12, 2017: Series 50 Grace Period Ends
Municipal advisor professionals have until September 12, 2017 to take and pass the MSRB's Municipal Advisor Representative Qualification Examination (Series 50) to continue to engage in municipal advisor activities.

October 31, 2017: Annual Registration Fee
Each municipal advisor firm registered with the MSRB must pay an annual fee of $1,000 by October 31. Invoices are sent the first week of October. See MSRB Rule A-12.

Dealers, MAs Push for MSRB to Fix Proposed Rule Changes on Complaints.

WASHINGTON – Market groups and firms are asking the Municipal Securities Rulemaking Board to rethink proposed rule changes related to complaints, saying they should be adapted to better fit the differences in the relationships that municipal advisors have with clients and dealers have

customers.

The groups and firms made their requests in letters sent to the Securities and Exchange Commission, which must approve the rule changes.

The MSRB, which proposed changing three of its rules to amend the complaint process for dealer customers and then extend that process to MA customers, did not solicit comments before submitting to the SEC, to the chagrin of dealers and MAs.

The proposal would amend MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records.

The National Association of Municipal Advisors, in a letter authored by its executive director Susan Gaffney, said that the regulation, in some ways, "is trying to fit a square peg into a round hole."

"While we have stated on numerous occasions that the new MA regulations should mirror current broker/dealer regulations whenever possible, this is an example where an alternative approach is warranted due to the difference between the nature of a broker/dealer 'customer' and a municipal advisor 'client,'" Gaffney wrote.

The PFM Group agreed with NAMA, saying that the amendments are a "mismatch of good intention" and a lack of "effective execution."

"This important distinction between the respective relationships is evidence by the disparate treatment of municipal advisors as a fiduciary under the Dodd-Frank Act and the ensuing Municipal Advisor Rule when compared to the regulatory standard of suitability for broker-dealers," PFM wrote.

The non-dealer advisory firm added: "Regrettably, the proposed rule changes do not include needed input from municipal market participants," referring to the MSRB's decision not to go out for public comment before submitting to the SEC.

Bond Dealers of America said the MSRB "is proceeding with unnecessary haste" in not first asking for public comment and, like NAMA and PFM, pointed out the "wholly different" business relationships that dealers and MAs have with their clients.

The proposed amendments would change Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint. They would eliminate the need to send a brochure and instead require other disclosures for dealer customers and MA clients. The dealer and MA requirements would mandate the firms give notification of: their registration with the MSRB and the SEC; the MSRB's website address; and the brochure available on the MSRB's website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers would be required to notify customers with that information annually and MAs would have to share the information "promptly," but no less than once a calendar year over the course of the MA relationship.

NAMA and PFM proposed that instead of using G-10 to require that information, the MSRB should have MAs send the information along with the conflicts of interest and disciplinary disclosures that are required under MSRB Rule G-42 on core duties of MAs. PFM said that path "would be immensely more effective and less burdensome."

The firm and NAMA additionally asked for specific information about the contents of the MA brochure as well as a chance for input. BDA urged that a new brochure be created specifically for MAs instead of trying to repurpose the existing one for dealers.

The proposed revisions to Rule G-8 would require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log would have to include information about the identity of a client and the timing of the complaint as well as a description of the complaint and the action, if any, the dealer or MA took in response. NAMA is asking that the MSRB more specifically describe what it means by "complaints" and "action" while also providing examples of how to create and maintain the logs.

All complaints would be coded using a standard set of product and problem codes that the MSRB would make available, similarly to current SEC and Financial Industry Regulatory Authority requirements. PFM and NAMA requested that the MSRB allow MAs to give input on those codes. BDA asked that the MSRB work with FINRA to ensure that the problem codes are uniform and harmonized so that they do not lead to a heightened regulatory burden on firms registered with both self-regulators.

Rule G-9 would be amended to require both dealers and MAs to retain their complaint records for six years. Both NAMA and PFM argued the MSRB should keep the MA requirement at five years.

The MSRB has said the amendments would be effective six months after they are approved. BDA, citing other regulatory adjustments that dealers are currently facing, asked that the MSRB extend the effective date to one year after approval.

The Bond Buyer

By Jack Casey

December 14, 2016

SEC Ends MCDC Settlements, Turns to Violators That Didn't Participate.

WASHINGTON – The Securities and Exchange Commission will not bring any more settlements under its Municipalities Continuing Disclosure Cooperation initiative and will instead focus on those underwriters and issuers that did not voluntarily disclose violations under the MCDC.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, told The Bond Buyer about the unit's shift in focus on Tuesday, ending months of speculation about the future of the MCDC.

"We currently do not expect to recommend enforcement action against any additional parties under the initiative," she said. "We now think it is appropriate to turn our attention to issuers and underwriters and obligors that didn't participate."

The unit's enforcement lawyers view the underwriters and issuers who may have committed violations but did not self-report as part of MCDC as a high risk for future violations, Gaunt said, adding, "That is a group of particular interest to us and we intend to devote significant resources to identifying violations by those parties."

The enforcement lawyers would also like to learn about any instances where some violations were not self-reported even though the issuer or underwriter self-reported others, according to Gaunt.

There have been indications in the past that the commission may also pursue individuals that were associated with the violations that were reported under the initiative.

Market participants had been waiting for an indication from the SEC about MCDC's future since the commission released its round of issuer settlements in late August.

The SEC's decision to conclude the initiative was guided by the knowledge that MCDC both raised the level of awareness of continuing disclosure problems in the market and led to improvements to be put in place for "the key gatekeepers" in the market, according to Gaunt. MCDC also raised the quality of disclosure and due diligence in the market, she added.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last 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, including a 2014 settlement with California's Kings Canyon Joint Unified School District. In addition, 72 underwriters representing 96% of the underwriting market by volume paid a total of $18 million in MCDC settlements.

Issuers that settled under the initiative did not have to pay penalties but agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding their continuing disclosure obligations to ensure compliance with federal securities laws. They also agreed to designate an individual or officer to be responsible for ensuring they are compliant with their policies and procedures. The designated individual is also responsible for implementing and maintaining a record of the issuer's disclosure training.

The issuers also have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Underwriters that settled paid fines based on their size and number of violations, up to a maximum of $500,000, and agreed to hire an independent consultant. The consultant was tasked with analyzing the underwriters' policies and procedures and submitting a report to the underwriter detailing recommendations for changes or improvements to the policies and procedures. The underwriters, which were announced in a series of three settlements between June 2015 and February 2016, paid a total of $18 million.

At the time MCDC was announced, some market participants had said continuing disclosure problems were mostly concentrated among small, infrequent issuers. They said most issuers had cleaned up their act after the SEC's Office of Compliance, Inspections, and Examinations issued a risk alert in 2012. The risk alert highlighted due diligence and disclosure failings OCIE had uncovered and urged market participants to establish adequate procedures to help them stay in compliance with federal securities laws related to disclosure.

"Among the things that I think the initiative revealed is that these kinds of failures were committed by issuers of all types and sizes, not just small, infrequent issuers," Gaunt said. "I think the initiative also revealed that this was not a historical problem, but rather, involved misconduct as recent as

2014, when the [MCDC] initiative was announced."

The Bond Buyer

By Jack Casey

December 13, 2016

GFOA Members Warn Disclosure Bill Could Push Some Issuers Out of Market.

WASHINGTON – A bill introduced by Rep. Gwen Moore, D-Wis., that would shift municipal disclosure responsibilities to issuers and borrowers from underwriters could drive some localities out of the market, issuer officials warned Moore's chief of staff on Thursday.

The warnings came from members of the Government Finance Officers Association's debt committee at a meeting here after the bill was introduced earlier in the day.

Jonas Biery, the debt committee's chair, said that hears from small issuers throughout the nation that over the past three or four years there has been continued confusion and fear about the increased complexity of regulatory and enforcement actions in the muni industry.

"I think there's some anecdotal, if not data supported, evidence that some of those issuers are backing out of the market," Biery said. "Smaller, typically rural issuers are saying they can't comply and take the risk so they're not going to enter the market."

He added that he thinks there is a valid concern that initiatives like the bill are going to continue to push this "important sector" out of the market.

Ben Watkins, an ex-officio member of the committee and the bond finance director for Florida, said that the bill is "obviously something that from an institutional standpoint [GFOA has] a long history of resisting." GFOA's position won't change, he said.

"It's very difficult for us to reconcile what has historically been a record of support for the muni industry and state and local governments with this proposal," Watkins said. "I believe the consensus in the room would be that this is extraordinarily misguided and counterproductive."

Watkins said the bill is the beginning of a snowball that rolls downhill and has a logical conclusion of creating "a tremendous obstacle and impediment for state and local governments' access to very efficient and inexpensive financing, which really finances the infrastructure of the country."

Moore's bill would authorize the SEC to establish baseline mandatory disclosure requirements, including on content and timing, for primary offerings. But it would leave room for the commission to vary the requirements for different classes of issuers or borrowers.

That is a complete reorientation from the current disclosure regime, which puts disclosure responsibilities on underwriters. Under the Securities and Exchange Commission Rule 15c2-12, firms cannot underwrite an issuer's bonds unless that issuer has contractually agreed to disclose financial and operating information at least annually as well as material events as they occur.

Sean Gard, Moore's chief of staff, told the committee members that the bill didn't come out of Moore's mind all of a sudden because she wanted to come down hard on the muni market. Instead,

Moore sees the bill as a way to strengthen the market, he said.

“If you look at the legislation, you will see that it is well-drafted. It’s not a Hail Mary,” Gard said. “For most issuers, there’s nothing in this legislation that comes out of left field,” Gard said.

He also cited ongoing conversations among a number of market groups, including GFOA through its best practices, that there is market focus on improving disclosure.

“This is just our addition to that [disclosure] discussion,” Gard said.

He noted that the bill and industry discussions follow SEC enforcement division findings through its Municipalities Continuing Disclosure Cooperation initiative that found 72 issuers, including two states, did not comply with their continuing disclosure requirements and then lied to investors about that.

“The industry wouldn’t be having these conversations around disclosure if there wasn’t something there,” Gard said.

At the same time, Gard said, it is important for industry participants to recognize that the bill was introduced on the last day of the congressional session, meaning it will not get a committee hearing in the session and won’t move forward.

“[Moore] doesn’t have any plans to sneak this in,” Gard said. “She does want to engage the issuer community and have this conversation.”

The legislation, which aims to codify recommendations made in the SEC’s 2012 Report on the Municipal market, would not repeal the Tower Amendment of the Securities Exchange Act of 1934, which prohibits the SEC and Municipal Securities Rulemaking Board from requiring issuers to file bond-related documents with them before the sale of those bonds.

Issuers and borrowers with more than $10 million of outstanding municipal securities would have to adopt internal controls and systems, including written policies and procedures that, at a minimum, identify each official responsible for each aspect of disclosure as well as the process by which official statements are drafted and reviewed.

The bill would authorize the SEC to adopt a rule allowing issuers and borrowers to comply with those provisions through a state-wide system of disclosure controls and education.

It would also authorize the SEC to prescribe accounting methods for state and local bond documents and bond-related financial information. Alternatively, the SEC could require issuers to use the reporting and accounting standards from a standards-setting body, such as the Government Accounting Standards Board. The bill does not specifically mention GASB or any other standards-setting body.

The bill as drafted provides a safe harbor for forward-looking statements made by issuers and borrowers.

In addition to the new disclosure requirements, the bill would remove the muni exemption from registration for private activity bonds so PAB transactions would either have to be registered with the SEC or fall under some other exemption such as the one for private placements. Bonds for nonprofit hospitals and universities would continue to be exempted from registration under their 501(c)(3) exemption.

The SEC has recommended that PAB or conduit deals that involve corporate borrowers be registered, since corporations must register corporate deals.

Laura Lockwood-McCall, director of the debt management division of the Oregon State Treasury, questioned why corporate deals would need to be registered.

“You just increase the cost to communities across the country that are working with the private sector to spur our economies,” she said.

The legislation includes twelve types of information an issuer would be required to include in an official statement but gives the SEC the discretion to require more disclosures.

The OS would need to identify and describe any issuer or other borrower with respect to the securities being offered as well as provide a description of any legal limitations on the incurrence of indebtedness by the issuer, borrower, or taxing authority of the issuer. It would also need to describe the issuer’s or borrower’s debt structure, including information with respect to amounts of authorized and outstanding debt, estimated short-term debt, security of debt, and debt service requirements, as well as the nature and extent of their other material contingent liabilities or commitments.

Other information would have to be disclosed about: defaults; whether securities are supported by taxes; the issuers’ financial statements if they are material; the intended use of the proceeds of the offering; and any material conflicts of interest of the issuer or other obligated person and any other party involved in the offering.

The Bond Buyer

By Jack Casey

December 8, 2016

SIFMA Continuing to Work to Improve Disclosure.

The Securities Industry and Financial Markets Association will be focused on several municipal bond industry initiatives in including disclosure in 2017, the group said at its annual “State of the Industry” briefing in New York on Wednesday.

SIFMA will be working with issuers, underwriters, bond counsel, investors, auditors and credit analysts to improve transparency in the wake of the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative, said SIFMA’s President and CEO Kenneth Bentsen.

“We have been working with all the various stakeholders … trying to develop an industrywide initiative to improve issuer disclosure,” Bentsen said, “including having the states take a greater role in regulating and policing local government issuer disclosure.”

Additionally, Bentsen said SIFMA was looking at a revisions and updates to SEC rule 15c212; disclosure regarding bank loans and direct placements; the SEC guidance with respect to the outstanding continuing disclosure agreements; and improvements to the Municipal Securities Rulemaking Board’s EMMA online website.

Some of the other initiatives the group will be focused on are backing the SEC's proposal on a shortened settlement cycle (T+2), working to aid senior citizen investors with the Senior $afe Act, and promoting cyber security and preparedness, he added.

Timothy Scheve, chair of SIFMA's Board of Directors, said that he would be focused on promoting the benefits of the U.S. capital markets, pushing for a comprehensive best interest standard for retail investors, and preserving equal access for its members to all SIFMA business models.

The Bond Buyer

By Chip Barnett

December 7, 2016

NFMA Municipal Analysts Bulletin.

The National Federation of Municipal Analysts Municipal Analysts Bulletin, Vol. 26, No.3, is now available. All officers, active committees and societies contribute to the newsletter – it's the best way to learn about what is happening at the national level and locally.

Click here to open the newsletter.

Muni Disclosure Responsibility Would Shift to Issuers from Underwriters in New Bill.

Rep. Gwen Moore (D-WI) has introduced a bill that would make state and local government issuers or borrowers responsible for bond-related information disclosure, rather than underwriters. Under current SEC rules, muni issuers are not regulated with regards with muni disclosures. The bill would also allow the SEC to establish baseline mandatory disclosure requirements for primary offerings.

Bill Text

Judge Slashes SEC's Proposed Fine for Ex-Miami Budget Director.

NEW YORK — A federal judge has rejected the U.S. Securities and Exchange Commission's request for a record $450,000 penalty against a former Miami budget director found liable for misleading municipal bond investors, fining the man $15,000 instead.

In an order on Monday, U.S. District Judge Cecilia Altonaga said the SEC has already made an example of former budget director Michael Boudreaux in its first municipal securities fraud case to go to trial.

Boudreaux and the city of Miami were found liable by a jury in September for shifting money among accounts to hide the city's worsening financial condition from investors who bought over $150 million of Miami's bonds in 2009.

Though a jury found Boudreaux acted with severe recklessness, he did not gain financially from his conduct, Altonaga said, adding that the fine the SEC was seeking appeared "overreaching and punitive."

The SEC's 2013 lawsuit alleged the city's "shell game" helped it win favorable ratings for its bonds and exposed bondholders to substantial risk of losses.

Penalties were not part of the jury trial. Miami reached an agreement with the SEC in October to pay $1 million to settle its case.

A $450,000 penalty against Boudreaux would have been the largest ever against a municipal official by the SEC. In a motion in October, the SEC said the penalty was justified because Boudreaux orchestrated the fraud and directed multiple transfers of money over a two-year period.

In a statement on Monday, Boudreaux's lawyer Benedict Kuehne said his client was relieved by the reduced penalty.

SEC spokesman Ryan White declined comment.

In a motion in November, Kuehne had argued that the proposed penalty was "massively unfair." Boudreaux had already been financially ruined by the SEC's case and could no longer find work in municipal government, his lawyer said.

In Monday's order, Altonaga said the SEC failed to present any evidence that Boudreaux's conduct caused investor losses or a substantial risk of losses. It was also unreasonable to expect Boudreaux to individually pay almost half the amount paid by the city itself, she said.

The judge also rejected the SEC's request for a permanent injunction barring Boudreaux from future violations of securities laws, saying there is "little to no chance" he will ever work for a municipality again, let alone with securities or bonds.

The case is Securities and Exchange Commission v City of Miami, U.S. District Court, Southern District of Florida, No. 13-22600

By REUTERS

DEC. 6, 2016, 11:39 A.M. E.S.T.

(Reporting by Dena Aubin; Editing by Anthony Lin and Tom Brown)

Republican Groups, FSI Urge Federal Court to Vacate Rule G-37 Changes.

WASHINGTON – The Financial Services Institute has joined three state Republican groups in urging federal appeals court judges to vacate the Securities and Exchange Commission's approval of Municipal Securities Rulemaking Board rule changes that they say restrict political contributions for municipal advisors.

The Republican groups, which are requesting an oral argument before the Sixth Circuit Court of Appeals in Cincinnati, are also asking the judges to then order the SEC to disapprove the rule. The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee made their requests in a brief filed earlier this month. FSI recently filed a friend-of-the-court brief in

support of the Republican groups' arguments. The group represents independent financial advisors and financial services firms.

The Sixth Circuit Court had halted proceedings in the case pending an order on a motion to dismiss from the SEC. A panel of three judges from that court referred the case to a merits panel, which received the groups' most recent motion and will handle upcoming filings expected from the SEC. The SEC will have until Dec. 19 to submit its response.

The state parties' suit against the SEC and MSRB claims the revised MSRB Rule G-37 unconstitutionally forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The rule took effect on Aug. 17.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, are barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional or a municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Republican groups' lawyers, led by Christopher Bartolomucci, a partner with Kirkland & Ellis here, said that the process of getting the rule changes approved showed that the MSRB and SEC believe "the SEC may supplant Congress' limits with a broad, prophylactic rule of its own in an effort to deter so-called 'pay-to-play' activities in the provision of advisory services for public assets."

Bartolomucci added that, as the groups told the MSRB and SEC in comment letters during the rulemaking process, "that contention is flatly foreclosed by federal campaign finance law, the statute under which the SEC purports to be acting, the Administrative Procedures Act, and, ultimately, the First Amendment."

FSI's friend-of-the-court brief similarly argues that the rule, both in its original and amended forms, "has curtailed the constitutional rights of independent broker-dealers (IBDs) and registered representatives while failing to take into consideration IBD firms' unique structure, and in particular their remoteness from any articulated 'pay-to-play' threat."

The group said that, unlike non-IBD firms, IBD firms generally operate through a wide network of independent contractors that are not employees and are given almost complete freedom to act as solo practitioners. The rule, however, treats the independent contractors as employees, allowing for "the action of a single independent financial advisor or registered representative to pollute the whole IBD network." That limits "the First Amendment rights of individuals who neither control nor profit from the governmental business obtained by a financial advisor they may never have met, operating in another jurisdiction," FSI argued.

FSI also noted that some of the rule's phrasing is vague and runs the risk of further limiting political speech. It said the rule regulates financial support that may indirectly influence hiring while not giving useful guidance as to what indirect influence might be. It also refers to indirect communication with a municipal entity as a part of its solicitation definition without explaining what that could entail, according to the group. Both examples of vague language are likely to cause firms to be overly careful and restrict individuals' activities more than might be necessary, FSI argued.

The financial group said the MSRB and SEC could have considered alternatives like levying tougher penalties for pay-to-play corruption or providing additional whistleblower protections. Instead of doing that, the "MSRB leapt without looking, and the SEC unfortunately ratified that decision," FSI said.

The three Republican groups added their own complaints in their brief on top of the First Amendment concerns, arguing that Congress "never intended to grant an agency like the SEC – much less the MSRB – the authority to tinker with contributions to political parties and candidates for federal office." Congress determined the contribution limit should be $2,700 per federal candidate per election and $10,000 per year for political party federal accounts and left no room for the SEC to second-guess its judgment, Bartolomucci and the other lawyers wrote.

The lawyers also argued that the SEC violated congressional appropriations language for 2016 that prohibited the commission from finalizing, issuing, or implementing any rule, regulation, or order regarding the disclosure of political contributions. The SEC has said it did not violate the rule because it never acted. Instead, the rule was deemed approved at the end of a 45-day period as happens under federal law when the SEC does not act. The groups and SEC have been arguing whether the course of events meet the qualifications for a final order or agency action, either of which would help the Republican groups' case.

The Bond Buyer

By Jack Casey

November 28, 2016

MSRB Instructs Dealers to Disclose Existence of Market Discount in Municipal Bond Transactions: Chapman and Cutler

Client Alert

The Municipal Securities Rulemaking Board ("MSRB") recently issued an interpretive notice announcing its interpretation that if a dealer engages in a transaction with a customer in a municipal security that bears market discount, the dealer must disclose the existence of market discount to its customer as part of the "time of trade disclosure" required under MSRB Rule G-47. Rule G-47 already includes original issue discount ("OID") in the rule's non-exhaustive list of information that may be material and require time of trade disclosures to a customer. Both market discount and OID impact the tax treatment of municipal bonds and can be particularly relevant for "tax-exempt" municipal bonds. The MSRB notice is available here.

MSRB Rule G-47

Rule G-47 requires brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose to their customers, at or prior to the time of a municipal bond trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market. Information is considered to be material under Rule G-47 if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor making an investment decision. The rule currently includes a non-exhaustive list of information that is generally considered material, including OID and other factors. While market discount is not listed in the rule, the MSRB interpretation now puts dealers on notice that the MSRB

believes the existence of market discount to be an issue that is required to be disclosed to a customer under Rule G-47 at or prior to the time of trade.

Why is Market Discount and OID Disclosure Relevant?

Generally speaking, accretion of OID over the life of a tax-exempt municipal bond is treated as tax-exempt interest under federal tax law while market discount is taxable income at a taxpayer's ordinary income tax rate (i.e., not as tax-exempt interest or at the capital gain rate). On the other hand, both OID and market discount are generally treated similarly to taxable interest income for taxable municipal bonds and are taxed at a taxpayer's ordinary income tax rate. These factors can impact an investor's decision to buy or sell a bond and the assessment of the bond's price. Tax treatment and computation of OID and market discount is very complex. Investors and dealers should consult their tax advisors for complete information.

Why is the MSRB Concerned with Market Discount Now?

The recent steep rise in municipal bond yields appears to be behind the MSRB market discount disclosure guidance and also has initiated other recent MSRB action. The MSRB recently issued a statement cautioning investors about the potential risks to bond positions and bond portfolios related to rising interest rates. The MSRB also recently submitted a letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern. The MSRB letter is available here.

The MSRB is concerned that an investor might not be aware that all or a portion of his or her investment return represented by accretion of market discount is taxable as ordinary income. The MSRB is concerned that this might result in an investor purchasing securities at an inappropriately high price (i.e., a price not reflecting the potentially higher tax rate applicable to the discount). The existence of market discount might also impact an investor's decision to purchase or sell a bond or determination of what price to pay or accept for a bond. As a result, the MSRB is now notifying dealers that it believes the fact that a security has market discount is material information that is required to be disclosed to a customer under Rule G-47.

What Should Dealers Do Now?

Dealers should review their existing policies and procedures to ensure that financial advisors disclose the existence of market discount to applicable customers in connection with municipal security transactions. Note that firms do not have any time of trade disclosure obligation under Rule G-47 with respect to customers that are sophisticated municipal market professionals, or SMMPs, as defined in MSRB Rule D-15.

November 29, 2016

SIFMA Warns Fed Basel Capital Standards for Trading Would Hurt Munis.

WASHINGTON – The Securities Industry and Financial Markets Association wants bank regulators to avoid adopting harsh international capital standards for trading that could have a chilling effect on the municipal market and hurt liquidity.

The dealer group made a plea for more flexible standards in a letter it sent to the Federal Reserve Board about the final rule on Minimum Capital Requirements for Market Risk, also known as Fundamental Review of the Trading Book (FRTB), published in January by the Basel Committee on Banking Supervision.

The Fed and other bank regulators are charged with U.S. implementation of the international framework that the Basel Committee adopted, which among other things, is meant to ensure that banks have adequate capital relative to risks on their trading books. SIFMA plans to send similar letters to other bank regulators as well.

Michael Decker, managing director and co-head of munis at SIFMA who authored the letter, said that the FRTB would increase the amount of capital required to trade munis by three to six times the current levels. “The higher costs of holding trading inventory would have a chilling effect on all dealers’ ability to trade bonds and would materially erode liquidity in the market,” Decker wrote in the letter. The decrease in liquidity would ultimately lead to increased borrowing costs for state and local governments, he added.

“SIFMA is very concerned about the potential effects of significantly higher capital requirements on the municipal market and the potential material harm to liquidity,” he wrote. “Past Basel capital regimes have long recognized the lower historical market risk and default probability of municipal securities in rulemaking, and FRTB as drafted would reverse this treatment and potentially penalize trading in municipal securities relative to other asset classes.”

The goal of SIFMA’s letter, Decker said, is to try to raise concerns with U.S. banking regulators before they get too far along in the process of drafting regulations.

Decker detailed the changes SIFMA would like to see in the two different approaches a bank could take under the framework, the sensitivity based approach (SBA) and the internal model approach (IMA), which allows banks to devise their own model subject to regulatory approval. He called the SBA “the default method for calculating capital charges for securities held by banks or bank-affiliated broker-dealers for trading” and wrote it will likely be what most dealers choose when working to comply.

“Many dealers will need to capitalize municipal security trading using SBA, either because they cannot justify the added administrative cost of implementing IMA or if some IMA requirements, such as the back-testing requirement, themselves prove too difficult to implement,” Decker wrote.

The part of the SBA that SIFMA believes would most affect munis is the approach’s measurement of default risk. Decker said the approach assumes default risk rates of 0.5% to 6% for investment grade securities, which is more closely aligned with corporate securities and thus much higher than the 0.03% to 0.42% that municipal market participants experience.

“Using risk weights based on corporate default rates would imply that default risk weightings would be 750 times too large for general obligation municipal bonds and 37.5 times too large for revenue bonds,” Decker wrote. He added that the default rate risk, among other parts of the approach, “reflects a lack of attention or a lack of understanding on the part of the Basel committee of the way the municipal market behaves relative to other products.”

SIFMA would also like to see the SBA’s treatment of general interest rate risk (GIRR) altered. GIRR is designed to measure the interest rate risk associated with a bank’s trading portfolio and measures how much more or less volatile a particular security is in relation to general interest rates.

SIFMA is concerned that the currently proposed method of evaluating GIRR would overstate the interest rate risk associated with munis because it would not capture the reduction in risk that banks realize when they hedge their muni positions, such as by shorting treasuries.

Additionally, Decker said SIFMA believes the SBA's approach to credit spread risk, a separate part of the SBA, also overstates the risk associated with a municipal product. Munis are "a very safe product" in "a very safe market" where there tends to be relatively little volatility associated with changes in credit risk, Decker wrote.

Without SIFMA's changes, Decker said, banks would need to have roughly seven times more capital for triple A-rated bonds and nine-and-a-half times more capital for those that have a triple B-rating. Even with the changes though, required capital for munis would still be from two to 20 times the current standardized capital requirements, according to Decker. It would be 2.3 times higher for triple-A bonds and 3.6 times higher for those rated triple-B.

Decker also asked the Fed to change some guidelines for the IMA so that it would designate municipal credit risk as a 20-day horizon for investment grade and a 40-day horizon for sub-investment grade instead of the 40-day and 60-day horizons the guidelines currently have, respectively. The liquidity horizons refer to the time required to exit or hedge a risk position without materially affecting market prices in stressed market conditions.

He also raised concerns that the IMA guidelines have a floor default rate probability of 0.3% while many munis have default rates that are much lower than 0.3%.

The Bond Buyer

By Jack Casey

December 2, 2016

SIFMA Submits Comments to the Federal Reserve System on FRTB.

On November 30, SIFMA submitted comments to the Board of Governors of the Federal Reserve System on the effects of the Fundamental Review of the Trading Book (FRTB) framework on municipal securities. The letter reviews potential effects of the FRTB on the municipal securities market and offers suggestions for certain clarifications and changes.

SIFMA Comment Letter

Basel Committee's Release on the FRTB

MSRB's Markup Disclosure Requirements to Take Effect in May 2018.

WASHINGTON – Dealers will have until May 14, 2018 to get ready for requirements that they disclose their markups and markdowns in certain transactions, the Municipal Securities Rulemaking Board announced on Tuesday.

The requirements are the result of MSRB rule changes the Securities and Exchange Commission

approved, along with parallel rule changes from the Financial Industry Regulatory Authority, on Nov. 17.

The effective date gives dealers approximately a year and a half to implement the changes necessary to comply with the revised rules. The MSRB had originally recommended a one-year implementation timeline. But dealers complained that they would be facing several other large undertakings during that time period, such as shifting to a two-day settlement cycle from the current three-day cycle, and would have trouble completing everything on time.

Bond Dealers of America said dealers should have been given at least two years to implement the rule while the Securities Industry and Financial Markets Association had pushed for at least three years.

The MSRB will hold a webinar on the rule changes on Jan. 12, 2017.

MSRB chair Colleen Woodell has said that the muni market "will gain an unprecedented level of transparency" when the rule changes become effective.

The changes are to MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The amendments will require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security in an amount that in aggregate equals or exceed the size of the customer trade, to disclose its markups and markdowns in the confirmation it sends the customer. Markup disclosures will have to be given as a total dollar amount and a percentage of the prevailing market price.

There are three exceptions to the rule under which markup disclosure will not be required: an offsetting trade done by a functionally separate trading desk; primary market trades at the list offering price; and trades of municipal fund securities.

The amendments also establish a waterfall of factors for determining prevailing market price, which dealers are to use to calculate their compensation. 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. They will then make a series of other successive considerations if that data is not available. 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 could 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.

The main dealer complaint about the rule changes is that it will be difficult to automate a compliance system to take into account the waterfall of factors, with some saying the regulators do not understand the complexity and cost associated with implementing the changes.

The SEC said in its approval order that the MSRB's changes were reasonably designed to ensure their purpose while limiting the impact of operational challenges for dealers. The commission also concluded that it is feasible for dealers to automate the determination of prevailing market price in accordance with the self-regulator's guidance and that the changes reflect the lowest overall cost approach to achieving a worthy regulatory objective.

Under the rule changes, dealers will not be allowed to label their markups or markdowns on confirmations as “estimated” or “approximate” but can include explanatory language or disclosures on the confirmations to give context or help investors understand how the markups are calculated. The MSRB has also acknowledged that different dealers can reasonably reach different conclusions as to whether securities are similar for use in the prevailing market price determination.

Dealers are allowed to rely on third-party services as part of their reliance on economic models at the bottom of the waterfall. However, the MSRB has said that if a dealer chooses to do that, it still keeps the ultimate responsibility to ensure the fairness and reasonableness of a price and any markup or markdown under the prevailing market price calculation.

The Bond Buyer

By Jack Casey

November 29, 2016

MSRB Provides Guidance on Application of Rules to Transactions in Managed Accounts.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today provided interpretive guidance for municipal securities dealers to address questions about the application of certain MSRB rules to municipal bond transactions with registered investment advisers having full discretion to purchase or sell municipal securities on behalf of their investor clients.

“The MSRB is offering this guidance in response to questions from dealers about the applicability of disclosure requirements and other MSRB rules to transactions in managed accounts,” said MSRB Executive Director Lynnette Kelly. The MSRB’s policy on providing interpretive guidance is available on its website.

Specifically, the guidance clarifies certain obligations for dealers that execute transactions with a registered investment adviser that is classified as a “sophisticated municipal market professional” under MSRB rules and authorized to exercise full discretion on behalf of its clients. The guidance makes clear that, for purposes of complying with the rules addressed in MSRB Rule G-48, dealers do not owe obligations to clients of such registered investment advisers beyond those under Rule G-48, which outlines modified obligations for dealers when transacting with sophisticated municipal market professionals.

Date: December 1, 2016

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

MSRB Reminds Dealers of Time of Trade Disclosure Obligations Related to Market Discount Bonds.

The Municipal Securities Rulemaking Board (MSRB) today published a regulatory notice to remind municipal securities dealers of their obligations under MSRB Rule G-47 to disclose to their customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. In periods when interest rates rise, municipal bonds may frequently be sold in the secondary market for less than par value at a market discount. The MSRB's notice states its interpretation that the fact that a municipal security bears a market discount is material information that must be disclosed under Rule G-47 to a customer that is not a sophisticated municipal market professional (SMMP). The existence of market discount may have significant tax implications and therefore impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond.

Read the regulatory notice.

SEC Seeks Record Penalty Against Former Miami Budget Director: Holland & Knight

After a federal jury found the City of Miami's (City) former budget director guilty of defrauding investors in connection with a 2009 bond offering, the U.S. Securities and Exchange Commission (SEC) is seeking a record $450,000 civil penalty against the former official – an amount that is nine times greater than any previous fine against a municipal official.1

In addition, the SEC is seeking a permanent injunction that would bar the City's former budget director from violating anti-fraud provisions of federal securities laws in the future.

The official was found guilty on three of four counts involving violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and that he aided and abetted the City's violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The jury found that both the City and its former budget director hid the City's declining financial position by using inter-fund transfers to cover up a general fund deficit, information that was not disclosed to rating agencies or in three separate bond issues in 2009, totaling $153.5 million.2

Through a settlement, attorneys for the SEC secured an injunction and a $1 million civil penalty against the City for its role in the fraud.3 The SEC now argues that the former official should be fined $150,000 for each of the three 2009 bond issues at question in the civil case.4

In its brief, the SEC stated that "a complete absence of both the sincerity of the former official's assurance against future violations and recognition of the wrongful nature of his conduct dictate that a penalty must be imposed." The SEC gave no indication that the court should reduce the penalty because the former official "remains gainfully employed, earning, per his counsel, about the same amount as he did when he was the budget director."5

The attorney representing the former budget director pushed back on that notion, saying in a court filing that his client "is a man of limited means who has no assets" and that "he has been financially ruined" fighting securities fraud charges.6

The significant penalties sought by the SEC against an employee of a governmental entity reflect the SEC's changing approach in holding individuals accountable. This is a relatively modern trend of the SEC, but the penalties sought against the City's budget director are unprecedented in the municipal

context. This is consistent with the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative in which it stated that settlements with a governmental entity did not preclude the SEC from seeking enforcement actions against the staff of such entity. The SEC is clearly signaling that it will hold not only an issuer accountable for bad disclosure but will seek personal penalties against staff as well.

Footnotes

1. See The Bond Buyer article "SEC Seeks a Record $450,000 Penalty Against Miami Official."

2. *Jury Verdict, Securities and Exchange Commission v. City of Miami and Michael Boudreaux, Case No. 13-22600-CIV-ALTONAGO/O'Sullivan, (S.D. Fla. September 14, 2016.)*

3. See Miami Herald article "SEC wants $450,000 penalty against former Miami budget director."

4. Id.

5. See The Bond Buyer article "SEC Seeks a Record $450,000 Penalty Against Miami Official."

6. See The Bond Buyer article "Former Miami Official Says SEC Penalty Would Mean Financial Ruin."

Last Updated: November 22 2016
Article by Michael R. Millett

Holland & Knight

Michael R. Millett is an Associate in our Tampa office.

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

SEC Approves MSRB's Markup Rule, Drawing Criticism From Dealers.

WASHINGTON – The Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's proposal to require dealers to disclose their markups and markdowns in certain transactions, drawing criticism from dealers.

The SEC approved the proposal late Thursday along with a parallel one by the Financial Industry Regulatory Authority.

"The commission believes the establishment of a requirement that dealers disclose markups/markdowns to retail investors, as proposed, will advance the goal of providing retail investors with meaningful and useful information about the pricing of their municipal securities transactions," the SEC said in its approval order.

The commission added that the changes will promote transparency of dealers' pricing practices and potentially promote price competition among dealers.

Colleen Woodell, chair of the MSRB's board of directors, said the muni market "will gain an unprecedented level of transparency" when the new rule is put in place roughly a year and a half

after the approval date.

“We have been working tirelessly to improve transparency for municipal bond investors and the changes set in motion today will allow them to assess their municipal bond transaction costs in a way similar to other markets,” Woodell said.

The MSRB is amending its Rules G-15 on confirmation and G-30 on prices and commissions. The changes will require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

The amendments also establish a waterfall of factors for determining prevailing market price, which dealers will then use to calculate their compensation. Dealers will initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. 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 could 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 could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Bond Dealers of America and the Securities Industry and Financial Markets Association have consistently criticized the rule changes as overly complex and potentially harmful to market liquidity. The main dealer complaint is that it will be difficult to automate a compliance system to take into account the waterfall of factors.

John Vahey, managing director of federal policy with BDA, said that the group doesn’t believe that regulators fully appreciate the extent to which automating the waterfall is “a serious and complex and costly project for dealers.”

He added that the SEC’s approval follows a recent MSRB letter that said liquidity is a risk to retail investors.

Vahey said complex and costly regulation is a contributing factor to the consolidation of dealers and thus liquidity concerns for the market, which already has 19% fewer dealers today than it did in 2012. The MSRB, in its filings on the rules changes, has acknowledged the possibility that the amendments could lead some firms to exit the market or merge with other firms.

Leslie Norwood, managing director and co-head of municipal securities with SIFMA, said the SEC’s approval of the requirements represents a “monumental change” for dealers and a significant change for investors.

“Now the hard work begins, as the devil is in the details of implementing such a significant change,” she said. “Over the next 18 months, our members will continue to work with the MSRB regarding necessary guidance on this historic new rule,” particularly as dealers work on a number of compliance issues.

Despite the dealer complaints, the SEC concluded that the changes were reasonably designed to ensure their purpose “while limiting the impact of operational challenges for dealers.” It added that

it believes it is feasible to automate the determination of prevailing market price in accordance with the proposed MSRB guidance. The SEC also noted that the MSRB has said that the changes reflect the lowest overall cost approach to achieving a worthy regulatory objective.

In addition to the issues with automating the waterfall, dealers had also posed several other compliance-related questions to the MSRB.

The firms had asked about whether they could be allowed to disclose the markups or markdowns on a confirmation as "estimated" or "approximate" given the level of subjectivity involved in some levels of the waterfall. The MSRB said such labelling would not be allowed because it could suggest that the amount listed is unreliable and might diminish the value of having the markup listed. However, the board said dealers could include explanatory language or disclosures on the confirmations to give context or help investors understand how the markups were calculated.

Dealers also questioned how the changes applied to fair pricing determinations. The MSRB said that if a dealer that uses reasonable diligence to determine the prevailing market price of a muni in accordance with the MSRB's guidance discloses a markup based on that determination, it should generally be able to rely on that determination for fair pricing purposes.

The MSRB also acknowledged that different dealers can reasonably reach different conclusions as to whether securities are similar for use in the prevailing market price determination.

Dealers had also questioned whether the reliance on economic models at the bottom of the waterfall could include use of third-party pricing services. The MSRB said that while a dealer can choose to rely on third-party services, the dealer still keeps the ultimate responsibility to ensure the fairness and reasonableness of a price and any markup or markdown under the prevailing market price calculation. The self-regulator also said that a dealer should have a reasonable basis to believe that the third-party pricing service produces evaluated prices that reflect actual prevailing to use it.

The Bond Buyer

By Jack Casey

November 18, 2016

MSRB to Dealers: Inform Investors About Market Discount Bonds at Time of Trade.

Read the MSRB Notice.

NABL: SEC Chair White Expresses Possibility of Issuer Regulation.

On November 14, the House Financial Services Committee held a hearing on the U.S. Securities and Exchange Commission's (SEC) Fiscal Year (FY) 2018 Preliminary Authorization Request. The SEC, in its preliminary request, has asked for $2.227 billion, a $445 million increase over the FY 2017 request. When questioned by members on the request, Chair White emphasized that the increase in funding would help the SEC adapt to its growing complexity and extensive responsibilities.

Representative Gwen Moore (D-WI) questioned Chair White on whether Congress should take action relating to SEC regulation over issuers, in light of the 2012 Report on the Municipal Securities Market and the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. Chair White said that while the MCDC Initiative has been successful in increasing awareness of continuing disclosure obligations, the SEC staff is continuing to examine whether the SEC should have greater authority.

Chair White's testimony is available here. A recording of the hearing is available here.

Justice Mulls False Claims Act Charges Against Issuers, Borrowers, MAs.

WASHINGTON — The Justice Department is considering filing civil lawsuits under the False Claims Act against at least five issuers and borrowers, as well as two municipal advisors, for allegedly misusing the Treasury Department's state and local government series securities to exploit interest rates and obtain tens of millions of dollars.

The issuers and borrowers include: Greenville County, S.C., School District; Nationwide Children's Hospital in Franklin County, Ohio; Gulf Breeze, Fla.; the Louisville and Jefferson County Metropolitan Sewer District in Kentucky; and The University Financing Foundation in Georgia, according to documents obtained by The Bond Buyer, bond-related disclosures, and sources.

The municipal advisors are Christopher Monaghan and Michel Garner, who were principals of the now-defunct Enhanced Financial Solutions LLC and are now principals at Echo Financial Products, both based in Pennsylvania. EFS set the five issuers and borrowers up in proprietary "yield enhancement programs" for state and local government series securities (SLGS), according to filings with the Securities and Exchange Commission by Echo.

EFS was affiliated with Pottstown, Pa.-based Investment Management Advisory Group (IMAGE), which shut down following a Justice Department antitrust investigation of bid-rigging of guaranteed investment contracts and other muni bond investments.

EFS' yield management program monitored interest rates and purchased SLGS for the issuers and borrowers, then redeemed and/or modified them when rates changed to obtain redemption premiums.

An issuer, for example, would buy 20-year SLGS, hold them for 30 days, and, if interest rates dropped, sell them back to Treasury at higher prices.

The issuers made huge amounts of money over several-year periods. Greenville County School District, the largest school district in South Carolina, made $67.7 million from 2007 through 2012, the Louisville and Jefferson County MSD made $114.60 million from 2008 through 2011, and Gulf Breeze made almost $64.2 million between 2007 through 2012, according to Treasury documents obtained through the Sunshine Act.

DOJ earlier this year sent letters to the issuers, borrowers and MAs saying it had opened a civil investigation into whether the yield enhancement programs' alleged violation of SLGS rules "implicated" the False Claims Act (FCA).

The FCA imposes liability on persons and companies who defraud governmental programs. It is the federal government's primary litigation tool to combat fraud against the government.

Sources believe Treasury asked DOJ to help it recover some of the ill-gotten gains from the SLGS transactions.

If DOJ filed False Claims Act charges against the issuers, borrowers and MAs and prevailed, it could obtain triple damages as well as $5,500 to $11,000 per claim.

DOJ told the issuers, borrowers, and MAs that it could take other action, such as filing suits charging them with common-law breach of contract, fraud, or unjust enrichment.

But DOJ's preference, according to the letters it sent the alleged violators, would be to settle the disputes over the SLGS transactions without resorting to litigation.

The issuers and one borrower said they are cooperating with DOJ.

"The investigation remains in its early stages, and the hospital has had only preliminary discussions with DOJ to this point," Nationwide Children's Hospital said in the official statement for $129.3 million of revenue refunding bonds Franklin County, Ohio sold for it. "At this point the hospital cannot predict the outcome of the DOJ investigation, including the potential materiality of any monetary consequences."

All but one of the other issuers and borrowers made similar disclosures in bond documents. Some made statements to The Bond Buyer and provided documents under the Sunshine Act.

Officials with The University Financing Foundation refused to comment and did not make any disclosures. Nationwide Children's Hospital officials said they could not comment further than their disclosure because of the ongoing investigation.

A Treasury spokesman said the department probably would not be able to provide documents because of an ongoing investigation and privacy issues. But some issuer officials talked about the DOJ probe.

Doug Webb, general counsel for the Greenville County School District, told The Bond Buyer, "The school district participated in the [SLGS] program from 2007 to 2013. This program was administered by a financial services provider on behalf of the school district and was also utilized by other municipal bond issuers. The school district used this investment program for the sole benefit of its students and constituents."

Gulf Breeze city manager Edwin Eddy said, "We are not taking it lightly. We hired a law firm, and determined that other agencies received the same legal advice we did. We're taking it seriously to make sure we are prepared."

The issuers, borrowers and MAs, who don't think they did anything wrong, have hired lawyers that specialize in tax and government controversies, as well as the False Claims Act. The Greenville County School District is being represented by Bryan Cave, their lawyers said. The Louisville and Jefferson County MSD has hired Brad Waterman, a lawyer with his own tax controversy practice. Gulf Breeze has hired Jenner & Block. Several other bond counsel and law firms are involved. Michael Schwartz, a former U.S. attorney who is now a partner at Pepper Hamilton in Philadelphia, represents Monaghan and Garner and EFS. Most of these lawyers, with the exception of Schwartz, either could not be reached for comment or declined to comment.

SLGS Program

The SLGS program was created in 1972. SLGS are non-marketable special purpose securities issued by Treasury and purchased by state and local governments to help them comply with yield

restriction and rebate requirements on their investments of bond proceeds.

SLGS are often purchased by issuers for their advance refunding escrows as alternatives to open-market Treasuries. Their maturity dates can be tailored to those of the bonds being refunded. But issuers can invest other bond proceeds in them as well.

In Gulf Breeze, reserve funds and replacement funds were invested in SLGS, documents show. The city also purchased SLGS with some of the proceeds from a $500 million variable-rate local government pool bond program that began in 1985 to provide loans to municipalities across the state.

In 1996, Treasury revised its rules to make SLGS more flexible for issuers. A year later, Treasury amended the SLGS rules to halt perceived abuses. The preamble to the rules said the amendments were to prohibit issuers from purchasing both SLGS and open-market Treasuries for the same advance refunding escrow as a "cost-free interest rate hedge or option for speculation in open market securities." The rules contained examples of impermissible transactions involving purchase of both SLGS and open-market Treasuries.

In 2005, Treasury published final SLGS rules that expanded the examples of impermissible transactions, but all of the examples involved interest rates exploited through the use of SLGS and open-market Treasuries. None of the examples involved just SLGS.

SLGS Transactions

In September 2006, March 2008 and February 2012 letters, C. Willis Ritter, a lawyer at Ungaretti & Harris at that time who served as both special tax counsel and special SLGS counsel to Gulf Breeze and helped prepare its SLGS agreement, assured Gulf Breeze and later other issuers that the yield investment program did not violate SLGS rules and would not warrant any enforcement action from Treasury, according to documents.

Ritter had said in an earlier brief sent to clients and obtained by The Bond Buyer that the 2005 final SLGS rules "indicated" it was permissible to do these transactions. He could not be reached for comment.

Treasury became aware of EFS' yield enhancement program and in October 2013 it began an administrative process to determine if the program violated SLGS rules. Treasury officials created a SLGS working group comprised from departmental staff to review the transactions done under the program and to submit a report and recommendations on those transactions. The department gave the issuers, borrowers and MAs the opportunity to tell it why their investment programs didn't violate SLGS rules.

In December 2013, the late Frederic "Rick" Ballard, with Ballard Spahr, responded to Treasury on behalf of EFS, the Greenville County, S.C. School District, Gulf Breeze and Nationwide Children's Hospital. He, like Ritter, said that Treasury had given an "implied" approval to these SLGS deals when it specifically proposed prohibiting them in the Notice of Proposed Rulemaking for the final rules, but then deleted that section from the final 2005 rules.

Ballard also said the issuers and borrowers had relied on counsel and that the transactions took place over an extended period of years, openly in filings with Treasury's Bureau of Fiscal Service.

"EFS and the [SLGS] purchasers were not trying to hide anything from anyone," he said.

Treasury Probe and Sanctions

In 2014, then-Treasury Fiscal Assistant Secretary Richard Gregg sent letters informing the issuers, borrowers and MAs that EFS' yield enhancement program violated SLGS rules when they: purchased a long-term SLGS security and redeemed it before maturity to capture a redemption premium; changed the maturity or interest rate of a SLGS security already subscribed for to take advantage of interest rate movements; and changed the SLGS subscription amount, in response to movements in interest rates, in order to maximize redemption premiums or minimize potential losses.

Based on the SLGS Working Group recommendations, Treasury suspended the issuers and borrowers from the SLGS program for five years. Treasury permanently barred Monaghan and Garner from the program, according to disclosure documents and Echo's filings with SEC.

Then earlier this year DOJ opened up its investigation.

Defenses

The issuers, borrowers and MAs are pushing back against DOJ on several fronts. First, they don't think they did anything wrong. They had opinions from bond counsel, special tax counsel, SLGS counsel and financial advisors that the SLGS transactions did not violate SLGS rules. They say they relied on these opinions.

"When it comes to dealing with the Justice Department, if you have an opinion that was written in good faith, there is no basis to go after the person relying on that opinion for any kind of fraud or improper conduct," Schwartz said.

The issuers, borrowers and MAs also say they openly bought and sold the SLGS over many years and Treasury never questioned the purchases and sales.

In addition, they said that, when informed by Treasury that their transactions violated SLGS rules, they stopped doing them and that Treasury sanctioned them with the suspensions. They thought this meant the case was closed.

"When we received word back from the Department of the Treasury that we shouldn't be doing that, we said, 'OK, we'll stop immediately,'" said Eddy.

In letters sent to them regarding the suspensions, Treasury said, "This constitutes the FINAL AGENCY ACTION in this matter. The decision will not be reconsidered and may not be appealed to any other officials in the department of the Treasury." It said, however, that the issuers and borrowers could seek judicial review of Treasury's findings and actions.

The issuers and MAs said they didn't agree with Treasury but didn't contest the suspensions.

But sources said federal officials contend Treasury had no way to impose penalties or recoup ill-gotten gains for the SLGS violations under the SLGS rules. The 2005 rules list the remedies available to Treasury for abuses. They include rejections of SLGS subscriptions and suspension or revocation from the SLGS program. The rules don't permit Treasury to seek penalties, sources said.

"You've got to remember that this is a Treasury borrowing program," said one source who did not want to be identified.

Some lawyers representing the issuers and borrowers argue that DOJ will never be able to file charges against the issuers and borrowers under the FCA because it bars tax claims. They said the SLGS program involves tax rules because it is designed to help issuers comply with arbitrage and yield restriction rules.

They point to Michael Lissack's False Claims Act suit against Sakura Global Capital Markets, which was shot down by the U.S. Court of Appeals for the Second Circuit in New York City because it involved tax claims.

Lissack accused Sakura of yield burning, which means selling issuers open-market Treasuries at inflated prices to "burn" down their investment yields. Appeals court judges dismissed the suit because the FCA contains a "tax bar" that excludes coverage of all "claims, records, or statements made under the Internal Revenue Code of 1986."

But Lissack was successful in filing FCA charges against broker-dealers for yield burning and his charges involved SLGS. Lissack argued that by getting issuers to invest in open-market Treasuries, the broker-dealers deprived Treasury of SLGs subscriptions and the revenue from that program that it normally would have had.

In April 2000, 17 regional and national broker-dealers and investment advisors agreed to a total of $140 million to settle the charges. Lissack made millions of dollars from the settlements.

In this latest SLGS controversy, Schwartz said, "We are fully cooperating with the Department of Justice and expect that when it thoroughly reviews all of the evidence it will determine that there is no basis to believe that Enhanced Financial did anything improper."

The issuers and borrowers are also hoping DOJ will decide not to take any action against them.

The Bond Buyer

By Lynn Hume and Shelly Sigo

November 15, 2016

Municipal Securities Investors to Gain Access to Dealer Compensation Information.

Washington, DC – Ushering in an historic change for transparency of the municipal market, the Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to require municipal securities dealers to disclose their compensation when transacting with retail investors. The MSRB has worked in coordination with the Financial Industry Regulatory Authority (FINRA), and the SEC also approved a similar rule proposed by FINRA for the corporate and agency debt markets, which harmonizes the new requirements across these fixed-income markets.

"The municipal bond market will gain an unprecedented level of transparency when this new rule is put in place," said Colleen Woodell, Chair of the MSRB Board of Directors. "We have been working tirelessly to improve transparency for municipal bond investors and the changes set in motion today will allow them to assess their municipal bond transaction costs in a way similar to other markets."

Retail investors in municipal securities receive less information on their written transaction confirmations about the cost of their transactions than investors in, for example, equities. The rule approved by the SEC will provide municipal retail investors with meaningful and useful pricing information to help them better evaluate the overall cost of their municipal securities transactions. The new MSRB rule will go into effect in 18 months.

When the rule is in place, municipal securities dealers will be required to provide retail investors information about dealer compensation, in the form of a mark-up or mark-down, for certain transactions. The MSRB expects the disclosure to affect an estimated 8,000 retail investor municipal securities transactions each day. “Disclosure of dealer compensation to investors will go a long way to helping municipal securities investors better understand the cost of buying or selling a bond,” Chair Woodell said.

The specifics of the MSRB’s rule focus on when a dealer in a principal capacity (for the dealer’s own account) purchases from or sells to a retail customer and on the same day has an offsetting sale or purchase of the same security to or from a third party. The rule requires that a dealer disclose on the customer’s confirmation the dealer’s compensation, in the form of a “mark-up” or “mark-down” from the “prevailing market price” of the security. In addition to providing the dollar amount and percentage of the dealer’s compensation on a trade, the confirmation would include the investor’s time of the trade and a link to trade price data about the security on the MSRB’s Electronic Municipal Market Access (EMMA®) website.

The rule changes include guidance for dealers on establishing the prevailing market price of a security, from which a dealer’s mark-up or mark-down is determined. The guidance builds on existing guidance under the MSRB’s fair pricing rules, which requires dealers to use reasonable diligence in establishing the prevailing market price of a municipal security, and is also generally harmonized with prevailing market price guidance previously adopted by FINRA and applicable to other fixed income securities.

The MSRB’s detailed explanations in its rulemaking materials are designed to assist dealers in understanding the MSRB’s regulatory intent for the application of the mark-up disclosure rule and prevailing market price guidance to different trading situations and the unique characteristics of the municipal market, which has more than one million individual bonds, most of which do not trade frequently. For example, the MSRB’s materials specifically address establishing the prevailing market price by reference to contemporaneous customer transactions; the ability of dealers to calculate their compensation at the time of disclosure to a customer; the frequent absence of pricing information for sufficiently comparable municipal securities; and the implications of transactions with affiliated dealers.

Date: November 18, 2016

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

MSRB Files Amendment to Mark-up Disclosure Proposal.

The Municipal Securities Rulemaking Board (MSRB) has filed with the Securities and Exchange Commission (SEC) an amendment to its rule proposal to require the disclosure of mark-ups and mark-downs to retail customers on certain principal transactions and to provide guidance on prevailing market price. The original proposed rule change, filed on September 2, 2016, consisted of proposed changes to MSRB Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, and MSRB Rule G-30, on prices and commissions.

The amendment addresses comments received by the SEC on the original proposal. The amendment extends the proposed implementation period from one year to 18 months and makes several minor technical changes and clarifications as follows:

- Clarifies that the proposed rule change requires disclosure only in cases where the retail customer trade has an offsetting same-day principal trade;
- Replaces the requirement that dealers disclose a link to a specific existing page on EMMA (i.e., the "Security Details" page) with a more generic requirement to disclose a link in a format specified by the MSRB to a webpage on EMMA that contains trading data for the security;
- Requires dealers to disclose the time of execution only for retail customer confirmations, rather than for both retail and institutional customer confirmations; and
- Clarifies that a dealer, when considering relevant factors to determine the degree to which a municipal security is similar to another, may look to the spread over U.S. Treasury securities of a similar duration or over an "applicable index," to account for the guidance's applicability to both taxable and tax-exempt municipal securities.

View the full amendment.

MSRB Announces February 27, 2017 Effective Date of Academic Historical Data Product.

The Municipal Securities Rulemaking Board (MSRB) announced today that its Academic Historical Transaction Data product, comprised of post-trade municipal securities transaction data collected through the Real-Time Transaction Reporting System (RTRS), will be effective February 27, 2017. As of that date, the RTRS Academic Data Product will be available to academic institutions for a fee and will improve their ability to perform research by enabling them to distinguish transactions executed by different dealers through the use of anonymized identifiers. Read the full regulatory notice.

The MSRB currently makes municipal securities trade data available to academics through a partnership with Wharton Research Data Services. RTRS data is made available to the public at no charge on the Electronic Municipal Market Access (EMMA®) website.

MSRB Academic Trade Data Product Available Feb. 27.

WASHINGTON – The Municipal Securities Rulemaking Board announced on Thursday that starting Feb. 27, academic institutions will be able to request one-year data sets from a new data product that will identify dealers in some way without naming them.

The data in the product will come from post-trade municipal securities transaction information collected through the Real-time Transaction Reporting System (RTRS) and will be three years old at the time it is provided. Academic institutions will be able to request the data sets on a rolling basis for a fee of $500 for each year of data, with a one-time initial set-up fee of $500.

The MSRB said last month in an SEC filing announcing the fee that while it usually waives fees associated with MSRB subscription services or historical data products for nonprofit organizations, it feels the fees for the new product are appropriate and not overly burdensome given the additional legal and operational effort that establishing the new product required.

“The establishment of the RTRS Academic Data Product adds to the MSRB’s current offering of data products and furthers the MSRB’s mission to improve the transparency of the municipal securities market by facilitating access to municipal market data for academic institutions,” the MSRB said in its regulatory notice announcing the effective date.

The data product is the result of changes to MSRB Rule G-14 on reports of sales and purchases, which requires dealers to report municipal security trade information to the MSRB’s RTRS within 15 minutes of the time of trade. The SEC approved the rule change in September.

The MSRB already makes much of the data reported to RTRS publicly available through its EMMA system as well as through subscription services or historical data sets, but none of the currently available data differentiates between dealers. The lack of dealer identifiers limits a researcher’s ability to fully understand secondary market trading, according to the MSRB.

The self-regulator said the new data, which will not include information about list offering prices and takedown transactions, is the result of requests certain academics have made for an enhanced version of RTRS trade data that includes dealer identifiers.

Academics showed their support for the new product in comment letters sent to the MSRB after the self-regulator first announced the idea in July 2015. However, Bond Dealers of America and the Securities Industry and Financial Markets Association said they were concerned that the identifiers would open their members up to harmful reverse engineering.

The MSRB responded to those concerns by strengthening the conditions that would apply to academics who use the product. Any academic institution that wants access to the data product will have to agree: not to attempt to reverse engineer the identity of any dealer; not to redistribute the data in the product; to disclose each intended use of the data; to ensure that any data presented in work products be sufficiently aggregated to prevent reverse engineering of any dealer or transaction; and to return or destroy the data if the agreement is terminated.

The data will also only be available to academics associated with institutions of higher education.

Lynnette Kelly, the MSRB’s executive director, has said the self-regulator took measures to make the data “as rich as possible for researchers while guarding against the potential for reverse engineering to identify the dealers in a particular transaction.”

However, SIFMA and BDA, in their last comment letters to the SEC before the rule changes to create the product received approval, said they still had concerns.

SIFMA appreciated the MSRB’s changes to strengthen the protections against reverse engineering, but Leslie Norwood, SIFMA managing director and co-head of municipal securities, said the group felt its concerns “were largely dismissed in the adoption of the changes” and did not believe the suggested MSRB’s limitations in the user agreement are sufficient to prevent potential misuse of data.

BDA said that it still thinks it is very likely that private and non-educational entities will end up getting the full trade history, including dealer names, for every trade released through the product. John Vahey, managing director for federal policy with BDA, urged regulators to be vigilant in protecting the integrity of the marketplace in the future.

The Bond Buyer

By Jack Casey

November 17, 2016

MSRB Extends Effective Date, Clarifies Provisions in Markup Filing.

WASHINGTON – The Municipal Securities Rulemaking Board wants to amend its proposal to require dealers to disclose their markups and markdowns in certain transactions by lengthening its implementation timeline and clarifying provisions that market participants have criticized.

The MSRB filed its proposed amendments, which also made two changes in what a dealer would have to disclose on the confirmations, with the Securities and Exchange Commission late Monday.

The MSRB's original proposal, filed with the SEC for approval on Sept. 2, would modify MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The modifications would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

They also would establish a waterfall of factors for determining prevailing market price, which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. 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 could 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 could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Dealers had said in past comment letters that the one-year implementation timeline the MSRB had proposed would not give them adequate opportunity to address the complex changes that would be needed to automate compliance with the waterfall. They also pointed out that they will be dealing with other large market changes like the shift to a two-day settlement cycle at the same time.

The MSRB is now proposing to extend that timeline by six months in an effort to "assist dealers in meeting the requirements of the proposed rule change and mitigate the costs of implementations," according to the self-regulator.

John Vahey, managing director of federal policy for Bond Dealers of America, said that BDA is "happy to get an additional six months," but said dealers "could have used a longer time in light of all the rules that are out there."

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA appreciates the extended implementation period to deal with the "monumental set of operational changes for dealers" under the rule.

The MSRB's amendments would also make two changes to the information dealers would have to include on their customers' confirmations. Dealers would only have to include the time of execution

on confirmations to retail investors and not on confirmations for institutional customers as they would have been required to do before. The MSRB said it concluded that the likely costs of requiring dealers to give the information on institutional confirmations may exceed the benefits of the disclosure.

Dealers would also now be required to disclose, in a format specified by the MSRB, a reference and, if the confirmation is electronic, a hyperlink, to a webpage on EMMA that contains publicly available trading data for the specific security that was traded. That language is more generic than the original filing, which would have required dealers to disclose a link to a specific existing page on EMMA.

The MSRB said that using the slightly more general language would allow it to continue trying to make the landing page for investors that access EMMA more retail investor-friendly.

Two other changes the MSRB proposed would serve to clarify provisions of the rule. One would make clear that the rule would be triggered only when a customer trade for a non-institutional account has an offsetting principal trade. Another would modify the inclusion of spread in the non-exclusive list of relevant factors a dealer could use to determine whether a security is similar for purposes of calculating prevailing market price.

The original filing used the example of a spread between munis and U.S. Treasury securities of a similar duration for a prevailing market price determination, but market participants noted that Treasuries are most relevant to taxable munis, not tax-exempt bonds. In response, the MSRB is clarifying that dealers can consider the extent to which the spread over an "applicable index" at which the similar municipal security trades is comparable to the spread at which the subject security trades.

The Bond Buyer

By Jack Casey

November 15, 2016

N.Y. Audit Firm Settles SEC Charges Of Issuing Fraudulent Reports.

A New York audit firm agreed to settle SEC charges that it had issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, N.Y. and its local development corporation.

The SEC found that the firm and its senior partner:

- allowed Ramapo to record a $3.08 million receivable in its general fund for a property sale that the senior partner knew had not occurred;
- ignored red flags and relied upon what turned out to be false representations by Ramapo officials about certain other receivables, interfund transfers and liabilities; and
- failed to take appropriate steps to mitigate the risk of material misstatements even after senior management became aware that Ramapo's financial statements were the subject of multiple law enforcement investigations and the senior partner received complaints about possible fraud.

The firm agreed to: (i) forfeit approximately $380,000 in audit fees and interest and pay a $100,000

penalty; and (ii) engage an independent consultant. In addition, the senior partner agreed to pay a $75,000 penalty and be suspended from practicing public company accounting. Further, he is prohibited from acting as the engagement partner or engagement quality control reviewer on any municipal audit for five years.

Commentary

While one cannot say that there has been a flood of enforcement actions in which the activities of municipal officials have been scrutinized, there is enough to make it clear that the SEC is paying attention.

Last Updated: November 10 2016

Article by Steven D. Lofchie

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.

Groups Want MSRB to Focus on EMMA, Market Costs as Strategic Goals.

WASHINGTON – The Municipal Securities Rulemaking Board should focus its future strategic priorities on improving EMMA, increasing transparency of board operations and costs, and doing more cost-benefit analyses of its rulemaking, municipal market groups and participants told the MSRB.

The groups made their recommendations in response to the self-regulator's call for input about where it should direct its long-term strategic plan.

Mike Nicholas, Bond Dealers of America's chief executive officer, said that BDA believes the MSRB is entering into a new regulatory phase and that "this is the time for the MSRB to focus on ways to improve the municipal securities market that do not involve the types of sweeping and burdensome rulemakings that the MSRB has worked to adopt in recent years."

He said that future MSRB technological changes should focus on narrowing the gap between the corporate and muni markets.

"For all the rhetoric of the need of the municipal securities market to parallel the corporate securities market, the most obvious difference between the two … remains the antiquated technological infrastructure" of the muni market, Nicholas said.

BDA pointed out that issues in the corporate market are organized along industry categories while munis are almost exclusively organized by CUSIP number.

"This provides no organization to the types of issuers within the market and reduces the value of pricing disclosures for investors," Nicholas said. He added that while EMMA currently has issuers post their disclosures to EMMA using relevant CUSIP numbers and allows investors to receive notice of those filings based on CUSIPs, it does not allow an issuer-based disclosure system. The lack of such a system prevents an investor from being notified when for example the issuer of bonds the

investor owns publishes a preliminary official statement relating to the same credit as the bonds the investor holds, BDA said.

The National Federation of Municipal Analysts also suggested changes be made to EMMA that could be useful to both its members and the market generally. NFMA recommended that the MSRB: improve EMMA's search function to allow for more narrow searches; provide more descriptive information in alerts; connect remarketing of securities to the original issue; and provide more transparency about issuers' compliance with parts of their continuing disclosure agreements like the timeframe for filing.

NFMA asked that the MSRB provide procedures to reduce errors on EMMA and correct already existing errors like misfiled or mislabeled postings.

The Government Finance Officers Association similarly asked the MSRB to make it easier for issuers to correct or modify the data it has already submitted to the system.

"Changing or correcting data is often unreasonably difficult or sometimes impossible for issuers attempting to provide timely, relevant and accurate disclosure of information," said Emily Brock, director of GFOA's federal liaison center.

NFMA also recommended the MSRB change EMMA to: link bonds not only by the issuer but by the ultimate borrower and project; encourage more uniform electronic submissions of data; and provide a mechanism to identify active material events and those that have been resolved.

The Securities Industry and Financial Markets Association said that one of the MSRB's focuses should be on ensuring that a "robust cost-benefit analysis" is a key factor in evaluating the application of regulatory actions. Michael Decker, managing director and co-head of munis with SIFMA who wrote the group's letter, asked that the self-regulator report the data, assumptions, and models from which it derives its cost-benefit conclusions when describing its rulemaking proposals.

BDA similarly said that there needs to be a deeper review of the cost-benefit analysis of the MSRB's rulemakings, specifically through a retrospective regulatory cost-benefit analysis that "would improve the quality of the regulatory process and ensure that competition is not necessarily harmed by new regulations."

Nicholas recommended that the MSRB "conduct a study to consider how the cumulative regulatory changes have resulted in increased costs, burdens, and inefficiencies" and suggest needed changes.

Decker and SIFMA also asked that the MSRB both review its fee structure and budgeting process to make sure that costs are properly allocated across regulated entities and implement a longer-term outlook in its budget process.

"While we appreciate MSRB fee rebates, it would be better for the MSRB to set fees at a level that does not result in excessive surpluses, necessitating the need for rebates," Decker said.

Additionally, SIFMA asked for guidance on how MSRB Rule G-34 on CUSIPs applies to bank transactions and how MSRB rules apply in accounts where investment advisers have full discretion. It also asked that the MSRB make a stronger commitment to harmonizing rules with other regulators and revise its approach to informal guidance to be more responsive to firms' questions about MSRB rules.

GFOA asked for more transparency around MSRB operations, including making sure board meeting agendas and minutes are posted and that issuers have equal representation on the board with other

market participants, such as dealers, investors and MAs.

The Bond Buyer

By Jack Casey

November 14, 2016

SEC Approves FINRA Plan to Disclose Mark Ups in Bond Prices.

The Financial Industry Regulatory Authority (FINRA) said the U.S. Securities and Exchange Commission had approved a plan that would require brokerage firms to disclose how much they mark up the price of most bonds they sell to retail customers.

The SEC also approved a similar plan by the Municipal Securities Rulemaking Board, which regulates municipal advisers and bond dealers, the Wall Street watchdog said on Friday.

The two controversial plans aim to help the public assess the fairness of prices charged by brokers for corporate and municipal bonds.

The securities industry had balked at the plan saying it would be expensive to implement, unnecessary and potentially confusing to investors.

Individual dealers determine the price at which they sell or buy bonds, unlike stocks that have a price publicly available on an exchange.

FINRA said on Friday it would announce when the new rule would be implemented in an upcoming regulatory notice.

Reuters

Fri Nov 18, 2016 | 11:13am EST

(Reporting by Sruthi Shankar in Bengaluru; Editing by Shounak Dasgupta)

Banker's Roles with Issuer-Related Charitable Groups Raise Questions.

LOS ANGELES – A Wells Fargo Securities banker may not violate municipal bond rules by serving on the boards of school district charitable foundations and then obtaining the schools' underwriting business, but some securities lawyers say there is a perceived conflict of interest that should be disclosed.

The banker, Craig Brast, serves on the boards of two Houston-area charities, the Spring Independent School District Education Foundation and the Aldine Education Foundation. Brast doesn't live within school district areas, although he is a resident of Houston and he went to Westfield High School in Spring ISD.

The foundations are nonprofits that raise money for the Spring ISD and Aldine ISD through events

such as golf tournaments as well as direct donations. The foundations are distinct entities governed by volunteer boards of directors that are separate from the school district. The school districts, however, publicly encourage support of the foundations.

Brast was a founding member of the Aldine foundation when it was created in 2012 and has served as a volunteer member of the board on the Spring foundation for about five years. He continues to serve on both boards.

Brast has personally given money to the foundations. Neither Wells Fargo nor the foundations would disclose the amounts. A Wells Fargo spokesman said the bank gave about $4,000 to the Spring Foundation and $1,250 for the Aldine Foundation's golf tournament fundraiser last year.

Since 2012, when the Aldine foundation was created, the Aldine ISD has done two negotiated transactions and Wells Fargo was the lead underwriter on both, according to Thomson Reuters data.

The most recent was $266.84 million of school building and refunding bonds that the Aldine ISD issued in January of this year. In the other deal the school district issued $45.6 million of school building and refunding bonds in October of 2013.

Wells Fargo was involved in Spring ISD's most recent transactions as well. It was lead underwriter for $80 unlimited tax refunding bonds issued in June 2016 and a member of the underwriting syndicate for $136.9 million of unlimited tax refunding bonds issued in December 2015. The bank was not involved in five earlier negotiated transactions Spring ISD did dating back to July 2011.

Wells Fargo doesn't believe the contributions or Brast's involvement with the foundations and donations represent any conflicts of interest.

Municipal Securities Rulemaking Board rules do not bar bankers from giving to issuers' charitable groups.

Its Rule G-20 on gifts and gratuities prohibits dealers from giving, directly or indirectly, anything or service of value in excess of $100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer.

The MSRB's Rule G-37 on political contributions bars dealers and their municipal finance professionals from underwriting transactions with issuers for two years if they contribute to issuer officials who can influence the award of negotiated muni business. The rule states that dealers cannot do indirectly what they are prohibited from doing directly. But it only covers contributions to issuer officials.

The board's Rule G-17 on fair dealing requires that underwriters disclose to issuers with whom they do business any "potential or actual material conflicts of interest" inherent in the relationship.

Underwriters send issuers disclosure letters when they are engaged to do business, commonly called "G-17 disclosure letters" because they are designed to satisfy that rule's requirement that conflicts of interest or potential conflicts be disclosed.

Neither of the G-17 letters that Brast sent to the two school districts, which were obtained by The Bond Buyer through Freedom of Information Act requests, mentioned his involvement or contributions to the charitable foundations. The letter sent to Aldine ISD was dated Jan. 6, 2016 and the letter sent to Spring ISD was dated Nov. 30, 2015.

Securities lawyers who declined to be named in order to offer analysis of the circumstances said that pay-to-play rules such as the MSRB rules do not cover contributions to charitable foundations, even in cases where the gifts were at the request of, or to curry favor, with public officials.

But one of them said that such a banker's relationship with both an issuer and the issuer's money-raising foundation could be a problem.

"Even if it's not explicitly against G-37 or G-20, you still have to consider whether it's a conflict of interest," that attorney said.

That attorney said the situation in Houston is not unlike others around the country where charitable organizations serve as middlemen between issuers and dealers who obtain their negotiated municipal underwriting or advisory business.

He said that it was quite possible the Securities and Exchange Commission might find such relationships to be something that should be disclosed, because it could at least raise a question for investors about whether a firm is getting business because it also has another relationship with that issuer that is financially beneficial to the issuer.

"People should be weighing it," the lawyer said. "If you're not even thinking about it, that's a problem."

Wells Fargo spokesman Gabriel Boehmer said that the bank gives generously to non-profit organizations in Texas and nationwide, and gave about $9.4 million to Texas charities last year including the donations to the Spring and Aldine foundations.

Boehmer confirmed that Brast gives a small donation to both foundations annually, declining to specify the amounts. He added that Wells Fargo has business relationships with hundreds of Texas school districts and that Brast's work covers issuers throughout the Southwest.

Boehmer said that Wells Fargo employees serve on the boards of many charitable organizations, and that Brast's work to raise money for Spring and Aldine ISDs does not create a conflict of interest requiring a disclosure.

"In our view the education foundations, which are nonprofits, and the school districts are totally separate entities," he said. "It might appear to the casual observer that the school district and the foundation have a relationship, but they do not have a business relationship at all."

The Bond Buyer

By Kyle Glazier

November 18, 2016

NFMA Responds to MSRB's Request for Comment.

The National Federation of Municipal Analysts has submitted a response to the MSRB's request for public input on its long-term priorities "to help guide the strategic direction of the organization". The NFMA's comment letter, dated November 10, 2016, can be found by clicking here.

MSRB Reminds Municipal Securities Dealers of the November 16, 2016 Effective Date of Amendments to Rule G-12 on Close-out Procedures.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal securities dealers that the amendments to MSRB Rule G-12 on uniform practice, regarding close-out procedures for municipal securities, will become effective on November 16, 2016. Among other changes, the amendments require that inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10-calendar day extension at the buyer's discretion. The changes seek to reduce the risk and cost associated with inter-dealer fails.

Read the regulatory notice.

View the approval order.

SEC Investor Advocate Recommends Approval of FINRA and MRSB Proposals on Mark-up Disclosure.

Earlier this week, the Investor Advocate of the U.S. Securities and Exchange Commission recommended to the SEC that they approve the proposals from the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) to require disclosure of mark-ups and mark-downs from prevailing market price on retail customer confirmations, relating to certain transactions in fixed income securities and municipal securities.

Comment Letter from the Investor Advocate

SEC Filing Published in Federal Register

SIFMA's Recent Comments to SEC on Proposed Rule Changes

BDA Submits Comment Letter to MSRB on Long-Term Strategic Priorities.

On November 10, 2016, BDA submitted a comment letter to the MSRB on its request for comment on its long-term priorities and initiatives related to its core activities and goals to promote a fair and efficient municipal market. You can view MSRB's request for comment here.

MSRB requested feedback from market stakeholders on areas where it should focus its strategic priorities and how it should prioritize its core activities. BDA's letter recommends that MSRB:

- After many years of significant regulatory change, focus on ways to improve the municipal securities market that do not involve sweeping and burdensome new rules
- Enhance EMMA to allow for users to search by issuer and not be a primarily CUSIP-based system
- Harmonize the requirements of Rule G-15 with the recently adopted changes to SEC Rule 10b-10
- Conduct a study to consider how the cumulative regulatory changes over the past five years have resulted in increased costs, burdens, and inefficiencies, and suggest changes it would recommend as a result of the study

- Increase issuer education efforts
- Encourage the voluntary filing of bank loan information by recognizing and mitigating disclosure liability concerns

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MSRB Identifies Potential Risks for Retail Municipal Market Investors.

Washington, DC – In a recent letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, the MSRB identified disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern.

"As the primary regulator for the municipal market, it is our responsibility to identify areas where we believe retail investors may be at risk," said MSRB Executive Director Lynnette Kelly. "Our letter aims to communicate to the Investor Advocate our top concerns, in addition to highlighting what the MSRB is doing to address these concerns."

The first area of concern involves issuer disclosure practices, including bank loan disclosures, the timeliness of submissions, selective disclosure practices and clarity of general obligation pledges in high-profile municipal bankruptcies and restructurings. The MSRB promotes the transparency and availability of municipal market information, and is continuing to emphasize the importance timely disclosures submitted to its Electronic Municipal Market Access (EMMA®) website by issuers.

The MSRB's letter identifies price fairness and transparency in the municipal market as another area of concern. The MSRB has led multiple initiatives this area including implementing a best-execution rule for municipal market transactions and adding additional post-trade data to EMMA®, and additional initiatives are underway. The MSRB has asked the SEC to approve a proposed rule to help investors better understand the cost of buying and selling a municipal bond, and will continue to make enhancements to EMMA® to support pre-trade price transparency in the market.

The letter also warns that changes in the "ownership profile" of municipal bonds since 2010 have increased the risk that a rise in interest rates could lead to market dislocation and reduced liquidity in the municipal market. The letter cites greater mutual fund ownership and reduced dealer inventories as factors in the risk for investors, and highlights the decline in the number of municipal securities dealers, which has fallen 19 percent since 2012.

MSRB provides multiple free investor education resources related to interest rate risk including Impact of Market Interest Rate Movement on Municipal Bond Prices and Yields, Evaluating a Municipal Bond's Interest Rate Risk and The Importance of Monitoring Municipal Bonds. "Municipal bond investors can use these resources to learn about the risks of interest rate changes and considerations to discuss with their financial professional," Kelly said. The MSRB also makes available an online course aimed at financial professionals called Rules and Risks: Applying MSRB Rules in Relation to Municipal Market Risks.

The MSRB's letter to the Investor Advocate also identifies protection of senior and vulnerable investors as an issue of increasing importance. The MSRB is focused on bringing awareness to existing protections for these investor groups, and helping financial professionals better understand the needs and risks surrounding these investors.

The MSRB wrote to SEC Investor Advocate Rick Fleming in response to a request that the MSRB identify products and practices within the municipal securities market that may have an adverse

impact on retail investors.

Date: November 10, 2016

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

MSRB Announces Members of Investor Advisory Group.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its 2017 Investor Advisory Group, which provides the MSRB's Board of Directors with access to additional expertise on municipal market practices, transparency and investor protection issues.

Members of the 2017 MSRB Investor Advisory Group are:

- Fred S. Cohen, SVP/Director, Municipal Bond Trading, AllianceBernstein LP
- Jim Ladge, COO and Portfolio Manager, Appleton Partners, Inc.
- Geoffrey L. Schechter, Investment Officer, MFS Investment Management
- Justin Schwartz, Head of Municipal Money Markets, Vanguard Group, Inc.
- Ben Smelser, Vice President and Senior Trader, Breckinridge Capital Advisors

"As the MSRB advances several significant investor protection proposals, the Investor Advisory Group will help ensure that the MSRB's policies are informed by the expertise and perspectives of a diverse group of investors," said MSRB Chair Colleen Woodell.

Among the topics the MSRB is addressing this year are primary offering practices and the potential addition of pre-trade data to the Electronic Municipal Market Access (EMMA) website. The advisory group, created in 2015, will meet periodically throughout the year, as directed by the Board.

Date: November 10, 2016

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

MSRB Board Discusses Mark-up Disclosure and Other Topics.

The MSRB Board of Directors held its first quarterly meeting October 26-27, 2016 where it discussed multiple initiatives aimed at protecting investors and promoting a fair and efficient municipal securities market, and held annual meetings with leadership of the Securities and Exchange Commission and the Financial Industry Regulatory Authority. The Board also discussed the MSRB's mark-up disclosure proposal, improving pre-trade price transparency in the municipal market and primary market offering practice, among other topics.

Read the full meeting summary.

MSRB Files Proposed Rule Change to Extend MSRB's Proposed Customer Complaint and Related Rules to Municipal Advisors and to Modernize Those Rules.

The MSRB filed today with the Securities and Exchange Commission a proposed rule change consisting of amendments to MSRB rules related to existing customer complaints and recordkeeping requirements for brokers, dealers, and municipal securities dealers (collectively, dealers) and an extension of those requirements, as well as related record retention requirements, to municipal advisors. Amendments to MSRB Rule G-10, on delivery of investor brochure, Rule G-8, on books and records to be made by dealers and municipal advisors, and Rule G-9, on preservation of records, and an MSRB interpretation regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings, are included in the filing.

Specifically, the proposed rule change would:

- extend the MSRB's customer complaint recordkeeping requirements to all municipal advisors (i.e., non-solicitor and solicitor municipal advisors) as well as align those recordkeeping requirements more closely with the customer complaint recordkeeping requirements of other financial regulators, by, in part, requiring an electronic complaint log of written customer or municipal advisory client complaints;
- require that all regulated entities retain their customer complaint records for six years;
- overhaul Rule G-10 so that the rule would more closely focus on customer and municipal advisory client education and protection as well as align that rule with customer education and protection rules of other financial regulators; and
- extend the MSRB's guidance under Rule G-32, *Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers* (Nov. 20, 1998) to municipal advisors.

MSRB Seeks New Complaint Process for MAs, Updated One for Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board wants to amend several of its rules to both create a municipal advisor client complaint process as well as update and streamline its current requirements related to dealer customer complaints.

The MSRB filed its proposed changes with the Securities and Exchange Commission on Tuesday. It would amend MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records.

The self-regulator is proposing to set an implementation date for the changes of six months after SEC approval.

Rule G-10 is designed to protect investors by giving them necessary information, through brochures given to them by dealers, about how to file a complaint about their dealers with the right regulatory entity, according to the MSRB. However, under the current rule, investors only receive the brochure information after they have already made a complaint, which can mean the information comes too late for the investor to make the best use of it.

The MSRB's proposed changes would eliminate the requirement to send a brochure and expand the rule to include municipal advisors and their clients. Dealers and MAs would have to notify their customers and clients, respectively, of: their registration with the MSRB and the SEC; the MSRB's website address; and the brochure available on the MSRB's website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers would be required to notify customers with that information annually and an MA would have to share the information "promptly," but no less than once a calendar year over the course of the MA relationship.

The definition of "municipal advisory client" in the G-10 changes would include the solicitation of an issuer or borrower, but would not include advertising by dealers and MAs or the solicitation of a borrower if the person is not acting in the capacity of a borrower or the solicitation isn't in connection with issuing munis or municipal financial products.

The board said the changes will help investors and clients to get detailed and relevant information about regulated entities and how to make a complaint in a more timely and consistent fashion.

The MSRB is also proposing to extend 1998 guidance dealing with electronic delivery and receipt of information by dealers to municipal advisors as part of the changes. The guidance is under Rule G-32 on disclosure in connection with primary offerings.

In addition to the educational and informational changes, the MSRB is also seeking to enhance its recordkeeping requirements related to written complaints for dealers and then extend those enhanced requirements to MAs.

Under the current Rule G-8, dealers must keep a record of all written complaints from customers along with what action, if any, they have taken related to the complaint.

The revised Rule G-8 would require dealers and MAs to keep an electronic complaint log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients.

The log would have to include: the identities of the dealer customer or MA client; the date the complaint was received; the date of the activity that gave rise to the complaint; and the person whom the customer or client names in the complaint. The log would also have to include a description of the complaint and the action, if any, the dealer or MA has taken in response.

All complaints would be coded using a standard set of product and problem codes that the MSRB would make available, similarly to current SEC and Financial Industry Regulatory Authority requirements.

Rule G-9 will also be amended to require both dealers and MAs to retain their complaint records for six years. MAs would have otherwise only had to keep records for five years.

The definition of "municipal advisor client" in the G-8 and G-9 changes is also broader than the one used in the G-10 changes in order to allow for the capture of written complaints made by the full spectrum of MA clients of a solicitor municipal advisor, the MSRB said.

The self-regulator acknowledged that the changes would likely come with costs to the regulated entities, but noted that those entities that are already regulated with FINRA are already subject to similar requirements and therefore would not likely see significant cost increases.

The Bond Buyer

By Jack Casey

November 1, 2016

Reminder: Comments on the MSRB's Strategic Priorities are Due by November 11, 2016.

Read the Request for Comment.

SEC Approves FINRA Rules Addressing "Pay-to-Play" Practices: Ropes & Gray

The Securities and Exchange Commission (the "SEC") recently approved the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to adopt FINRA Rules 2030 and 4580, which set forth pay-to-play restrictions, and associated recordkeeping requirements, for broker-dealers engaged in distribution or solicitation activities for compensation with government entities1 on behalf of investment advisers or their managed funds. The Rules effectively enable broker-dealers to continue to engage in solicitation and distribution activity with government entities by bringing broker-dealers into the class of persons that investment advisers are permitted under SEC rules to hire to perform those activities. The Rules are expected to become effective some time between March and August of 2017.

Background

In 2010, the SEC issued Rule 206(4)-5 (the "SEC Pay-to-Play Rule"), which prohibits certain investment advisers and their covered associates from providing or agreeing to provide payment to a third-party placement agent to solicit a government entity for investment advisory services unless the placement agent is a "regulated person." A "regulated person," as defined in the SEC Pay-to-Play Rule, includes a registered broker-dealer subject to a FINRA rule determined by the SEC to be substantially equivalent to the SEC Pay-to-Play Rule. In light of this regulatory framework, FINRA proposed FINRA Rule 2030.

Scope of Rule

FINRA Rule 2030 will apply to broker-dealers acting on behalf of any investment adviser registered or required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"), as well as "foreign private advisers" exempt from registration under Section 203(b)(3) of the Advisers Act and "exempt reporting advisers" under Advisers Act Rule 204-4(a). Accordingly, FINRA Rule 2030 will not apply to a broker-dealer acting on behalf of an investment adviser registered with state securities authorities, or an investment adviser relying on another exemption from SEC registration. Moreover, FINRA Rule 2030 will not apply to a broker-dealer engaged in activities that would require municipal advisor registration and compliance with the pay-to-play rule of the Municipal Securities Rulemaking Board. A FINRA member that solicits a government entity on behalf of an affiliated investment adviser is not a municipal advisor and therefore would be subject to FINRA Rule 2030. The new FINRA rule would also apply to a placement agent that solicits a government entity to invest in a pooled investment vehicle such as a private investment fund or a mutual fund

included as an investment option in a governmental plan. A broker-dealer to which FINRA Rule 2030 will apply is referred to herein as a "Covered Member."

FINRA Rule 2030 will also apply to the broker-dealer's "covered associates," which term includes (i) any general partner/managing member or executive officer of the broker-dealer, as well as any person with a similar status or function, (ii) any associated person of the broker-dealer who engages in distribution or solicitation activities, or supervises the distribution or solicitation activities, in respect of a government entity, and (iii) any political action committee controlled by the broker-dealer or one of its covered associates.

Restricted Activities

FINRA Rule 2030 seeks to prevent abusive practices in the placement activities of Covered Members acting on behalf of investment advisers. Key provisions of the Rule are as follows:

- A Covered Member and its covered associates are prohibited from, for a period of two years beginning on the date of a Prohibited Contribution, receiving compensation for distribution to, or solicitation of, a governmental entity on behalf of an investment adviser. A "Prohibited Contribution" is a greater-than-de minimis contribution by a Covered Member or any of its covered associates to any person who is an incumbent, a candidate, or a successful candidate for elective office of a governmental entity if that office has direct or indirect responsibility for, or can influence the outcome of, the hiring of an investment adviser to manage the governmental entity's investments or that office has authority to appoint any person who has such responsibility or influence.
  - Covered associates are permitted to make certain de minimis contributions, on a per-official, per-election basis, without violating the Rule (up to $350 if the covered associate is entitled to vote for the official and $150 if the covered associate is not entitled to vote for the official).
  - The two-year ban is also triggered by contributions made by a covered associate prior to the covered associate's association with the Covered Member, except where the covered associate both (i) made the contribution more than six months prior to becoming associated with the Covered Member and (ii) is not engaging or seeking to engage in distribution or solicitation activities with the government entity on behalf of the Covered Member.
- A Covered Member and its covered associates are prohibited from soliciting any person or political action committee to make contributions, or bundling smaller contributions into one large contribution, to (i) an official of a government entity in respect of which the Covered Member already provides, or is seeking to provide, distribution or solicitation services on behalf of an investment adviser, or (ii) a political party of a state or locality where the Covered Member is engaging in, or seeks to engage in, distribution or solicitation activities on behalf of an investment adviser.
- Cases in which a Covered Member engages in distribution or solicitation activities on behalf of a "covered pool" will be treated under FINRA Rule 2030 as though the Covered Member were acting directly on behalf of the investment adviser to the covered pool. The Rule defines the term "covered pool" to include (i) any investment company registered under the Investment Company Act of 1940 (the "1940 Act") that is an investment option of a plan or program of a government entity and (ii) any company that would be an investment company under Section 3(a) of the 1940 Act but for the exclusion provided by either Section 3(c)(1), Section 3(c)(7), or Section 3(c)(11) of the 1940 Act such as a hedge fund, private equity fund, venture capital fund, or collective investment trust.
  - The Rule will not apply in respect of a registered investment company that is not an option of a participant-directed plan of a government entity, even if there are government entities that hold shares in the registered investment company. Consistent with the SEC Pay-to-Play Rule, to the

extent that mutual fund distribution fees are paid by a fund using fund assets pursuant to a Rule 12b-1 plan, such payments generally would not constitute payments by the fund's investment adviser.

- The Rule prohibits a Covered Member and its covered associates from doing anything indirectly that, if done directly, would violate the Rule.

Exemption for Returned Contributions

Subject to certain limitations, if a covered associate makes a small, inadvertent contribution that would otherwise trigger a two-year "time out," the time out will not apply if the Covered Member discovers the contribution within four months of the date of the contribution and the contribution is returned to the covered associate within 60 days of the discovery. A Covered Member may rely on this exemption a limited number of times. In the case of a contribution that cannot be cured under this exemption, a Covered Member may appeal to FINRA for specific relief.

Recordkeeping

FINRA Rule 4580 will require Covered Members to maintain records designed to allow FINRA to examine for compliance with FINRA Rule 2030. The required records include certain basic information in respect of the covered associates of the Covered Member, the investment advisers on behalf of whom the Covered Member has engaged in distribution or solicitation activities, and the government entities that the Covered Member has solicited or distributed to, as well as a chronological list of direct and indirect contributions made by the Covered Member or any of its covered associates, indicating the name and title of each contributor and each recipient of the contribution, as well as the amount and the date of the contribution, and whether the contribution was subject to the exception for returned contributions.

Next Steps

FINRA is expected to announce the effective date of FINRA Rules 2030 and 4580 in a Regulatory Notice to be published no later than the end of October 2016. The effective date of the Rules is expected to be no sooner than six months following the publication of the Regulatory Notice and no later than one year following the SEC's approval of the rules. During the period, FINRA members should consider identifying their covered associates and governmental entity clients, and modifying their supervisory procedures to address the requirements of the new rules.

For more information, please contact your usual Ropes & Gray attorney.

1 Government entities include all state and local governments, their agencies and instrumentalities, and all public pension plans and other collective government funds, including participant-directed plans such as 403(b), 457, and 529 plans.

Last Updated: October 21 2016

Article by Ropes & Gray LLP's Hedge Fund Practice Group, Ropes & Gray LLP's Investment Management Practice Group and Ropes & Gray LLP's Private Investment Funds

Ropes & Gray LLP

SEC Director Describes Enforcement Activities In The Public Finance Market: Cadwalader

SEC Enforcement Director Andrew J. Ceresney outlined agency enforcement activities in the public finance market. At the Securities Enforcement Forum 2016, he described current efforts as "essentially divided into two significant areas – municipal securities and public pensions."

Mr. Ceresney detailed SEC specialized enforcement activities in public finance as:

- creating the Public Finance Abuse Unit, which "has had a clear, measurable impact in this area";
- pursuing investment frauds that use municipal securities or other public finance instruments as vehicles for the schemes; and
- conducting enforcement sweeps, most prominently through the Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative.

Mr. Ceresney stated that many recent SEC enforcement actions represent "first-of-their-kind" actions such as: (i) enjoining bond offerings; (ii) imposing penalties against municipal issuers; (iii) enforcing controlling person liability and conduct-based injunctions against public officials; and (iv) charging the SEC's newest class of registrants: municipal advisors. SEC Enforcement also has increased its focus on coordinating with criminal authorities, noted Mr. Ceresney.

In addition, Mr. Ceresney talked about the impact SEC "actions in the public finance space have had on the market." These include: (i) increased issuer compliance with continuing disclosure obligations; and (ii) improved general awareness among market participants about their obligations under securities laws. He concluded that "this change in the tone of enforcement is here to stay."

Commentary

There is inherent political tension when federal regulators seek to bring enforcement actions against local government officials, particularly if those actions may impair the local governments' ability to get to the capital markets. That tension raises a question: does the SEC have the ability to take action against local elected officials who make overly optimistic statements as to the financial condition of municipal entities?

Last Updated: October 24 2016

Article by Steven D. Lofchie

Cadwalader, Wickersham & Taft LLP

SEC: Firm And Partner Charged With Issuing Fraudulent Audit Reports.

The Securities and Exchange Commission today announced that a New York-based audit firm and a senior partner agreed to settle charges that they issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, N.Y., and its local development corporation.

The SEC's order finds that PKF O'Connor Davies and Domenick F. Consolo allowed Ramapo to record a $3.08 million receivable in its general fund for a property sale that Consolo knew had not occurred. Consolo also ignored red flags and relied upon what turned out to be false representations by Ramapo officials about certain other receivables, interfund transfers, and liabilities. PKF O'Connor Davies failed to take appropriate steps to mitigate the risk of material misstatements even after senior management became aware that Ramapo's financial statements were the subject of multiple law enforcement investigations and Consolo received complaints about possible fraud.

Ramapo, its local development corporation, and four town officials were charged with fraud earlier this year and accused of hiding a deteriorating financial situation from municipal bond investors.

"When audit reports are used to sell municipal bonds, investors expect those reports to be accurate," said Andrew M. Calamari, Director of the SEC's New York Regional Office. "Consolo failed to exercise professional skepticism and PKF O'Connor Davies issued false unmodified audit reports, and they left investors without an accurate picture of the town's finances and its ability to repay bondholders."

Consolo and PKF O'Connor Davies consented to the SEC's order without admitting or denying the findings. The firm agreed to forfeit approximately $380,000 in audit fees and interest and pay a $100,000 penalty. O'Connor Davies also must engage an independent consultant. Consolo agreed to pay a $75,000 penalty and be suspended from practicing public company accounting. He's also prohibited from acting as the engagement partner or engagement quality control reviewer on any municipal audit for five years.

The SEC's order finds that Consolo violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 as well as Section 17(a) of the Securities Act of 1933, and PKF O'Connor Davies violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

The SEC's continuing investigation is being conducted by Daniel M. Loss, Pamela Sawhney, and Celeste A. Chase of the New York office and Creighton L. Papier of the Public Finance Abuse Unit. Assisting the investigation are Alexander Vasilescu of the New York office and Jonathan Wilcox, Joseph Chimienti, Louis Randazzo and Mark R. Zehner from the Public Finance Abuse Unit. The case is being supervised by Sanjay Wadhwa of the New York office and LeeAnn Ghazil Gaunt of the Public Finance Abuse Unit. The SEC appreciates the assistance of the U.S. Attorney's Office for the Southern District of New York and the Federal Bureau of Investigation.

Mondo Visione 2016

Date 31/10/2016

SEC Settles with Auditor in NYC Suburb's Bond Fraud Case.

A New York auditor on Monday settled U.S. Securities and Exchange Commission charges that it issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, New York, and its local development corporation, which were charged with fraud in April.

The SEC said PKF O'Connor Davies and senior partner Domenick Consolo let Ramapo record in 2009 a $3.08 million receivable in its general fund for the sale of a 13.7-acre property known as the "Hamlets" to the nonprofit Ramapo Local Development Corporation, despite knowing that the sale had not occurred.

It also said Consolo ignored red flags about the intention and ability of the RLDC to pay the $3.08 million, while PKF failed to mitigate the risk of material misstatements even after learning that federal authorities were investigating Ramapo's financial statements.

Under the settlement, PKF, of Harrison, New York, agreed to pay a $100,000 fine, forfeit $379,865 of audit fees and interest, and hire an independent consultant.

Consolo, 61, of Yorktown Heights, New York, agreed to pay a $75,000 fine and accept a five-year ban from supervising municipal audits. Neither admitted wrongdoing.

"We stand by the integrity of our work with the Town of Ramapo," PKF said in a statement, responding to requests for comment to a lawyer for the firm and Consolo. "We're confident what we learned through this process will provide valuable insights that will benefit our municipal clients."

The civil settlement came after the SEC on April 14 sued Ramapo, the RLDC and four officials in a case stemming from the financing of a controversial $58 million minor league baseball stadium.

Two of the officials, Ramapo elected Supervisor Christopher St. Lawrence and former RLDC Executive Director N. Aaron Troodler, have pleaded not guilty to separate fraud and conspiracy charges, in what prosecutors called the first U.S. criminal securities fraud case over the sale of municipal bonds.

Authorities said bond investors lost millions of dollars because the defendants concealed Ramapo's weakening finances, caused in part by the cost to build Provident Bank Park.

PKF's and Consolo's conduct "left investors without an accurate picture of the town's finances and its ability to repay bondholders," Andrew Calamari, director of the SEC's regional office in New York, said in a statement.

Ramapo is located in Rockland County, about 28 miles (45 km) northwest of New York City.

Reuters

Mon Oct 31, 2016 | 2:46pm EDT

By Jonathan Stempel | NEW YORK

(Reporting by Jonathan Stempel in New York; Editing by Paul Simao and Dan Grebler)

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting October 26-27, 2016 where it discussed multiple initiatives aimed at protecting investors and promoting a fair and efficient municipal securities market, and held annual meetings with the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

The Board met with SEC Chair Mary Jo White and Office of Municipal Securities' Director Jessica Kane and Deputy Director Rebecca Olsen, and separately with FINRA's President and CEO Robert Cook and Director of Fixed Income Regulation Cynthia Friedlander to discuss oversight of the municipal securities market and coordination on cross-market initiatives.

One key such initiative is the MSRB's effort to require municipal securities dealers to provide retail investors information about dealer compensation, in the form of a mark-up or mark-down, for certain transactions. In September 2016, the MSRB filed a proposal with the SEC to require dealers to disclose their compensation to investors to help them better understand the cost of buying or selling a municipal bond. It also filed associated regulatory guidance with the SEC on how dealers determine the prevailing price of bonds from which their mark-ups and mark-downs are calculated.

At its meeting, the Board discussed public comments received by the SEC on the MSRB's proposal and in response, agreed to make several minor amendments. "This rule proposal is one of the most significant undertakings of the MSRB in many years," said MSRB Chair Colleen Woodell. "While we are eager to see this rule in place, it's important we address reasonable concerns while preserving the original investor protection and transparency goals," she said.

FINRA is pursuing a similar rule for the corporate bond market. The MSRB has been and will continue to coordinate with FINRA on this cross-market initiative. Additional information on the MSRB's planned amendments will be available in the coming weeks.

In another market transparency initiative, the Board discussed its consideration of improving so-called "pre-trade" price transparency for municipal securities investors. The MSRB makes trade price information about municipal securities transactions freely available to all investors on its Electronic Municipal Market Access (EMMA®) website after the trade occurs. However, retail investors have limited access to additional data that might help them make more informed investment decisions. The Board directed MSRB staff to conduct further research on the potential value of certain pre-trade data as it continues to assess how it might enhance pre-trade transparency for retail investors.

As part of the MSRB's mandate to protect investors and municipal entities, the Board also discussed market practices associated with municipal bond underwritings. It directed MSRB staff to conduct a holistic review of its rules regarding primary offering practices with a view to enhancing existing protections under MSRB rules. Included in that review will be further consideration of a previously announced plan to amend MSRB Rule G-34, on the assignment of CUSIP numbers in primary offerings.

As part of its ongoing review of the MSRB's uniform practice rules, the Board also agreed to publish a request for comment on proposed updates to MSRB Rule G-26, on customer account transfers. Its discussion of the rule focused on modernization of the rule and changes necessary to make it more consistent with similar rules of other regulators.

In response to questions from dealers on the application of MSRB rules to municipal bond transactions by investment advisers having full discretion to act for their clients' accounts, the Board agreed to publish interpretive guidance on the application of certain rules to these transactions.

The Board also held a preliminary discussion of comments received on the second request for comment on a proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination stated in the bond offering document. The Board will determine next steps at a later date.

Date: October 31, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
(202) 838-1305
jgalloway@msrb.org

FINRA Examiners Probing Firms' Involvement with Bank Loans.

NEW YORK – Financial Industry Regulatory Authority examiners are probing firms' involvement with bank loans and other alternative financings in the municipal market, a FINRA official said at an industry seminar here.

Bonnie Bowes, associate director for fixed income regulation with FINRA, made her comments at a seminar on bank loans and direct placements hosted by the Securities Industry and Financial Markets Association on Tuesday.

Bowes said that dealers should expect examiners to ask for things like lists of direct placement deals and the details of those transactions. Firms should also be able to show adherence to policies and procedures they've established to determine whether the transactions involve bank loans or securities as well as their analysis of how they made those determinations, she added.

Bowes also listed several examples of insufficient answers firms have provided in the past of why they classified a debt instrument as a loan instead of a security.

The examples included the firms saying: the bank or purchaser didn't want the instrument to be labeled a security; the issuer didn't want the expected additional costs if something were labeled a security; counsel would not give a legal opinion on the issue; and labeling the instrument as a loan is how the firm always conducts business with the bank.

Bowes and Robert Fippinger, chief legal counsel for the Municipal Securities Rulemaking Board, echoed an April notice from the two self-regulators that advised dealer and municipal advisor firms to look to the U.S. Supreme Court Case Reves v Ernst & Young, Inc. as the legal authority on determining whether a note is a security.

That case held that a note is presumed to be a security unless it is specifically identified otherwise. Examples of non-securities under the case are: notes secured by a mortgage on a home; short-term notes secured by a lien on a small business or its assets; short-term notes evidenced by accounts receivable; and notes evidencing loans from commercial banks for ordinary operations.

If a note is not explicitly deemed a non-security, it may qualify as a non-security if it bears a "strong family resemblance" to the non-security notes identified in the case.

The "family resemblance test" from the case has four factors to consider: the motivations of the buyer and seller; the plan of distribution; the reasonable expectations of the investing public; and the existence of an alternate regulatory regime.

One audience member at the seminar asked whether there were any instances so far where FINRA had reviewed a dealer's direct placement history and concluded that the firm had miscategorized an instrument as a bank loan or other alternative financing instead of a security.

In response, Bowes said FINRA has reviewed the Reves analyses given to examiners by firms and also reviewed transaction documents to study whether transactions are secured by a note as well as other characteristics, but have not concluded something was miscategorized in an enforcement matter.

She later noted, in response to a question about how much weight examiners give to policies and procedures, that during examinations FINRA staff takes into consideration the strength of a firm's

policies and procedures that were created as well as the firm's adherence to them.

Fippinger also advocated for strong policies and procedures.

"If you have procedures in place to make a conclusion based upon factors, I think you're probably alright," Fippinger said, adding he was speaking for himself and not necessarily the MSRB. He added that a firm working with direct placements should be aware of the ways in which it can fall into either underwriter or municipal advisor activity. A firm should "try not to be both" as it would mean they could fall under MSRB provisions prohibiting a firm from acting as an underwriter and advisor on the same transaction, he added.

The jointly issued MSRB and FINRA notice from April that Bowes and Fippinger brought up during the panel told firms they need to conduct adequate due diligence on the bank loan and direct placement issue after regulators concluded some firms may not have fully considered the applicability of the securities laws and rules underlying bank loans. The notice also warned that municipal advisors may be engaging in direct placements without fully understanding whether they are acting as municipal advisors or broker-dealers.

The notice was similar to an MSRB notice released in September 2011 that warned market participants that some loans could actually be considered securities. Muni market groups and the MSRB have been seeking guidance from the Securities and Exchange Commission on when private placements and bank loans involve securities. So far, the SEC has refrained from providing such guidance, but Ed Fierro, senior counsel with the commission's Office of Municipal Securities, said during Tuesday's panel that staff is continuing to review the issue.

The Bond Buyer

By Jack Casey

October 25, 2016

Justice Probes Municipal-Bond Issuers Over Treasury Profits.

The U.S. Justice Department is investigating whether two local governments improperly made about $180 million by trading special Treasuries purchased with money raised in the municipal-debt market.

The agency that runs Louisville, Kentucky's sewer system disclosed in an August bond-offering document that officials may file a civil lawsuit against it for exploiting interest-rate moves to profit from Treasuries that are sold only to state and local governments. The securities were created to help governments comply with federal rules that limit how much they can earn by investing the proceeds of tax-exempt bond issues.

The government is also probing Gulf Breeze, Florida, a 6,000-resident city that frequently sells debt on behalf of non-profits and private corporations, city records show.

"We're just trying to figure out what they need," said Edwin Eddy, the city manager of Gulf Breeze, which hired the law firm Jenner & Block to respond to the inquiry.

Justice Department spokeswoman Nicole Navas and Treasury Department spokesman Rob Runyan

declined to comment. Attorneys for Gulf Breeze and the Louisville and Jefferson County Metropolitan Sewer District — which have been barred from executing such trades since 2014 — dispute that they ran afoul of U.S. regulations. A lawyer for Enhanced Financial Solutions, the firm that managed the two borrowers' investments, said he expects that the Justice Department will determine that there was no wrongdoing.

Enforcement Target

The investigations are the latest in a decades-long effort to police the business of investing money raised in the $3.8 trillion municipal market, where governments can borrow cheaply for schools, roads and other public works because the interest payments bondholders receive aren't subject to federal income tax. State and local governments can't exploit that subsidy to profit by borrowing to speculate with stocks, corporate bonds or other higher-yielding securities.

Governments are allowed to purchase Treasuries and guaranteed investment contracts, or GICs, to pick up some income until bond proceeds are spent, though there are limits on how much they can earn. Municipalities also use Treasuries for so-called advanced refundings, in which they borrow money, buy U.S. bonds and use the income to pay off debt before it can be repurchased from investors.

Such products have been a frequent target of regulators. More than a decade ago, the Securities and Exchange Commission settled with banks that allegedly inflated the prices of Treasuries sold to local governments in the 1990s. More recently, 20 bankers and brokers pleaded guilty to or were convicted of rigging the bidding for GICs, resulting in fines of about $750 million against banks.

[For an in-depth look at the bid-rigging investigation, click here.]

The probes of Gulf Breeze and Louisville center on a $109 billion Treasury niche known as State and Local Government Series securities, or SLGS, that are tailor made for local governments. Treasury officials claim that Louisville and Gulf Breeze used quirks in how SLGS are issued to reap speculative gains, according to correspondence with regulators obtained by Bloomberg through public-records requests.

Federal officials say the local-governments put in orders for SLGS — whose prices are set just once a day — and then utilized the ability to change the requested amounts and maturities before they were issued if the broader bond market moved in their favor. As soon as the next day, they sold the securities back to the Treasury Department, profiting if interest rates declined, the department said in letters to Gulf Breeze and Louisville. The strategy resulted in earnings of about $64 million for Gulf Breeze between 2007 and 2012, while Louisville made $115 million from 2008 to 2011, according to the letters.

Gulf Breeze sought the Treasury Department's approval for the strategy. C. Willis Ritter, an attorney who advised the Treasury Department in the 1970s on the initial tax-exempt bond regulations, asked officials in March 2007 to confirm that the earnings were permitted under rules adopted in 2005. The department didn't provide a written response, according to its reply to a public records request submitted by Bloomberg.

Exoneration Seen

Enhanced Financial anticipates that the Justice Department will conclude that there was no wrongdoing, said Michael Schwartz, a lawyer who is representing the firm. The principals of Enhanced Financial, Christopher Monaghan and Michael Garner, currently work at another

Pennsylvania financial adviser, Echo Financial Products LLC.

“We are fully cooperating with the Department of Justice and expect when the Department of Justice thoroughly reviews all of the evidence they will determine there’s no basis to believe that Enhanced Financial Solutions did anything improper,” Schwartz said.

The Treasury Department ordered Enhanced Financial in late 2013 to stop its transactions in SLGS, according to SEC records. Louisville and Gulf Breeze in 2014 were also barred from buying them for five years, according to public records.

“They said don’t do that anymore and we said, OK, we won’t,” said Eddy, Gulf Breeze’s city manager.

The city started using SLGS in the mid-2000s to invest the reserves from a 1985 bond issue that funded local government loans because guaranteed investment contracts weren’t available at the time, Eddy said.

“We looked at the state and local government desk as an alternative based on advice from consultants and attorneys,” Eddy said. “It’s our job as administrators of the loan pool to earn as much money as we can.”

Bloomberg Business

by Martin Z Braun

October 27, 2016 — 2:00 AM PDT Updated on October 27, 2016 — 8:57 AM PDT

MSRB Responds to Issuer Complaints and Improves Bank Loan Disclosures On EMMA.

In late September, the Municipal Securities Rulemaking Board (“MSRB”) announced that it had taken steps to enhance the bank loan disclosure submission process and the display of these documents on MSRB’s Electronic Municipal Market Access (“EMMA”) system.

This latest announcement is in keeping with the MSRB’s previously released advisory notices, in which the self-regulator advocated for state, local and municipal bond issuers to voluntarily disclose bank loans and other alternative financings. Specifically, the MSRB has expressed concerns that these so called “bank loans” could, among other things, potentially impair the rights and seniority status of existing bondholders or adversely impact the liquidity or credit profile of an issuer.

Bank loan financings are entered into directly between an issuer and a bank without the involvement of an underwriter and are not subject to the continuing disclosure rules of Securities and Exchange Commission (“SEC”) Rule 15c2-12. As such, no offering disclosure documents are prepared and issuers are not required to provide information about bank loans via EMMA. Bank loans are seen, therefore, as a less expensive alternative to traditional publicly issued bond transactions.

However, due to the lack of explicit requirements for issuers to disclose bank loans, there is a concern that the investing public may not become aware of an issuer’s bank loan(s) until such issuer’s next public offering or the release of such issuer’s audited financial statements. In the eyes of the MSRB, this “delay” in the release of information related to an issuer’s bank loan(s) could

adversely impact the holders of the issuer's outstanding bonds, as well as potential future investors. In January 2015, the MSRB released Notice 2015-03, Bank Loan Disclosure Market Advisory, in which it encouraged issuers to voluntarily post information about their bank loan(s) "to foster market transparency and to ensure a fair and efficient municipal market."

The new disclosure submission process is the result of several discussions between the MSRB and market participants which took place earlier this year. Many state, local and municipal officers complained that the submission process was confusing and actually seemed to lose some of the submitted documentation. The officers emphasized that the lack of disclosure of bank loans had less to do with the issuers' failing to disclose and more with the complexity of the submission process previously in place which made it difficult to correctly submit and find the disclosed materials.

In response to these concerns, the new process the MSRB announced last month provides step-b--step instructions for issuers to use when submitting information on bank loans and alternative financings to EMMA and contains advanced search functions that will allow EMMA users to search for securities associated with bank loan disclosures.

The general consensus among those in the public finance industry is that the issue of disclosing bank loans would be better addressed with a change to the SEC's Rule 15c2-12. However, the MSRB's facilitating the process of disclosing bank loans could be seen as indicative of where the federal regulatory authorities are heading.

Last Updated: October 19 2016

Article by Gordon Knox

Miles & Stockbridge

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

SEC Will Tell All MCDC Submitters If They Face Enforcement Action.

CHICAGO – While the Securities and Exchange Commission remains silent on whether there will be more settlements under its continuing disclosure enforcement initiative, an SEC official said any party that voluntarily submitted potential violations will be told whether the commission plans to take action against them.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, made the remark on Thursday during a panel discussion of hot topics in securities law at the National Association of Bond Lawyers' Bond Attorneys' Workshop here.

Gaunt acknowledged that the questions about the future of the commission's Municipalities Continuing Disclosure Cooperation initiative have been popular and "are very understandable," but said she is not in a position to comment.

However, she explained that while there may not be a statement from the commission on MCDC's future, the enforcement division's standard practice is to notify parties "at the earliest opportunity that [it] can do so" if it decides not to recommend an enforcement action.

“I can assure you that anyone who has made a submission will hear from us one way or another,” Gaunt said.

Ken Artin, a shareholder with Bryan Miller Olive and past-president of NABL, argued during a similar hot topics panel earlier in the day that the SEC should refrain from pursuing any more settlements.

“The fact is everybody is very much aware of continuing disclosure undertakings” after MCDC, Artin said, adding that “further enforcement actions probably aren’t going to drive that point home anymore.”

Joseph “Jodie” Smith, a shareholder with Maynard, Cooper & Gale who moderated the two panels, noted that many market participants said the SEC achieved its goal of boosting the market’s focus on disclosure as soon as it announced MCDC.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The most recent SEC action related to the initiative came on Aug. 25 when the SEC publicized 71 settlements with issuers from 45 states.

The settlements included disclosure failures that occurred between 2011 and 2014 and marked the first group of issuers who settled under the initiative. The SEC took action under MCDC against a single issuer, California’s Kings Canyon Joint Unified School District, in July 2014.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Those issuers joined 72 underwriters that represented 96% of the underwriting market by volume and paid a combined $18 million under MCDC settlements. The underwriter settlements were released in three batches, adding to speculation among market participants that there may be more issuer settlements in the future.

During the panel discussion, the audience members, who were primarily bond lawyers, were asked to raise their hands if they had an issuer or conduit borrower client that made an MCDC filing before the initiative’s deadline. A large percentage of those in the audience raised their hands in response.

However, when they were asked to do the same if they had a client that was included in the list of 71 issuer settlements, a far smaller number responded affirmatively, showing there are still a large number of issuers that will be waiting for the responses the SEC has promised.

Bond lawyers and others have raised questions about the SEC’s prior statement that it intended to pursue actions against non-reporting entities after it finishes settling with those who reported. Gaunt noted she could not comment about the possibility of ongoing enforcement activity but said non-reporters make up an area “in which we are certainly interested.”

She also said that while individuals were explicitly not a part of the MCDC initiative, pursuing individuals outside of the initiative “continues to be open to us.”

The Bond Buyer

By Jack Casey

October 21, 2016

SIFMA Submits Comments to the MSRB on Clarifying Exceptions to Minimum Denomination Rule.

On October 18, SIFMA filed a comment letter with the MSRB regarding its draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. These revised provisions would form a new stand-alone rule. SIFMA is pleased with some of the proposed changes, such as the elimination of the reference to increments and the elimination of the liquidation statement in the case of securities purchased from other dealers. However, some of the proposed changes result in less liquidity for customers and create additional and unnecessary challenges for dealers.

SIFMA Comment Letter on Clarifying Exceptions to Minimum Denomination Rule (Oct 2016)

SIFMA Comment Letter regarding draft amendments to MSRB Rule G-15(f) on minimum denominations (May 2016)

MSRB Announces Regulatory Topics to be Discussed at October Board Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet October 26-27, 2016 in Washington, DC, where it will discuss mark-up disclosure, pre-trade price transparency and syndicate practices, among other rulemaking and policy topics.

View the MSRB Board of Directors' meeting discussion items.

SEC's Ceresney Tells Muni Market Enforcement Focus is 'Here to Stay'

WASHINGTON – The Securities and Exchange Commission enforcement division's heightened attention on the municipal market and application of new legal techniques to that enforcement are "here to stay," according to the commission's top cop, Andrew Ceresney.

Municipal market participants also shouldn't be surprised if they continue to see the SEC use new-to-the-market techniques like civil penalties for issuers, individual accountability under control person liability, and increased coordination with agencies investigating criminal conduct, he said.

Ceresney made his comments during a keynote speech at this year's Securities Enforcement Forum held here on Thursday.

While the SEC had pursued several larger actions related to munis and public pensions before 2010, Ceresney said, the creation of a specialized unit in that year to address misconduct related to the municipal market and public pensions "by every measure … has paid off in a big way."

Since 2013, the SEC has brought enforcement actions against: 76 state or local government entities, including four states; 13 obligated persons; and 16 public officials. That compares to enforcement actions against 6 government entities, 6 obligated persons, and 12 public officials in the 10 years between 2002 and 2012.

The rise in enforcement actions has been coupled with "important" behavioral changes in market participants, Ceresney said.

For example, in an August 2015 case against Edward Jones, the firm, which was part of a syndicate, settled with the SEC over charges that, instead of selling new bonds to customers at the initial offering price as required, it 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, according to the SEC.

Ceresney said the case prompted conversations about whether such activity was endemic to the market.

He also pointed to comments by market participants that the SEC's Municipalities Continuing Disclosure Cooperation initiative has made disclosure a top priority. The initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years in which issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The SEC's specialized Public Finance Abuse Unit plans to continue such work and may, over time, normalize some of the first-of-their-kind actions the market has seen.

Issuers, for example, "should not expect a pass on civil penalties," which are a recent development in muni enforcement, Ceresney said.

The SEC first hit an issuer with a civil penalty in a November 2013 action against a public facilities district in the state of Washington. The commission has since reached a settlement with California's largest agricultural water district that included a $125,000 fine and will have to act on a proposed $1 million settlement with the city of Miami after a federal jury found the city guilty of securities fraud last month.

"Enforcement will scrutinize the nature of the issuer and the sources of funds available to pay a penalty and, with commission approval, seek penalties where appropriate," Ceresney said. "And in particularly egregious cases, we will pursue penalties even when the source of those funds is the taxpayer base."

The commission also intends to continue pursuing individuals under a section of the Securities and Exchange Act that allows the SEC to hold public officials responsible for violations based on their control of the municipal entity that engaged in the fraud, Ceresney said. It has pursued charges under the section's control person liability in two 2014 actions, one against the former mayor of Allen Park, Mich. and the other against the mayor of Harvey, Ill.

Ceresney also reiterated past indications that the SEC is coordinating more with criminal authorities on public finance matters, as it is doing in a pending case against Ramapo, N.Y., its local development corporation, and four town officials. The SEC is alleging the defendants covered up the town's deteriorating finances while pursuing a number of financings.

The commission also intends to work with units within the U.S. Attorney's Office and Federal Bureau of Investigation on public corruption matters.

“Our sense is that, where public officials are engaging in public corruption in other contexts … we may also find there is corruption in the awarding of underwriting business or investment advisory contracts for public pension funds,” Ceresney said.

The Bond Buyer

By Jack Casey

October 14, 2016

MSRB Amends Its Quorum Requirements to Include Municipal Advisors.

WASHINGTON – The Municipal Securities Rulemaking Board must now have at least one municipal advisor representative board member present to constitute a quorum under a rule change it filed with the Securities and Exchange Commission on Friday.

The amendment is immediately effective and changes MSRB Rule A-4 on meetings of the board.

The new requirement “ensures representation of all categories of persons required to be members of the board in any quorum established under Rule A-4,” according to the filing.

“The MSRB … believes the proposed rule change appropriately complements the board’s governance procedures that are structured to obtain the diverse views of the public and various entities that are subject to the MSRB’s regulation and oversight and to provide for their representation in the decision-making processes of the board,” the self-regulator said in its filing.

Under the MSRB’s previous quorum requirements, two-thirds of the board’s members had to be present and of those members, there had to be at least one: public representative; broker-dealer representative; and bank representative. If those conditions were met, any action that was approved by a majority vote of the present members constituted official board action.

The new amendment does not change the rule’s previous requirements aside from adding the MA representative portion and making several technical changes to clarify the rule.

The change relates to the Dodd-Frank Act’s charge to the MSRB to create a regulatory regime for municipal advisors and municipal advisory services. As part of the new regulatory structure, the MSRB was required to ensure that at least one individual on its 21-member, majority public board was associated with an MA. Any MA board member is considered a regulated member.

The MSRB filed the amendment without asking for or receiving industry comment. However, any participants that would like to comment on the rule change can file a submission with the SEC.

The Bond Buyer

By Jack Casey

October 14, 2016

Dealers: Proposed MSRB Minimum Denomination Rule Would Hurt Liquidity.

WASHINGTON – Dealer groups are concerned that a proposed Municipal Securities Rulemaking Board standalone minimum denomination rule would hurt liquidity and adversely affect participants in the market.

The MSRB's proposed Rule G-49 would incorporate requirements in the board's existing Rule G-15 on confirmation, which was amended in 2002 to prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by the issuers. The proposed rule also would include four exceptions to the rule, two of which were included with the 2002 prohibition and two that were proposed in April of this year to help maintain liquidity for below-minimum positions.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in its official statement for the bonds. Issuers sometimes set higher minimum denominations on bonds that are risky to discourage retail investors from buying them. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Mike Nicholas, chief executive officer for Bond Dealers of America, said in a comment letter submitted to the MSRB that the proposed rule "is extraordinarily complex and dealers have serious concerns with confusion arising regarding different interpretations of what is a permissible transaction under the rule."

"From a practical standpoint, the result of this complexity is that customers will be left with positions in municipal securities that they will not be able to trade or will only be able to trade at inferior prices," Nicholas said.

He added that the rule should be more narrowly tailored to focus only on those minimum denominations that an issuer sets because of suitability concerns for investors that are not considered sophisticated.

"This change will allow bonds with minimum denominations set due to normal market convention to freely trade without a detrimental impact on liquidity, pricing, or investor protection," Nicholas wrote.

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said that while SIFMA thinks there are some improvements in the standalone rule, it is overly complex and contains several changes that would "result in less liquidity for customers and create additional and unnecessary challenges for dealers."

One change proposed by the MSRB would be the elimination of the current requirement that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't the dealer's customer and is the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and must confirm that the original selling customer has fully and completely liquidated its below-minimum position. Dealers had said in previous comment letters that the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum positions because of concerns about disciplinary actions, among other things.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its request for comment that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The liquidation statement is key to one of the existing exceptions the MSRB adopted as part of Rule G-15. Under that exception a dealer could sell a below- minimum denomination 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.

The elimination of the liquidation statement requirement would also affect another exception that was proposed in April and would have required such a statement. 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.

SIFMA said in its most recent comment letter that it supports the elimination of the liquidation statement, but noted that its reading of the new proposed rule finds the MSRB narrowed the exception that was proposed in April and would be affected by the liquidation statement change. The exception in the proposed rule says that a dealer can use the provision if the below-minimum position it is selling was acquired by the dealer in an interdealer transaction and the amount being sold is the same amount as the below-minimum denomination position that the dealer acquired in the interdealer transaction, according to SIFMA.

Norwood said that it "seems inappropriate" that the proposed rule allows a dealer to use the exception if the dealer acquires the position in an interdealer transaction but doesn't allow a sale under the exception if the dealer acquired the position from a customer.

"By limiting this exception to positions acquired from dealers, the MSRB is effectively limiting liquidity for customers that have below-minimum denomination positions," SIFMA said. "We believe [the exception] should … be available to dealers, regardless of whether the bonds were purchased from a customer or a dealer …. The source of the bonds should not matter in this instance, as that fact has no impact on whether additional below-minimum denomination pieces are being created."

Norwood added that if the proposed rule is amended as SIFMA is requesting, another exception that the MSRB had written into the rule would become redundant and should be eliminated. That exception would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds.

She also said SIFMA believes a section of the proposed rule that the MSRB called a "new safeguard" in light of its elimination of the need for a liquidation statement should be deleted. The safeguard would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum denomination 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 denomination positions, the board said.

Norwood, who emphasized the point of the rule is to prevent dealers from engaging in transactions with customers, not dealers, below the minimum, said the MSRB's idea is "unwarranted, harms liquidity and is inconsistent with the original purpose of the rule of customer protection."

Nicholas made a similar argument, saying that "the practical result of [the rule] denying dealers …

flexibility is that dealers will be left with positions that will not trade and, therefore, dealers will not provide liquidity in certain situations."

He cited an example where a dealer buys a customer's liquidated position and then sells only a portion of that position to another customer to bring the second customer above the minimum denomination. Under the proposed rule, Nicholas says, the dealer could only sell the remaining part of the original liquidated position to one or more customers with an existing position in the issue and could not sell the remaining position to another dealer.

"BDA members believe that, in this instance, interdealer sales should be given the same treatment as customer sales," Nicholas said.

SIFMA additionally raised concerns about compliance costs to market participants from the rule and asked that the MSRB more effectively leverage its EMMA system to increase transparency related to below minimum denomination transactions. Part of that effort should be amending MSRB Rule G-32 on disclosures in connection to primary offerings to require the filing of minimum denomination information on EMMA on all transactions, according to SIFMA.

In the proposed rule, the MSRB would eliminate a condition it had put into its two additional exceptions proposed in April that would have required a dealer's sale to a customer to be consistent with any restrictions in the issuer's official statements regarding increment amounts.

Commenters had said the increment condition would unnecessarily limit the transfer of positions held by customers instead of providing more flexibility.

The draft rule will also carry over provisions that applied to past exceptions and require a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

The Bond Buyer

By Jack Casey

October 20, 2016

Ceresney Warning: Expect Continued SEC Enforcement Activity Regarding Municipal Securities.

In the keynote address at the 2016 Securities Enforcement Forum last week, Andrew J. Ceresney, Director of the SEC's Division of Enforcement, made clear that the SEC will continue and even expand its focus on the public finance market, particularly in the municipal securities area.

Ceresney noted that enforcement activity in the municipal securities arena has increased substantially. In the 10 years from 2002 to 2012, the SEC filed enforcement action against 6 government entities, 6 obligated persons and 12 public officials. In contrast, the Commission has filed enforcement actions against 76 government entities, 13 obligated persons and 16 public officials in the last 3 1/2 years.

The SEC has been conducting well-publicized enforcement sweeps in the area. Perhaps the most well-known of those is the Municipal Continuing Disclosure Initiative (reported about here), which caught up 72 broker-dealers and 71 municipal underwriters. Also of note was the Puerto Rico Junk Bond sweep, which illustrates the increased use of surveillance in the area. The junk bond offering was considered appropriate for only institutional investors and therefore had a minimum denomination of $100,000. Recognizing that some dealers might nevertheless try to break up the bonds into smaller denominations for retail customers, the SEC staff surveilled the trading, identifying a number of sales below $100,000. Settled enforcement actions were brought against 13 firms as a result.

In addition to the sweeps, the Commission has been using remedies and theories that, up until recently, have been seen only in the non-municipal context. Among those are the following:

- **Temporary Restraining Orders.** In 2014, the first request for a temporary restraining order was filed to stop an offering of bonds by the City of Harvey, Illinois, until certain safeguards regarding the use of the proceeds could be put into place. The SEC alleged that in connection with prior offerings city officials had diverted $1.7 million in proceeds to pay the city's operational expenses, as opposed to the projects that were supposed to be funded by those earlier bonds.
- **Civil Penalties Against Municipal Issuers.** The first imposition of a civil penalty against a municipal issuer occurred in 2013. In that case, a public facilities district in the state of Washington, which had issued about $42 million in bond anticipation notes, was alleged to have misled investors by failing to disclose that an independent consultant had questioned the projections contained in the official statement for the notes. Ceresney cautioned that the Commission will continue to pursue penalties against municipal issuers when appropriate, "even when the source of those funds is the taxpayer base."
- **Controlling Person Liability for Government Officials.** In 2014, the SEC used section 20 of the 1934 Act for the first time against a former government official. That case concerned a bond offering by the City of Allen Park, Michigan, to finance a movie studio project. The SEC alleged that the offering documents contained misleading statements about both the viability of the project and the financial condition of the city, including its ability to service the bond debt. The SEC alleged the former mayor of Allen Park was liable as a controlling person because of his authority and control over the city.
- **Injunctions Against Participation in Future Offerings.** The SEC is also seeking to enjoin issuer officials from participating in future municipal bond offerings. Thus, for example in the City of Harvey case discussed above, the mayor agreed to an order enjoining him from participating in future offerings.
- **Coordination with Criminal Authorities.** In 2014, the SEC's increased coordination with criminal authorities in the municipal finance area resulted in what may be the first filing of municipal bond-related criminal securities fraud charges. On April 14, 2016, the SEC brought civil fraud charges against Ramapo, New York, its local development corporation and four town officials, alleging they hid deteriorating financial conditions from bond investors. That same day, the U.S. Attorney for the Southern District of New York unsealed an indictment against a former town supervisor and executive director of the development corporation, charging them with securities fraud, wire fraud and conspiracy. Ceresney promised that coordination between the SEC and the public corruption and public integrity units of the U.S. Attorneys' offices and the FBI will continue to increase, particularly in the investigation of whether there is corruption in the awarding of underwriting business.

Ceresney closed with a warning to the municipal securities industry: "[O]ne municipal securities industry commentator recently observed of the last 3½ years that '[t]here is a definite change in tone.' I am here to say that this change in the tone of Enforcement is here to stay. You can expect

continued activity in this area to protect investors."

Barnes & Thornburg LLP

by Anna N. DePerez

Tuesday, October 18, 2016

Anne N. DePrez is a member of Barnes & Thornburg LLP's Litigation and Corporate Departments. Co-chair of the firm's Financial, Corporate Governance and M&A Litigation Practice Group, she is also a member of the White Collar Crime Defense and Government Litigation Practice Groups. She concentrates her practice in the areas of securities and business litigation. Her securities litigation practice includes representing issuers, directors, underwriters, broker-dealers and others clients in securities fraud class actions, securities regulatory matters, and customer…

Anne.DePrez@btlaw.com
317-231-7264
www.btlaw.com

MSRB Requests Input From Market on Future Strategic Planning.

WASHINGTON – The Municipal Securities Rulemaking Board is seeking input from market participants on where to focus its long-term strategic plan and specifically how it can improve its EMMA system.

The MSRB is scheduled to begin its strategic planning cycle with a meeting in January and will focus on both its core activities as well as strategic goals designed to steer its long-term priorities, the board said in a regulatory notice Wednesday. The MSRB engages in a strategic planning process every two years. It is asking that market comments be filed by Nov. 11.

"The MSRB's long-term strategic planning process informs the board's discussion and prioritization of regulatory, educational, and transparency initiatives," said MSRB executive director Lynnette Kelly. "Receiving comment from a wide range of market participants helps ensure that the MSRB thoroughly considers relevant market topics when setting and reevaluating organizational priorities."

The strategic planning will fall to the MSRB's 21-member, majority-public board and will involve a "comprehensive strategy review" with consideration of: its statutory authority; activities of dealers and municipal advisors; information needs and concerns of issuers; and market research practices, according to the regulatory notice.

Commenters are being asked for their opinions both on potential strategic goals for the board as well as the way the MSRB should prioritize its core activities. Its core activities include: regulating muni dealers and MAs; operating market transparency systems; and providing education, outreach and market leadership.

The regulatory notice includes a list of six questions to help guide commenters. A main focus is on suggestions for steps the MSRB can take to maximize the benefits EMMA can provide the market.

EMMA is the official repository for information on almost all municipal bonds.

The board has said it is planning to organize focus groups of EMMA users, including investors and issuers, over the next year to help generate ideas for improving the system. It also announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

The MSRB's Wednesday request for comment also asks participants to weigh in on what they see as the most important risks or issues in the market as well as whether any part of the board's more recent regulation of MAs deserves additional consideration.

The Dodd-Frank Act of 2010 charged the MSRB with regulating municipal advisors and the board has since created new rules like its Rule G-42 on core duties of MAs while also expanding existing dealer rules on things like gifts and political contributions to include municipal advisors in response to the act.

The MSRB is also asking commenters to write in with ideas of specific topics that it should address in its overall education program. The board last month rolled out the first two of what it intends to be a number of courses as part of one aspect of its education activities, a new learning management system called MuniEdPro. The system is designed to keep participants up to date on the municipal market and in compliance with their continuing education requirements. The two classes address the roles and responsibilities of participants in fixed-rate, primary market offerings as well as understanding MSRB Rules as they relate to market risks.

The Bond Buyer

By Jack Casey

October 12, 2016

Woodell Hopes to Start New Initiatives During Tenure as MSRB Chair.

WASHINGTON – As the new chair of the Municipal Securities Rulemaking Board on Oct. 1, Colleen Woodell hopes the board will begin new initiatives on syndicate practices and pre-trade price transparency during her one-year term.

She plans to use the knowledge she has gained over her career to contribute to the market on a much broader basis.

"I really wanted to give back," Woodell said of the impetus for her decision to take the position leading the board, which will also continue work on major rulemakings like markup disclosure.

Woodell discussed the issues pending before the MSRB and her career during an interview with The Bond Buyer.

The former chief credit officer of global corporate and government ratings at S&P Global Ratings, she is in her fourth year on the board. Her tenure is longer than usual after colleagues voted to give her a one-year extension as part of the MSRB's plan to have members ultimately serve four-year terms.

She replaces Nat Singer, senior managing director at Swap Financial Group, as chair, whom she served under as vice chair this past year.

Woodell said she views her role leading the 21-member, majority public board as a facilitator "making sure that everybody is heard and that we get the knowledge in the room that we need."

She added that although she sees 21 members as being "a lot," she thinks "it is a good number because it gives enough of a broad scope that it gets [the MSRB] where [it needs] to be."

As the MSRB continues to explore new rulemakings and necessary steps over the next year, Woodell said she will be cognizant of market feedback about pressures its participants have faced from recent regulations. However, she noted that "if we know that there's a need to do something, as a regulator, we need to do it."

"We know there's been a lot to absorb over the last couple of years and we're sympathetic to that," she said. "The costs are significant, the people impact is significant, but we still need to make sure that we are meeting our mission."

It is also important to her to make sure that new board members, who sometimes come on thinking their time will be spent solely on rulemaking, are aware that there is much more the MSRB does apart from crafting regulations.

Given the larger rulemaking initiatives that have either been finalized or appear closer to being finalized, like municipal advisor rules and markup disclosure, she thinks the market will have had a chance to get adjusted "before the next big things come."

The MSRB's markup disclosure rule, which is accompanied by guidance on how dealers would use a "waterfall" of factors to determine prevailing market price, has already been filed with the Securities and Exchange Commission. It would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation it sends the customer.

Comments on the proposed rule are supposed to be sent to the SEC by Oct. 4. Although dealers have been concerned about how to demonstrate compliance with the rule, Woodell said the board thinks "that what it filed is getting the market where it needs to be."

"Hopefully it will be done during my term, but you never know," Woodell said about the proposal. MSRB Rule G-42 on core duties of MAs went through three rounds of comments from the SEC. "Hopefully this won't go that many, but it's always possible," she added. The next step for the MSRB will be to respond to the comments.

The MSRB will also continue with several other initiatives, like a newly proposed rule on certain exceptions that would allow dealers to trade in amounts below a security's minimum denomination.

New Initiatives

Woodell said she also intends to set in motion several multi-year initiatives related to past comments and data the MSRB has received.

"We put a request for comment out on the entire [MSRB] rulebook a couple years ago and that raised a few questions, along with enforcement cases about syndicate practices," Woodell said. "We need to start the conversation on those."

The focus on syndicate practices relates to an August 2015 SEC case against Edward Jones, where the firm, which was part of a syndicate, settled charges that, instead of selling new bonds to customers at the initial offering price as required, it 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.

Woodell said the board may consider some rule changes that take into account the enforcement actions, developments in Internal Revenue Service price determination requirements, and other feedback or information it gets from the market.

“The first thing we need to look at is whether it is a bona-fide order,” Woodell said, referring to whether the orders that dealers submit are actual orders instead of a firm just saying it wants bonds to then either flip or do something else with them.

Woodell also intends to start the conversation on pre-trade price transparency this year, something that will be at least the same magnitude of an undertaking as markup disclosure or the initial municipal advisor rules from the board, she said.

The MSRB has already circulated a few concept releases on the topic and is currently analyzing the comments it received. Pre-trade is amorphous but refers to data that can help with pricing determinations before a muni is traded. It can include voluntarily submitted information from alternative trading systems and external yield curves.

According to Lynnette Kelly, the MSRB’s executive director, the goal for the board will be to figure out what types of pre-trade information would be the most valuable.

The board also plans to work with the Financial Industry Regulatory Authority on steps involving pre-trade price transparency information, adding an extra level of necessary coordination to the process.

Woodell said the board will separately circulate a request for comment before it holds a formal strategic planning session to look at the longer-term goals for the board. The MSRB holds such a planning session every two years and incorporates the market comments along with input from the board.

Over the next five to ten years, Woodell said she would expect that the market would continue to absorb larger MSRB rulemaking like rules on syndicates, while also seeing a rise in electronic platforms.

Tangentially related to the MSRB, she said the muni market will be affected by the country’s infrastructure needs and pension issues. Both presidential candidates have talked about the need for increased spending on infrastructure and the elections will also likely bring about larger changes to Congress and the SEC, she said.

“I think the infrastructure and … pensions are huge. They’re not going away,” Woodell said. “You’re not going to wake up tomorrow and say ‘that’s gone.'”

EMMA

As is normal with the MSRB, the next year is also expected to bring several changes and improvements to the board’s EMMA system, according to Woodell.

“EMMA is a big transparency platform,” she said. “We’ll continue to think about what needs to be

done with it and take feedback from everybody to see what could be better."

To that end, the board will be facilitating focus groups with different types of EMMA users, including investors and issuers. It will also consider adding things like third-party yield curves and a new issue calendar to the platform.

Kelly, who described the focus groups as "a year-long initiative," said they will help to answer questions like whether the interface should look different depending on what type of user is accessing it and how the platform could best be leveraged to empower different users.

The board recently announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

"Every time we do anything, almost every day here, someone talks about market transparency and fair and efficient markets," Woodell said. "Transparency is obviously key to fair and efficient markets."

In addition to EMMA, the board will follow developments related to the first MA qualification exam, which was released on Sept. 12 for a year. MAs that didn't pass the pilot exam will have to take and pass the qualification exam. The board also will give a $5.5 million proportional rebate to dealers and will continue to monitor its finances to be "very sensitive" to the fiscal responsibility that it has to the muni business to not charge too much, Woodell said.

Some market participants question whether the MA qualification exam will cause advisors to retire early or otherwise leave "It would be disconcerting to me if it did because a basic qualification exam feels like something someone who is practicing as an MA should be able to pass," Woodell said.

"I'm sure some of the market participants feel some level of angst surrounding the idea of a test," she added. "But if you're going to be in the market and if you're going to be advising people, you have a fiduciary duty [and] you better know what you are doing."

Background

Woodell says that her career in munis started with "a lucky break" after she graduated from Wells College in Aurora, N.Y. as an economics major. She went to the yellow pages and sent out "a bunch of resumes to places I found," one of which was Moody's.

She started there in 1977 in what was then the department that handled the handbook of common stocks Moody's published. Then, in 1979, Moody's developed an internal program to promote from within and asked Woodell if she was interested in public finance.

"I said 'what's that,' and that's really what started it," Woodell said.

She stayed with Moody's until 1990, at which point she moved to Fitch until 1993. From there, she went to First Albany Capital Inc., a regional firm at that point, for five years. Ultimately, she moved to S&P and was there until 2004.Woodell retired in 2012.

Woodell said that she loves the industry because it is always changing, something she finds "fascinating."

She also enjoys what she and her friends refer to as "the curse of the muni analyst."

“I fly into National [Airport in D.C.] and I say ‘oh, there’s the sewer plants for Washington’ or I go on vacation and I say ‘oh, they have desalinization here,'” she said. “It’s with you all the time. I find it endlessly fascinating.”

The Bond Buyer

By Jack Casey

September 30, 2016

SEC Approves Fund Liquidity Rules, Sparking Concern for Munis.

WASHINGTON – The Securities and Exchange Commission voted unanimously on Thursday to finalize new open-end fund liquidity requirements that market participants said would hurt the industry by damaging the funds’ appetites for munis.

The rule requires funds to create liquidity risk management programs that are approved and monitored by their boards. It will apply to mutual funds and other open-end management investment companies, including exchange-traded funds, but will exclude money market funds. ETFs that honor redemptions using securities instead of cash are excluded from some of the new requirements.

The requirements respond to what the SEC sees as the recent growth of open-end funds investing in potentially less-liquid strategies and are meant to ensure that funds maintain enough liquidity that they are able to effectively deal with investor redemptions.

“It is imperative that open-end funds manage their liquidity carefully, both to ensure that redemptions can be fulfilled in a timely manner and to minimize the impact of redemptions on remaining investors and the broader marketplace,” said SEC chair Mary Jo White.

Most funds will be required to comply with the liquidity risk management program requirements by Dec. 1, 2018, though funds with less than $1 billion in net assets will have until June 1, 2019. The finalized rule and amendments require funds’ liquidity programs to be designed to assess liquidity based on the number of days in which the fund reasonably expects an investment could be converted to cash given current market conditions without significantly changing the market value of the investment, according to the rule.

The Government Finance Officers Association, which expressed concern about the SEC’s original proposal for new requirements released in September 2015, is still worried about the finalized rule’s requirement to categorize assets in a way that “overlooks some of the key features of muni securities,” according to Emily Brock, director of GFOA’s federal liaison center.

Munis made up about $688.9 billion of the assets mutual funds and ETFs held as of Sept. 30, according to Morningstar Inc. data.

“Trading volume is not in isolation a reliable indicator of future liquidity for municipal securities,” Brock said. “Because highly rated municipal securities are considered core holdings of large institutional investors, they experience lower trading volumes during more stable financial periods than they do during periods of fiscal stress.”

She also noted that during times of fiscal stress, munis are typically the first considered for sale

because of their attractiveness to investors. Additionally, Brock said GFOA's concern is tied to the "critical" nature of infrastructure investment in the nation's economy.

"We expect as a result of this rule, funds will decrease their appetite for the securities of smaller, less frequent issuers," which constitute about three quarters of GFOA's membership, Brock said. "The potential loss of mutual funds as investors is alarming, given the level of investment from funds in short-and-long-term municipal bonds."

Matt Posner, a principal with the Court Street Group, said that mutual funds have played a key role in the current outperformance of munis compared with other fixed-income classes and that this rule, by making the funds' internal processes more expensive, will eventually make the cost of issuance more expensive and will hurt smaller issuers that are considered less liquid.

He added that the muni industry should have used the resources it dedicated to challenging a separate rule from banking regulators that did not classify munis as high quality liquid assets, to instead address this one, which has "a much more wide-ranging influence."

"There are lessons to be learned about how this rule got passed without much discussion," Posner said. He added that the lessons could be helpful as the Basel III fundamental review of the trading book requirements loom. The requirements are a part of revisions from bank supervisors that are designed to reform regulatory standards for banks in response to the financial crisis.

The SEC's finalized liquidity requirements build on its original proposal. Under the finalized rule, funds' programs would have to classify portfolio assets into four categories: highly liquid investments; moderately liquid investment; less liquid investments; and illiquid investments. It also generally allows funds to classify their investments by asset class instead of making them determine the time it would take to convert each investment into cash.

Funds covered under the rule also must determine a minimum percentage of their net assets that must be invested in highly liquid investments. Highly liquid investments, according to the SEC, are defined as those that are reasonably expected to be converted into cash within three business days without significantly changing their value. Funds also have to have policies and procedures for responding to a shortfall in their highly liquid holdings.

Another component of the new requirements would mandate that no more than 15% of a fund's investments are considered illiquid, defined as incapable of being sold within seven calendar days without significantly affecting the investment's market value. The rule lays out a series of steps and considerations if a fund exceeds the percentage.

The SEC additionally approved by a two-to-one vote a separate but related set of changes on Thursday that would allow open-end funds, excluding MMFs and ETFs, to use swing pricing. Swing pricing refers to a fund's adjusting of its net asset value per share to pass on to purchasing or redeeming shareholders certain costs associated with their activities.

The swing pricing amendments will become effective two years after they are published in the Federal Register.

The Securities Industry and Financial Markets Association's Asset Management Group said in a statement that it supports the SEC's "taking the initiative to enhance its ability to monitor and regulate asset management activities" with the new requirements.

"While we are still in the process of reviewing the final rules, it is clear that the commission maintained its commitment to the goals of the proposal, including strengthening the SEC's

regulatory effectiveness and protecting investors, while showing thoughtful consideration of comments by SIFMA AMG and others," SIFMA AMG said.

Paul Schott Stevens, president and chief executive officer of Investment Company Institute, said ICI is still reviewing the final rules "will have a more comprehensive understanding of the rules' impact once we have completed that work."

"It is clear, however, that this is a tough set of new rules that will spur a number of operational changes across the registered fund industry," Stevens said. "While some of these new rules will likely add complexity and cost, ICI commends chair White and the SEC for advancing this work, as the commission is the appropriate body to address areas of potential risk in activities and products related to asset management."

The Bond Buyer

By Jack Casey

October 13, 2016

SEC Stepping Up Enforcement of Public Finance Market.

Over the last three years, the Securities and Exchange Commission's Enforcement Division has used sweeps to dramatically increase the number of enforcement measures brought against bad actors in the public finance market, Director Andrew Ceresney said.

Ceresney's division has brought enforcement actions against 76 state or local governments, 13 obligated individuals and 16 public officials since 2013. From 2002-2012, the division brought enforcement actions against six government entities, six obligated individuals and 12 public officials.

MCDC and other sweeps.

Enforcement sweeps have been critical to enhancing enforcement of the municipal securities market and the public pension market, which currently hold securities valued at $3.7 trillion and $3.8 trillion, respectively.

"A sweep is a group of enforcement actions brought simultaneously against different parties who have engaged in similar violations," Ceresney said in a speech at the Securities Enforcement Forum on Oct. 13.
The commission's most prominent sweep has been the Municipalities Continuing Disclosure Cooperation Initiative (MCDC) in 2014. The enforcement division implemented the self-reporting initiative to target municipal advisers failing to provide investors with important financial information.

After failing to disclose, bond issuers were falsely telling investors they were complying with disclosure obligations. Additionally, underwriters were suspected of selling bonds to customers using materials containing false statements, the director said.

"While not every self-report resulted in an enforcement action, the commission charged 72 broker-dealers, representing about 96 percent of the market for municipal underwriting," Ceresney said.

Beyond sweeps, the commission has implemented four other new measures in bringing enforcement actions in the public finance space — enjoining bond offerings, dispensing penalties against municipal issuers, issuing injunctions against public officials and raising standards for municipal advisers.

Restrain the bonds.

While the SEC has issued temporary restraining orders in other sectors, the commission never prohibited a municipal issuer from selling bonds until 2013. The SEC alleged the city of Harvey, Ill., had diverted bond proceeds for improper, undisclosed uses. Additionally, the commission alleged Harvey officials had been issuing bonds for the purported development of a hotel, but in reality had diverted $1.7 million of the proceeds toward the city's payroll and other operational costs.

Harvey was going to issue similarly structured bonds in the near future before the enforcement division stepped in to enjoin offerings until necessary safeguards were imposed.

Municipal issuers.

Historically, the commission hasn't brought penalties against municipal issuers, but that changed in recent years, Ceresney said.

The enforcement director presented three recent cases in which the commission charged issuers. In November 2013, the SEC charged a public facilities district in Washington with lying about the financial projections associated with an events center it was hoping to fund.

The SEC charged California's largest agricultural water district last March for lying to investors about its financial condition in connection with a 2012 bond offering worth $77 million. Currently, the commission is pursuing a civil penalty against the city of Miami for officials engaging in a "shell game" — using restricted funds to inflate its general fund.

"These cases demonstrate that municipal issuers should not expect a pass on civil penalties," Ceresney said.

Public official culpability.

The commission has started holding public officials responsible under Section 20(a) of the Exchange Act, "based on their control of the municipal entity that engaged in the fraud," Ceresney said.

Section 20(a) was used in the municipal securities context for the first time in a case against the former mayor and former administrator of Allen Park, Mich., in 2014. The commission alleged the administrator prepared and approved offering documents in association with the construction of a movie studio, despite knowing of negative, undisclosed information. The SEC alleged the mayor, based on his authority and control over the municipality, was also liable.

Municipal advisers.

This year, the commission brought enforcement actions against municipal advisers for the first time. The Dodd-Frank Act mandated municipal advisers register and comply with regulations issued by the Municipal Securities Rulemaking Board. The SEC charged Central States, LLC, and three of its employees, with violating their fiduciary duties and breaching MSRB rules.

"The new registration requirements and regulatory standards were intended to mitigate some of the problems observed with the conduct of some municipal advisers, including failure to place the duty

of loyalty to their municipal entity client ahead of their own interest," Ceresney said.

By Timothy Weatherhead, The Hill Extra – 10/14/16 05:04 PM EDT

SIFMA Submits Comments to SEC on Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers.

SIFMA provides comments to the Securities and Exchange Commission (SEC) in response to Municipal Securities Rulemaking Board (MSRB) Filing with SEC on Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price.

Read the comment letter.

October 3, 2016

BDA Submits Comment Letter to the SEC: MSRB Retail Confirmation Disclosure Rule Proposal.

BDA has submitted a comment letter to the SEC in response to the MSRB's filing of its proposed retail confirmation disclosure rule along with proposed guidance amendments to MSRB Rule G-30 related to 'prevailing market price'.

On Friday, September 9th BDA submitted a comment letter to SEC in response to FINRA's filing of its proposed retail confirmation rule with the SEC. The letter and FINRA's rule filing can be viewed here.

The BDA's letter related to MSRB's proposal is focused on the following key issues:

- The urgent need for FINRA and MSRB to harmonize their rules from a policy, testing date, and effective date standpoint
- BDA urges regulators to appreciate the operational burdens associated with automating the process for making a 'prevailing market price' judgement especially related to the 'similar' security analysis that will frequently be required for municipal securities
- Due to the operational and technology burdens of the rule and the other major rules that will be effective in the next 24 months
- BDA urges the SEC to institute proceedings on both the FINRA and MSRB filings to extend the time period for assessing the rules prior to approval or disapproval

Proposal Overview

Scope of Transactions: The proposal will apply to retail trades when a dealer has entered into an offsetting principal trade in the same security in a total quantity greater than the retail trade during the same trading day

Timing of Trades: MSRB proposes to have the rule apply to offsetting principal and retail trades

that are executed on the same trading day as opposed to over a certain amount of hours during a given trading day

Disclosure Computation: MSRB has proposed to base the confirmation disclosure computation on the difference between the prevailing market price that exists at the time of the retail trade and the retail trade price

- MSRB Rule G-30 Amendments: "Dealers must establish market value as accurately as possible using reasonable diligence under the facts and circumstances" based on the FINRA 2121 "waterfall" concept. MSRB notes that it has filed the G-30 amendments with only minor amendments in comparison to the proposed amendments BDA commented on in March 2016.

Time of Trade Disclosure and Link to EMMA on Confirms: Unlike FINRA, MSRB included a requirement to include a time of trade of disclosure on all retail and institutional customer confirmations in addition to a link to EMMA on retail confirms regardless of whether the mark-up disclosure is required on the transaction.

Proposed Effective Date: No later than 365 days after the SEC approves the rule

Additional Information:

A recap of BDA's April 2016 Member Fly-in Meeting with FINRA and MSRB can be viewed here.

BDA's December 2015 comment letters to FINRA and MSRB can be reviewed here.

10-04-2016

Dealers to SEC: Markup Proposal Overly Complex, Would Hurt Liquidity.

WASHINGTON – Dealer groups are warning that a Municipal Securities Rulemaking Board proposal to require dealers to disclose their markups and markdowns in certain transactions would be overly complex and hurt liquidity.

They urged revisions and new guidance allowing for compliance through dealers' automated systems.

The groups made their comments to the Securities and Exchange Commission regarding the MSRB's proposed changes to its Rules G15 on confirmation and G30 on prices.

The changes would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

The Financial Industry Regulatory Authority has proposed a similar requirement and has been coordinating its changes with the MSRB.

The MSRB proposal, filed with the SEC on Sept. 2, also establishes a waterfall of factors for determining prevailing market price (PMP), which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. 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 could 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 could be used to show securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Both Bond Dealers of America and the Securities Industry and Financial Markets Association criticized the proposed waterfall of considerations given, among other things, the level of subjectivity many of the determinations would require.

BDA chief executive officer Mike Nicholas said the proposal "vastly underestimates the complexity of operationalizing the waterfall concept in an automated fashion."

"In light of the fact that there is currently no commercially available solution for automating the waterfall process … dealers will have to devote significant resources to finding a solution that works with their existing legacy systems and processes," he wrote.

Leslie Norwood, managing director and co-head of municipal securities for SIFMA, and Sean Davy, managing director for SIFMA's capital markets division, warned that under the proposal dealers that carry inventory would be required to "grapple with the cost and complexity" of such programming. They said that the burden could cause those firms to move to a riskless principal model "rather than assume the costs, complexities, and risks of implementing the proposal as currently formulated."

"Unfortunately, there is no suggestion that the MSRB has measured or fully considered the risk that its proposal will impair liquidity in the municipal market," SIFMA wrote. "A more thorough analysis of the proposal's effect on liquidity is entirely within the MSRB's capabilities."

SIFMA, which also made clear that working with the MSRB's EMMA system and FINRA's TRACE system would be a more effective way to ensure investors are informed, asked that the MSRB adopt explicit guidance recognizing that it is not technologically feasible to automate a strict waterfall analysis. The prevailing market price analysis should also only apply to the confirmation disclosure proposal instead of transactions in general, SIFMA said.

Quoting a section of the SEC's 2012 Report on the Municipal Securities Market that explained determining the prevailing market price for munis can be a complex task, Norwood and Davy said the complexity would be "further amplified in the context of the proposal."

"The MSRB should expressly recognize this operational reality and provide further guidance regarding what it views as 'reasonable policies and procedures' to calculate PMP on an automated basis," SIFMA said. The group suggested that the self-regulator allow firms to adopt an alternative to contemporaneous costs or proceeds, such as pulling prices from third-party pricing vendors.

Additionally, SIFMA is asking that the MSRB and FINRA acknowledge that firms would be acting reasonably and appropriately by labeling their markups and markdowns as an "estimate" or as "approximate" on the confirmations given the difficulty of being exact when using the waterfall. Nicholas also said that it would be appropriate to deem the disclosed markup or markdown as a dealer's estimated compensation.

Regulators should acknowledge that firms may diverge when determining what securities are

“similar,” given the likely subjectivity of the determination and its basis on facts and circumstances, SIFMA wrote. The group wants an assurance that regulators would not find that a dealer’s calculation is incorrect as long as it is based on a reasonable and good faith automated measure of PMP based on the information available at the time of the transaction.

Both dealer groups asked for clarifications on certain aspects of the MSRB filing.

BDA expressed “serious concern” that the proposal says isolated transactions in munis “may” be given little or no weight in establishing prevailing market price. Nicholas notes that munis do not trade as frequently as corporates and that given the specificity of the required similar security analysis, isolated securities or those with a limited number of trades may be the only ones a dealer could deem similar.

He added that there is a discrepancy between the MSRB’s filing and the actual rule text as to how much weight an isolated transaction can be given. He requested the board clarify the language as well as the intent of the section.

SIFMA asked that the MSRB revise its guidance to more accurately describe what it means by a spread, which is included in its non-exclusive list of relevant factors, to determine whether a security is similar. The example the board gives of a spread compares munis to Treasuries, but only taxable munis trade at a spread to Treasuries, SIFMA said.

Both BDA and SIFMA also emphasized the need for the MSRB to coordinate their rulemaking with FINRA as much as possible to limit the compliance burden. The MSRB has proposed dealers send customers security-specific hyperlinks along with confirmations. The groups said it would be better for the board to require dealers to include more general links on confirmations that would direct customers and investors to pages on which they can search for their specific securities. The two dealer groups also asked the MSRB and FINRA to set a more reasonable implementation period than the proposed one year after SEC approval. They cited the complexity of complying with the changes as well as the numerous other large regulatory developments that are expected soon, such as movement to a T+2 settlement cycle and implementation of the Department of Labor’s fiduciary standard.

BDA asked the period be at least two years after SEC approval while SIFMA said that, if the MSRB and FINRA work to provide more clarity and guidance on the proposal, it could be implemented in no less than three years.

“Neither the MSRB nor FINRA have provided justification for such an aggressive timeframe,” SIFMA said. “We urge [the regulators] to propose a reasonable implementation period consistent with the commission’s expectations.”

The Bond Buyer

By Jack Casey

October 5, 2016

Municipal Advisors Put Focus on Staying Clear of Dealer Activity.

NEW ORLEANS – Municipal advisors face growing concern that some activities they could pursue to

help clients make private placements might land them in hot water with the Securities and Exchange Commission.

A panel discussion at National Association of Municipal Advisors' annual conference here focused on how MA firms' activities in private placements could lead the regulator so see them as unregistered broker-dealers, subject to a different set of regulations, and what they can do to avoid that trap.

The issue has received increased attention in past years as the popularity of bank loans and other private placements have increased in the municipal market, panelists and audience members said.

"We're all grappling with an approach we can go forward with to best serve our clients that still keeps us out of trouble with the SEC," said Alex Handlers, of Bartle Wells Associates, who moderated the panel. He said MA firms have changed their practices in recent years in various ways to address the concerns.

Private placements can be attractive for issuers because they are cheaper and less regulated than traditional issuances. They can also give issuers the ability to negotiate specific aspects of the deal like legal covenants.

MA involvement in such deals has raised legal issues over whether they are acting as unregistered brokerdealers. Advisors, who owe fiduciary duties to their clients, and broker-dealers, who act as intermediaries, operate in different regulatory regimes.

The legal question boils down into two areas of consideration: whether the private placement should be considered a security; and whether an advisor dealing with the private placement is acting only in the capacity of their advisory relationship with their client or whether the advisor is acting as a broker by entering into the business of effecting a transaction in the securities of others.

While SEC representatives have said in the past that there is no bright line test for determining whether something is a loan or a security, they point to the 1990 case *Reves v. Ernst & Young*, in which the Supreme Court found that notes were presumably securities, but allowed for that presumption to be overcome if the notes bore a strong resemblance to another note that is not a security.

If a private placement is not deemed a security, then the need to distinguish between MA and broker-dealer business is moot because the SEC and MSRB rules for broker-dealers only apply to municipal securities.

If a private placement is a security, though, MAs have to be more careful and can look to generally accepted key parts of a security transaction, including: solicitation; execution of the transaction, conversations about the size of the transaction; and whether the MA handles the securities of others in connection with the transaction, as factors in determining whether they are acting as unlicensed dealers.

Handlers added that MAs seem to have found that some of the activities that they historically had taken on could be included in the definition of broker-dealer activity, such as identifying potential investors and doing the solicitation for the deal.

Handlers advised that when MAs are evaluating their activities, they take into account "the whole totality of things" the SEC could look for related to dealer activity, like whether the duty of soliciting for the deal falls to the MA or, as it should, a dealer acting as a placement agent.

“[An MA] could go over to the dark side on one of these things, [which does] not necessarily mean [it] is going to be deemed guilty, but it doesn’t help” the MA’s case with the SEC, Handlers said.

“The more we can keep ourselves on the right side of the line, the less chance there will be of any violation from the SEC’s perspective,” he said. “If we haven’t changed our practices yet, it’s time to do it now.”

One MA in the audience who works for a larger firm shared with the panelists and attendees what steps his firm had taken to shield itself from possible violations. The main concern he addressed related to MAs having a list of possible lenders that they then reach out to asking about potential interest in a deal. The panelists and audience members agreed that such an action automatically limits the number of potential lenders and thus would move an MA into one part of the broker-dealer territory.

The MA’s firm tries to combat that problem by making sure that its client supplies the list of potential lenders instead of the MA itself. That way, it’s the issuer determining where the request for proposal (RFP) is going to go, the advisor said. The firm also sends out RFPs on the issuer’s stationary instead of its own and will rely on its issuer client to take the lead on negotiating the terms of the private placement.

“We’re trying to be pretty clear up front with everything we do because we don’t know where we’re going to … get trapped and be in the underwriter world,” the advisor said.

SEC representatives have said that they are looking at the issues MAs can face when navigating the difference between allowable conduct with private placements and actions that can lead to violations. One solution could be providing for certain exemptions from broker-dealer rules for MAs conducting business. The SEC already provides other regulated entities like investment advisors and broker-dealers exemptions from its MA rule, but there are no parallel exemptions for MAs from broker-dealer or investment advisor rules.

Jeff Sharp, senior vice president and director of business development for Capital One Public Funding, which has a portfolio of muni private placements, encouraged the municipal advisors in the room to not shy away from having their issuer clients pursue private placements despite the regulatory concerns.

“I want to make a bit of an impassioned plea that you not just throw the baby out with the bathwater,” he said. “These are a valuable tool for your clients at times. We really want to be an arrow in your quiver.”

Sharp said the potential risk for MAs can be removed through the use of dealer placement agents as intermediaries.

“Placement agents are there to help you,” Sharp said. “It will cost your clients some money, but that’s just part of our new regulatory environment. They can keep you out of trouble and get your clients a good deal.”

The Bond Buyer

By Jack Casey

October 11, 2016

SEC Examiners Find MA Violations, Expect More Reviews Next Year.

NEW ORLEANS – Securities and Exchange Commission examinations of municipal advisors over the past two years found fiduciary duty and fair dealing violations, said SEC officials who cautioned the number of MA exams will increase in 2017.

The officials from the SEC's Office of Compliance Inspections, and Examinations discussed the findings from the examination initiative during a panel at the National Association of Municipal Advisors annual conference here.

The initiative was announced in August 2014 and was designed to assess non-dealer MAs' compliance with registration, disclosure, fair dealing, supervision, books and records, as well as training and qualifications requirements. The SEC is responsible for examining all non-dealer MAs while the Financial Industry Regulatory Authority is responsible for dealer MAs.

After a firm examination is completed, OCIE sends either a deficiency letter spelling out the violations it found or a no further action letter. While the deficiency letter is not public and does not necessarily imply there will be enforcement, the representatives said they may pass certain findings on to their enforcement colleagues in the SEC.

Robert Miller, an OCIE supervisory attorney and examining manager, emphasized that when a firm receives a no further action letter, it should be aware that it is not the same thing as "a gold star."

Suzanne McGovern, an OCIE assistant director, said that as of Sept. 13, approximately 670 firms have registered with the SEC, 518 of which are non-dealer municipal advisors. Additionally, 4,900 individuals have each filed a Form MA-I to provide advisor information.

OCIE examined 50 non-dealer municipal advisors and two broker-dealers in 2015 and closed 67 examinations of non-dealer municipal advisors in 2016, according to McGovern.

She added that OCIE's focus on examinations will continue into next year as the office and the MA community both become adjusted to newly effective conduct rules for municipal advisors, such as the Municipal Securities Rulemaking Board's Rules G-20 on gifts and G-37 on political contributions. OCIE recently outlined its resource allocation for the next year and determined that one of the office's priorities for 2017 will be independent MAs, she said.

"That means probably the number of examinations this year will go up," she said. The office uses risk assessments it does of the firms to determine which ones to examine and when to begin the processes.

While examinations in 2015 mainly uncovered what Miller called "technical violations," such as those related to registration and books and records, examinations in 2016 found instances of fiduciary duty violations. The Dodd-Frank Act gave MAs a fiduciary duty to put their clients' interests first. The more recently enacted MSRB Rule G-42 detailed MA duties of care and loyalty.

As an example of the commission's fiduciary duty findings, Miller described a series of discoveries the office made about three individuals who were employed with an MA and were also working at a related broker-dealer. The individuals pursued several deals while working with a municipality in an advisory capacity and the OCIE examiners found that when it came time to choose an underwriter for the municipality's deals, they picked their own dealer without notifying the municipality of their ties.

“In that case, clearly there’s a conflict of interest,” Miller said about the concerns with the individual’s breach of their fiduciary duty. “If they’re double-dipping, what is the likelihood that they are going to look out for the best interest of the municipality as opposed to themselves?”

While Miller did not explicitly identify the parties in the case, the facts he described are very similar to an SEC enforcement action released in March where the commission settled with Kansas-based municipal advisor Central States Capital Markets, its chief executive officer John Stepp, former vice president Mark Detter, and current vice president David Malone. The firm and employees were financial advisor for an issuer in a muni transaction and then selected a broker-dealer where the three men also worked to underwrite the bonds, according to the SEC.

Miller said OCIE examiners have also uncovered examples of fair dealing violations related to excessive fees.

He gave an example of a deal involving a small community in the Southeast that needed to buy new equipment for its school district. The community reached out to a municipal advisor and the MA recommended it issue bonds. However, given the small nature of the deal, the MA initially had trouble finding other deal participants and decided it had to do more due diligence. It eventually found participants with which the firm had worked with before, but, when the bonds were issued and the deal was completed, OCIE found that the MA ended up getting a fee of 22% of the bond proceeds.

“I think that is the definition of excessive,” Miller said.

OCIE’s excessive fee determinations deal more with facts and circumstances he added, saying examiners will continue to look at things like the MA’s expertise, the time it has spent in the industry, the level of qualifications, and the complexity of the issuance when drawing such conclusions.

Miller and McGovern said OCIE also found registration as well as books and records violations during the two-year examination period.

Common violations included registering with the Municipal Securities Rulemaking Board as an MA but not the SEC, listing an incorrect name on the registration form, and not properly keeping a general ledger for the firm.

Miller recommended that firms trying to keep a good general ledger think about the practice from a “follow the money” standpoint. He said the idea is to allow examiners, when they visit, to see how money came in, who got paid, and what the money was getting paid to.

“The key thing for us … is more documentation is better,” he said. “It allows us to ask intelligent questions.”

Other violations related to documentation included failures to have written supervisory procedures (WSPs) or not having WSPs that were tailored to the firm’s operations. They gave an example of firms that, when asked about their WSPs, would provide copies of MSRB and SEC rules and simply say that they follow each of the rules’ components.

“Things like that will definitely get attention from the SEC,” Miller said.

He added that examiners also saw some firms that had comingled email addresses or credit cards for both individuals and the firms. They also found a number of individuals, each of which had a Form MA-I that had not been updated and thus had them registered with two different firms.

McGovern said that OCIE has found “probably about 50% of municipal advisors are not filing their amendments” to keep the regulators as well as their information updated.

OCIE is planning to put out a risk alert describing its findings as a “last piece” of the initiative, according to McGovern. She said the risk alert may take longer to be released because it has to get SEC approval, but that once it is made public it can help MAs strengthen their compliance programs.

The Bond Buyer

By Jack Casey

October 7, 2016

Municipal Advisor and Issuer Needs Post MCDC.

The SEC’s Municipalities Continuing Disclosure Cooperation initiative is causing many municipal issuers and underwriters to change the way they do things. Underwriters are scrutinizing issuer disclosures, and the representations made about those disclosures, for accuracy and clarity. To date 71 issuers have entered into cease and desist orders with the SEC and must update past delinquent disclosure filings and improve their processes to ensure timely and complete disclosure going forward. These realities, and the introduction of the Municipal Securities Rulemaking Board Rule G-42, provide municipal advisors with an opportunity to support their Issuer clients in meeting these requirements and the demands of the market.

Issuer Needs Post MCDC

The cease and desist orders issued by the SEC are likely to serve as a roadmap for all issuers. These orders require issuers to (amongst other things):

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days.
- Establish continuing disclosure obligation policies and procedures, and periodic training, within 180 days.
- Provide the SEC with a compliance certification.
- Disclose the terms of the settlement in any official statement for five years.

New Issues

Issuers coming to market need to ensure that their past filings conform to what they represented they would make publicly available and provide underwriters comfort that the issuer has a sound process in place to make timely and complete disclosure prospectively. It is best to begin this analysis when a deal is in its formative stages as underwriters will want to know:

- Are the issuer representations in the preliminary official statement and OS accurate?
- Does the underwriter have confidence the issuer will comply with their disclosure requirements going forward?

Check, Correct and Monitor

Outlined below is an approach that will help your Issuer clients address these obligations and support your G42 obligations:

- **Update Past Delinquent Filings:**
  – Conduct a 15c212 Five-Year Lookback Analysis.
  – Utilize data provided from the analysis to fix late and/or missed filings.
  – Once filed, re-run the analysis to demonstrate/confirm compliance at the Issue and CUSIP level.
- **Prospective Compliance — Notification/Monitoring and Periodic Lookback Analyses:**
  – Use a notification service to alert the Issuer and/or their Municipal Advisor in advance of ongoing filing obligations such as the Audit and Financial and Operating data. The notification service should clearly identify the timing and due date of the filing, operating and financial data tables required to be filed, and which issues and CUSIPs must be tagged to identify filings.
  – Use a monitoring and notification service to identify Rating Changes to support timely filing.
  – Once the filing date has passed, perform a 15c212 Lookback/Confirmation report to demonstrate/confirm proper filing.
- **Official Statement Notice:**
  – Include a statement regarding use of a notification/monitoring service for prospective filing obligations and post-filing reporting to support the issuer's timely filing prospectively.

The regulatory environment has placed new and different burdens on virtually all members of the municipal market. These changes require market participants to address this heightened regulatory and market scrutiny in an efficient and cost-effective manner. As a Municipal Advisor, there is an opportunity to support and serve Issuer clients as they grapple with these new demands. The simple approach outlined above is recommended for those needing to comply with a MCDC Order and for all issuers to ensure their filings are timely and representations on new issues are accurate.

The Bond Buyer

By Gregg Bienstock

October 12, 2016

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

MSRB Files Amendment to Rule A-4 on Meetings of the Board.

The Municipal Securities Rulemaking Board (MSRB) today filed, for immediate effectiveness, an amendment to MSRB Rule A-4, Meetings of the Board, to add that to constitute a quorum of the Board, at least one member of the Board who is a municipal advisor representative must be present. Under Rule A-4 as amended, a quorum of the Board consists of two-thirds of the whole Board, and at least one public representative, one broker-dealer representative, one bank representative and one municipal advisor representative must be present.

Read the rule filing.

Miami to Pay $1 Million to Settle SEC Municipal Bond Fraud Case.

The city of Miami agreed to pay $1 million to settle a Securities and Exchange Commission lawsuit in which a federal jury ruled that the municipality defrauded bond investors by hiding the deteriorating condition of its finances.

The city and the SEC notified the court that a tentative settlement had been reached last month, and city commissioners approved it this week, according to information posted on Miami's website. City officials have denied wrongdoing, blaming a prior administration.

Bloomberg Markets

by Susannah Nesmith

October 14, 2016 — 12:06 PM PDT

MSRB Seeks Input on Strategic Priorities.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB), which oversees the $3.8 trillion municipal securities market, is seeking public input on its core activities and strategic goals to help guide the organization's long-term priorities. Feedback from market stakeholders supports the MSRB's ability to fulfill its mission to protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market.

In an effort to promote market transparency, the MSRB is seeking specific input on future development of its Electronic Municipal Market Access (EMMA®) website, the official repository for information on virtually all municipal bonds. In addition, the MSRB is also seeking feedback from municipal market participants on prioritizing its ongoing efforts and what, if any, additional issues should be considered.

"The MSRB's long-term strategic planning process informs the Board's discussion and prioritization of regulatory, educational and transparency initiatives," said MSRB Executive Director Lynnette Kelly. "Receiving comment from a wide range of market participants helps ensure that the MSRB thoroughly considers relevant market topics when setting and reevaluating organizational priorities."

Date: October 12, 2016

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

Woodell Hopes to Start New Initiatives During Tenure as MSRB Chair.

WASHINGTON – As the new chair of the Municipal Securities Rulemaking Board on Oct. 1, Colleen Woodell hopes the board will begin new initiatives on syndicate practices and pre-trade price transparency during her one-year term.

She plans to use the knowledge she has gained over her career to contribute to the market on a much broader basis.

“I really wanted to give back,” Woodell said of the impetus for her decision to take the position leading the board, which will also continue work on major rulemakings like markup disclosure.

Woodell discussed the issues pending before the MSRB and her career during an interview with The Bond Buyer.

The former chief credit officer of global corporate and government ratings at S&P Global Ratings, she is in her fourth year on the board. Her tenure is longer than usual after colleagues voted to give her a one-year extension as part of the MSRB’s plan to have members ultimately serve four-year terms.

She replaces Nat Singer, senior managing director at Swap Financial Group, as chair, whom she served under as vice chair this past year.

Woodell said she views her role leading the 21-member, majority public board as a facilitator “making sure that everybody is heard and that we get the knowledge in the room that we need.”

She added that although she sees 21 members as being “a lot,” she thinks “it is a good number because it gives enough of a broad scope that it gets [the MSRB] where [it needs] to be.”

As the MSRB continues to explore new rulemakings and necessary steps over the next year, Woodell said she will be cognizant of market feedback about pressures its participants have faced from recent regulations. However, she noted that “if we know that there’s a need to do something, as a regulator, we need to do it.”

“We know there’s been a lot to absorb over the last couple of years and we’re sympathetic to that,” she said. “The costs are significant, the people impact is significant, but we still need to make sure that we are meeting our mission.”

It is also important to her to make sure that new board members, who sometimes come on thinking their time will be spent solely on rulemaking, are aware that there is much more the MSRB does apart from crafting regulations.

Given the larger rulemaking initiatives that have either been finalized or appear closer to being finalized, like municipal advisor rules and markup disclosure, she thinks the market will have had a chance to get adjusted “before the next big things come.”

The MSRB’s markup disclosure rule, which is accompanied by guidance on how dealers would use a “waterfall” of factors to determine prevailing market price, has already been filed with the Securities and Exchange Commission. It would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation it sends the customer.

Comments on the proposed rule are supposed to be sent to the SEC by Oct. 4. Although dealers have been concerned about how to demonstrate compliance with the rule, Woodell said the board thinks “that what it filed is getting the market where it needs to be.”

“Hopefully it will be done during my term, but you never know,” Woodell said about the proposal. MSRB Rule G-42 on core duties of MAs went through three rounds of comments from the SEC. “Hopefully this won’t go that many, but it’s always possible,” she added. The next step for the MSRB will be to respond to the comments.

The MSRB will also continue with several other initiatives, like a newly proposed rule on certain exceptions that would allow dealers to trade in amounts below a security's minimum denomination.

New Initiatives

Woodell said she also intends to set in motion several multi-year initiatives related to past comments and data the MSRB has received.

"We put a request for comment out on the entire [MSRB] rulebook a couple years ago and that raised a few questions, along with enforcement cases about syndicate practices," Woodell said. "We need to start the conversation on those."

The focus on syndicate practices relates to an August 2015 SEC case against Edward Jones, where the firm, which was part of a syndicate, settled charges that, instead of selling new bonds to customers at the initial offering price as required, it 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.

Woodell said the board may consider some rule changes that take into account the enforcement actions, developments in Internal Revenue Service price determination requirements, and other feedback or information it gets from the market.

"The first thing we need to look at is whether it is a bona-fide order," Woodell said, referring to whether the orders that dealers submit are actual orders instead of a firm just saying it wants bonds to then either flip or do something else with them.

Woodell also intends to start the conversation on pre-trade price transparency this year, something that will be at least the same magnitude of an undertaking as markup disclosure or the initial municipal advisor rules from the board, she said.

The MSRB has already circulated a few concept releases on the topic and is currently analyzing the comments it received. Pre-trade is amorphous but refers to data that can help with pricing determinations before a muni is traded. It can include voluntarily submitted information from alternative trading systems and external yield curves.

According to Lynnette Kelly, the MSRB's executive director, the goal for the board will be to figure out what types of pre-trade information would be the most valuable.

The board also plans to work with the Financial Industry Regulatory Authority on steps involving pre-trade price transparency information, adding an extra level of necessary coordination to the process.

Woodell said the board will separately circulate a request for comment before it holds a formal strategic planning session to look at the longer-term goals for the board. The MSRB holds such a planning session every two years and incorporates the market comments along with input from the board.

Over the next five to ten years, Woodell said she would expect that the market would continue to absorb larger MSRB rulemaking like rules on syndicates, while also seeing a rise in electronic platforms.

Tangentially related to the MSRB, she said the muni market will be affected by the country's infrastructure needs and pension issues. Both presidential candidates have talked about the need for

increased spending on infrastructure and the elections will also likely bring about larger changes to Congress and the SEC, she said.

“I think the infrastructure and … pensions are huge. They’re not going away,” Woodell said. “You’re not going to wake up tomorrow and say ‘that’s gone.'”

EMMA

As is normal with the MSRB, the next year is also expected to bring several changes and improvements to the board’s EMMA system, according to Woodell.

“EMMA is a big transparency platform,” she said. “We’ll continue to think about what needs to be done with it and take feedback from everybody to see what could be better.”

To that end, the board will be facilitating focus groups with different types of EMMA users, including investors and issuers. It will also consider adding things like third-party yield curves and a new issue calendar to the platform.

Kelly, who described the focus groups as “a year-long initiative,” said they will help to answer questions like whether the interface should look different depending on what type of user is accessing it and how the platform could best be leveraged to empower different users.

The board recently announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

“Every time we do anything, almost every day here, someone talks about market transparency and fair and efficient markets,” Woodell said. “Transparency is obviously key to fair and efficient markets.”

In addition to EMMA, the board will follow developments related to the first MA qualification exam, which was released on Sept. 12 for a year. MAs that didn’t pass the pilot exam will have to take and pass the qualification exam. The board also will give a $5.5 million proportional rebate to dealers and will continue to monitor its finances to be “very sensitive” to the fiscal responsibility that it has to the muni business to not charge too much, Woodell said.

Some market participants question whether the MA qualification exam will cause advisors to retire early or otherwise leave “It would be disconcerting to me if it did because a basic qualification exam feels like something someone who is practicing as an MA should be able to pass,” Woodell said.

“I’m sure some of the market participants feel some level of angst surrounding the idea of a test,” she added. “But if you’re going to be in the market and if you’re going to be advising people, you have a fiduciary duty [and] you better know what you are doing.”

Background

Woodell says that her career in munis started with “a lucky break” after she graduated from Wells College in Aurora, N.Y. as an economics major. She went to the yellow pages and sent out “a bunch of resumes to places I found,” one of which was Moody’s.

She started there in 1977 in what was then the department that handled the handbook of common stocks Moody’s published. Then, in 1979, Moody’s developed an internal program to promote from within and asked Woodell if she was interested in public finance.

“I said ‘what’s that,’ and that’s really what started it,” Woodell said.

She stayed with Moody’s until 1990, at which point she moved to Fitch until 1993. From there, she went to First Albany Capital Inc., a regional firm at that point, for five years. Ultimately, she moved to S&P and was there until 2004. Woodell retired in 2012.

Woodell said that she loves the industry because it is always changing, something she finds “fascinating.”

She also enjoys what she and her friends refer to as “the curse of the muni analyst.”

“I fly into National [Airport in D.C.] and I say ‘oh, there’s the sewer plants for Washington’ or I go on vacation and I say ‘oh, they have desalinization here,'” she said. “It’s with you all the time. I find it endlessly fascinating.”

The Bond Buyer

By Jack Casey

September 30, 2016

SEC Votes to Propose Shortening Settlement Cycle Timeframe.

WASHINGTON – The Securities and Exchange Commission has voted to propose an amendment to one of its rules that would shorten the standard settlement cycle for most bond and other securities transactions to two instead of three days after the trade date.

The amendment is related to a previously SEC-approved proposal from the Municipal Securities Rulemaking Board that would similarly shorten the settlement cycle for muni transactions.

The SEC’s proposal to amend Rule 15c6-1(a) of the Securities and Exchange Act of 1934 will be open for public comment for 60 days after publication in the Federal Register, the commission said in a release.

“Today’s proposal to shorten the standard settlement cycle is an important step in the SEC’s ongoing efforts to enhance the resilience and efficiency of the U.S. clearance and settlement system,” SEC chair Mary Jo White said at a commission meeting on Wednesday. “The benefits of a shortened settlement cycle should extend to all investors, not just those directly involved in the trading, clearing, and settling of securities transactions.”

The SEC amendment is designed to reduce the risks that arise from the value and number of unsettled securities transactions prior to their completion, including the credit, market, and liquidity risk that U.S. market participants face.

SEC commissioner Michael Piwowar has consistently supported the idea to shorten the settlement cycle.

“I have been quite vocal about the fact that I would have preferred for us to consider this rulemaking long ago,” he said during the meeting. “Years from now, investors will be puzzled about how a T+3 settlement cycle existed for so long.”

Piwowar also noted that the SEC is asking about the possibility of shortening the settlement cycle even further, to one day after the trade date.

“I preliminarily understand that a T+1 settlement cycle would produce distinct challenges and generate costs magnitudes above a T+2 settlement cycle, but I encourage commenters to tell us whether that is true and also identify the costs and benefits of each alternative relative to one another,” Piwowar said.

The Investment Company Institute applauded the SEC’s vote to propose the amendment, saying the change “will help make our markets more efficient and reduce risk to the benefit of all investors.”

“The SEC’s proposal sends a clear, important signal to industry stakeholders that regulators are committed partners in realizing this important change,” said Marty Burns, chief industry operations officer at ICI. “Today’s action represents a critical milestone that will keep the T+2 project moving along toward implementation next year.”

The MSRB filed similar changes to its Rule G-12 on uniform practice, Rule G-15 on confirmation, as well as other requirements in November of last year.

The MSRB changes, approved by the SEC, are tied to the SEC shifting to a T+2 cycle and are part of an industry migration to the new cycle by the third quarter of 2017.

The self-regulator has not set a compliance date for its proposed rule changes but has said it will publish a notice on its website to align the compliance date to that of the rest of the markets.

John Vahey, director of federal policy for Bond Dealers of America, said BDA supports the shortening of the settlement cycle to trade date plus two and “believes it will provide meaningful benefits for the marketplace.”

However, he said, the group continues “to be concerned with the potential for shortened time periods for other rules, such as confirmation delivery time requirements.”

Kenneth Bentsen, president and chief executive officer for the Securities Industry and Financial Markets Association, said SIFMA commends the SEC for its leadership in establishing a regulatory framework that supports a shortened settlement cycle.

“The SEC’s proactive efforts to update its rule will create the regulatory certainty the industry needs to move forward in its goal of achieving a T+2 settlement cycle by September 5, 2017,” he said. “This is truly a win for investors, the industry and all market participants.”

BDA, in a comment letter to the SEC, had expressed concern that the MSRB rule changes might impact retail investors who purchase securities using written checks. But the SEC said in its approval notice that the MSRB addressed the issue by arguing in its filing that the large majority of firms have access to technology that would allow their clients to deliver funds in a timely manner aligned with the T+2 timeline. The MSRB also suggested firms encourage their customers to use electronic funds payment to streamline processing.

Both BDA and SIFMA said the changes could affect MSRB Rule G-32 on disclosures in connection with primary offerings. BDA asked that the MSRB leave Rule G-32 unchanged while SIFMA said the changes for T+2 provided “an opportune time” to revise customer disclosure requirements under the rule. The MSRB, in its filing with the SEC, said it may consider suggested clarifications to the rule at a later date.

The Bond Buyer

By Jack Casey

September 28, 2016

MSRB Proposes Standalone Minimum Denomination Rule.

WASHINGTON – The Municipal Securities Rulemaking Board proposed on Tuesday to create a standalone minimum denomination rule that would revise current and proposed requirements because of dealer complaints.

The new standalone Rule G-49 would contain requirements added to Rule G-15 in 2002 to prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by the issuers. It would also include two exceptions to the prohibition added in 2002, as well as two more exceptions proposed in April of this year to help maintain liquidity for below-minimum positions.

Under the proposed Rule G-49, one of the existing exceptions and one of the exceptions proposed in April would be modified in response to market participants' comments.

The MSRB has asked for public comments to be submitted on proposed Rule G-49 by Oct. 18.

"As a result of input from industry and other commenters, the MSRB believes that creating a clearer, stand-alone rule on minimum denominations will facilitate understanding and compliance with these investor protections," said MSRB executive director Lynnette Kelly. "We want to support the practical application of the prohibition while emphasizing the overall importance of adhering to the minimum denomination for certain transactions."

The minimum denomination is the lowest amount of bonds that can be bought or sold, as determined by the issuer in its official statement for the bonds. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Rule G-49 would eliminate the current requirement that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't the dealer's customer and is the party from which the dealer purchased the securities. The liquidation statement must 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.

The liquidation statement is key to one of the existing exceptions that was adopted as part of Rule G-15. Under that exception a dealer could sell a below- minimum denomination 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.

The elimination of the liquidation statement requirement would affect another exception that was proposed in April. 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. There was also a liquidation statement required for that.

The MSRB is proposing to eliminate the liquidation statement requirement after dealers said in comments in April that the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum denomination positions.

Dealers were concerned that they could be subject to disciplinary action if they could not prove a liquidation had occurred. They would need to rely on another dealer, an ATS, or a broker's broker to obtain such a statement and were wary of such reliance. They were also concerned traders would be discouraged from bidding on below-minimum positions.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its request for comment that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The MSRB has proposed a "new safeguard" in light of its elimination of the need for a liquidation statement. The safeguard would prohibit a dealer engaged in an inter-dealer trade from selling less than all of a below-minimum denomination 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 denomination positions, the board said.

The MSRB is separately proposing to eliminate a condition it had put into its two additional exceptions proposed in April that would have required a dealer's sale to a customer to be consistent with any restrictions in the issuer's official statements regarding increment amounts.

Commenters had said the increment condition would unnecessarily limit the transfer of positions held by customers instead of providing more flexibility.

In addition to the two exceptions that would be affected by the liquidation statement's elimination, G-49 would incorporate two others, one that is already in existence and another that was proposed in April. The exception already in place allows dealers to buy from customers munis below the minimum denomination if the dealer determines, based on customer account information or a written statement from the customer, that the customer is selling its entire position in the bonds.

The second exception, proposed in April and added to G-49, would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds.

The draft rule will carry over provisions that applied to past exceptions and require a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

The rule would not, however, require such a written statement to be made to a customer who is brought up to or past the minimum denomination for the munis under the second proposed exception to the rule.

The Bond Buyer

By Jack Casey

September 27, 2016

MSRB Improves Bank Loan Disclosure on EMMA After Issuer Complaints.

WASHINGTON – The Municipal Securities Rulemaking Board has improved its EMMA system to make it easier for issuers to disclose bank loans and other alternative financings after state and local officials complained the process was too confusing and seemed to lose some of these disclosures.

The self-regulator, which has been a frequent advocate for voluntary disclosure of bank loans, introduced new, step-by-step instructions for issuers to use when submitting information on alternative financings to EMMA. The system now includes a bank loan disclosure tab on issuer homepages and contains an advanced search function that will allow users to search for securities associated with bank loan disclosures.

The MSRB will also hold an educational webinar on the new process geared toward issuers from 3:00 to 4:00 p.m. on Oct. 13.

“Feedback from issuer representatives suggested that a simplified method of submitting bank loan disclosures to EMMA would support making this important information available to investors and the public,” said MSRB executive director Lynnette Kelly. “With the new and streamlined process, the MSRB hopes to see more issuers submitting bank loan disclosures for display on EMMA.”

Bank loans and other financings have become popular for issuers because they can be used as a cheaper and less regulated alternative to municipal bonds. However, there is no requirement that issuers disclose such financings and any disclosure that does occur is done on a voluntary basis.

Under the new submission guidelines, issuers are instructed to begin by finding the area for creating a bank loan or alternative financing filing under the “continuing disclosure” tab on the EMMA Dataport Submission Portal. They will then be able to enter a description of the financing, disclose the date of the financing, and be given the choice of three options, depending on whether they know the CUSIP numbers that they want to associate with the loan. If they know the CUSIPs, they will be able to add them in an additional box. If they do not have CUSIP information, they can either search for the specific securities they want to associate by issuer name or state, or choose to only enter the issuer name and state without tying the financing to CUSIPs.

The new disclosure capabilities come after several discussions between the MSRB and market participants that took place earlier this year.

Issuers on the Government Finance Officers Association’s debt committee vented their frustrations about the complexity of bank loan disclosure on EMMA to MSRB chair Nat Singer during a meeting the committee held as part of GFOA’s annual conference in Toronto in late May. They emphasized that the problem has less to do with issuers not disclosing and more with the complexity of the system that was in place making it hard to correctly submit and find the disclosed information.

Ivan Samstein, chief financial officer for Cook County, Ill., and a committee member, told Singer that while there may be a problem with a lack of disclosure, it is overstated.

Jonas Biery, vice chair of the debt committee and senior business operations manager at the City of Portland, Ore.’s Bureau of Environmental Services, said that issuers didn’t know where to post the information and investors didn’t know how to find it, which led to the appearance of issuers largely

under-disclosing.

“From our perspective, we have this potential momentum to create this structure that facilitates issuer posting, but the EMMA system just didn’t quite seem to accommodate that,” Biery said at the time.

The MSRB circulated a concept release in March that asked market participants to weigh in on whether it should pursue a rule to require municipal advisors to disclose information about the bank loans or privately placed munis of their issuer clients. The MSRB said it considered requiring the disclosures from MAs because issuers had not readily responded to prior requests for voluntary bank loan disclosures on EMMA.

Most commenters on the concept release applauded the MSRB’s intent to increase disclosure but presented a host of reasons for why the concept of having MAs disclose bank loans is flawed. The main concerns centered on the likely threat to an MA’s fiduciary duty to its issuer client if the issuer didn’t want to disclose a bank loan but the MA was required to disclose it. Other commenters also questioned whether the MSRB had the statutory authority to require such disclosure.

The general consensus among commenters was that the issue would be better addressed with a change to the SEC’s Rule 15c2-12 on disclosure. The idea to change 15c2-12 has proved popular in the market and lawyers in the Securities and Exchange Commission’s Office of Municipal Securities have said they are exploring possible regulatory solutions that could address whether issuers should in some way be required to disclose information about their bank loans and privately placed securities.

The Bond Buyer

By Jack Casey

September 26, 2016

MSRB Seats New Board and Announces Priorities for New Fiscal Year.

Washington, DC – On October 1, 2016, the Municipal Securities Rulemaking Board (MSRB) began its new fiscal year and seated the 21-member Board of Directors that establishes regulatory policies and oversees operations.

Colleen Woodell, a Board member since 2013, takes over as Chair with a focus on advancing transparency initiatives, clarifying dealer syndicate rules and emphasizing the role of education in market regulation. “I look forward to guiding the continued evolution of the municipal market as it adopts necessary structural and transparency changes, and ensuring that all participants operate with integrity,” Woodell said. Board member Arthur Miller, who joined in 2015, serves as Vice Chair for the upcoming year.

Among the MSRB’s operating objectives for FY2017 are the expected implementation of a rule requiring dealers to disclose to retail investors information about dealer compensation when buying municipal bonds from, or selling them to, investors. “Our mark-up disclosure proposal will bring the municipal market in line with the equity market when it comes to investors’ understanding of the cost of their transactions,” Woodell said.

The MSRB also will continue to improve the usefulness and usability of the Electronic Municipal Market Access (EMMA®) website, with an evaluation of how it can best serve all stakeholders and the addition of features that support market transparency, including a new-issue calendar, third-party yield curves and, potentially, pre-trade price data.

In 2017, the MSRB also will expand its MuniEdPro course catalog to provide municipal market participants with high-quality, interactive educational content, and develop additional professional qualification standards for municipal advisors, including a principal exam and continuing education requirements. With respect to municipal advisor regulation, the MSRB will address advertising practices and activities of solicitor municipal advisors, and additional professional qualification requirements, including continuing education.

For the dealer community, the MSRB plans to update and clarify several uniform and fair practice rules, and scrutinize dealer syndicate practice rules for necessary changes.

The MSRB Board of Directors has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors. In March 2016, the Securities and Exchange Commission, which oversees the MSRB, approved lengthening the term of service for the MSRB Board members to four years from three. Under the new structure, four staggered classes—one class of six members and three classes of five members—will ensure consistent and manageable annual turnover.

Four standing committees—Steering, Audit, Finance, and Nominating and Governance—perform work at the direction of the Board, with responsibilities defined by their charters. See a list of MSRB Board members and their committee assignments below.

FY 2017 MSRB Board of Directors and Committee Assignments

Steve Apfelbacher – Finance (Chair) and Steering
J. Anthony Beard – Nominating and Governance
Renee Boicourt – Audit
Robert Clarke Brown – Finance, and Nominating and Governance
Julia H. Cooper – Audit
Ronald Dieckman – Nominating and Governance
Richard K. Ellis – Audit
Jerry W. Ford – Audit, and Nominating and Governance
Dall Forsythe –Finance
Richard Froehlich – Nominating and Governance
Gary Hall – Nominating and Governance, and Steering (non-voting member)
Lucy Hooper – Nominating and Governance
Mark Kim – Audit (Chair) and Steering
Kemp J. Lewis – Finance
Arthur Miller – Steering
Christopher M. Ryon – Steering and Nominating and Governance
Rita Sallis – Nominating and Governance (Chair), and Steering
Edward J. Sisk – Nominating and Governance
Patrick Sweeney – Finance
Dale Turnipseed – Nominating and Governance, and Steering
Colleen Woodell – Steering (Chair) and ex officio member of each committee

Date: October 3, 2016

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

MSRB Requests Comment on Establishing Continuing Education Requirements for Municipal Advisors.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft rule amendment to establish continuing education (CE) requirements for municipal advisors. The CE requirements would complement the MSRB's professional qualification program for municipal advisors, including an examination for municipal advisor representatives and a forthcoming examination for municipal advisor principals at municipal advisor firms.

The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that the MSRB develop professional qualification standards and CE requirements for municipal advisors. The draft amendments to MSRB Rule G-3, on professional qualification requirements, aim to establish robust CE requirements for municipal advisors while balancing the need to avoid unnecessary regulatory overlap with existing CE requirements for municipal securities dealers, who may also act as municipal advisors.

"Creating appropriate CE requirements for municipal advisors will ensure that firms provide minimum levels of training to individuals whose advice can have such a long-lasting impact on the financial health of states, cities and other municipalities across the country," said MSRB Executive Director Lynnette Kelly. "This is an important next step in the development of a comprehensive regulatory framework for municipal advisors."

The MSRB will host a free educational webinar on Thursday, October 20, 2016 at 3:00 p.m. to 4:00 p.m. Eastern Time to review the draft requirements and assist stakeholders in providing input on the proposal. Register for the webinar.

Read the request for comment.

Comments should be submitted no later than November 14, 2016.

Date: September 30, 2016

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

MSRB Seeks Comment on Creating New Rule to Clarify Minimum Denomination Provisions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. The revised provisions would form a new stand-alone rule.

The MSRB's minimum denomination regulations, currently provisions of MSRB Rule G-15 on customer transactions, are designed to protect investors in cases where municipal securities issuers determine that the complexity, risks, lack of disclosure or other factors make the securities inappropriate for a retail customer. The MSRB first sought comment in April 2016 on clarifying its minimum denomination provisions and adding exceptions that would be consistent with this investor protection intent and would also enhance liquidity for investors that hold positions below the minimum denomination. The MSRB has decided to gather additional public input before considering proposing any changes to the Securities and Exchange Commission.

"As a result of input from industry and other commenters, the MSRB believes that creating a clearer, stand-alone rule on minimum denominations will facilitate understanding and compliance with these investor protections," said MSRB Executive Director Lynnette Kelly. "We want to support the practical application of the prohibition while emphasizing the overall importance of adhering to the minimum denomination for certain transactions."

Draft MSRB Rule G-49 provides for several exceptions to the minimum denomination prohibition to facilitate liquidity for investors that for various reasons may own bonds in lots below the minimum denomination. The MSRB believes the proposed exceptions provide benefits to these investors while at the same time avoiding the creation of additional below-minimum denomination positions. The draft rule also aims to reduce administrative burdens when transacting in positions that resulted from customers totally liquidating their entire below-minimum position. Read the request for comment.

Comments should be submitted no later than October 18, 2016.

Date: September 27, 2016

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

NABL: MSRB Updates Congress on Implementation of Dodd-Frank Act.

On September 19, the Municipal Securities Rulemaking Board (MSRB) sent to the leadership of the Senate Banking, Housing and Urban Affairs and House Financial Services Committees a letter concerning the MSRB's creation of the core regulatory framework for municipal advisors (MAs). In the letter, MSRB Chair Nathaniel Singer detailed the MSRB's completion of a core regulatory framework for MAs through the implementation of MSRB rules, including MSRB Rule G-42 (establishing core standards for non-solicitor MAs) and MSRB Rule G-44 (creating supervision and compliance obligations for MA firms). In addition, the MSRB has created education and outreach initiatives for MAs. Singer also included in the letter that the MSRB's Electric Municipal Market Access (EMMA) system has been enhanced to include credit ratings from all major rating agencies, an economic calendar and an email reminder tool to alert municipal entities of approaching annual disclosure deadlines.

The MSRB's letter to Congress is available here.

MSRB Updates Congress on Completion of Core Regulatory Framework for Municipal Advisors.

In a letter to Congress on the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Municipal Securities Rulemaking Board (MSRB) describes the completion of its core regulatory framework for municipal advisors and the complementary education and transparency initiatives aimed at protecting municipal entities.

Read the full press release.

Read the MSRB's letter to Congress.

Issuers: Verify the Professional Qualifications of Your Municipal Advisor.

Working with a municipal advisor? Be sure to check their registration status and professional qualifications.

All municipal advisor firms must be registered with the Municipal Securities Rulemaking Board (MSRB) and the Securities and Exchange Commission (SEC).

View a list of all registered municipal advisor firms here or on the MSRB's website by clicking the Check Out Your Municipal Finance Professional button on the homepage, at msrb.org.

Municipal advisor professionals are also now required to take a professional qualifying examination developed by the MSRB. By September 12, 2017, every municipal advisory professional is expected to have taken and passed the MSRB's qualifying exam (Series 50) in order to continue providing municipal advisory services.

A list of associated persons at registered municipal advisor firms who have passed the Series 50 exam is available on the MSRB's website.

NABL: House Financial Services Subcommittee Holds Hearing on Municipal Securities.

On September 22, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled "Examining the Agenda of Regulators, SROs, and Standards-Setters for Accounting, Auditing, and Municipal Securities". Members of the panel included Securities and Exchange Commission (SEC) Office of Municipal Securities (OMS) Director Jessica Kane and Municipal Securities Rulemaking Board (MSRB) Executive Director Lynnette Kelly. Members of the committee were primarily concerned with protecting issuers and the public from high costs and providing investors with transparency in the muni market. During the hearing, a number of representatives raised specific concerns, including Rep. David Sweikert (R-AZ), who raised concerns regarding "extraordinary legal fees" for state and local governments when refinancing bonds, and Rep. Bruce Poliquin (R-ME), who raised concerns with "hidden costs" in negotiated sales as compared to competitive sales. Kane and Kelly continued to emphasize the

progress made by their respective agencies in transparency and disclosure. They specifically mentioned the SEC's MCDC Initiative and the MSRB's proposed markup of disclosure rules.

The witnesses' written testimonies and a recording of the hearing are available here.

MSRB to Lawmakers: 680 Firms, 4,500 Professionals Registered as MAs.

WASHINGTON – About 680 firms, with 4,500 associated professionals, were registered as municipal advisors as of September, the Municipal Securities Rulemaking Board's chairman told House and Senate committee leaders in a letter detailing the board's compliance with the Dodd-Frank Act.

"I am writing to update you regarding a major milestone for the MSRB," Nat Singer, the board's chairman told the leaders of House Financial Services and Senate Banking committees. "We have just concluded development of a core regulatory framework for municipal advisors, implementing a regime mandated by Congress under the [Dodd-Frank Act]."

The letter describes the new MSRB rules that make up that framework as well as the initiatives the board has implemented to protect municipal issuers and other entities and to enhance its EMMA system as well as its educational and outreach efforts.

The MSRB also created a majority-public member board, as mandated by the Dodd-Frank Act, which was signed into law by the president on July 21, 2010.

Dodd-Frank required non-dealer MAs for the first time ever to become subject to federal regulation and gave the MSRB regulatory jurisdiction over them.

On Sept. 30, 2013, the Securities and Exchange Commission adopted final registration rules for MAs, which defined the term "municipal advisor" and set forth exemptions from that definition. MAs must register with both the SEC and the MSRB.

The MSRB amended its Rule A-12 on registration to require new MA registrants to pay a $300 annual fee per professional in addition to a MA firm's payment of a $1,000 initial and a $1,000 annual fee. Singer told the committee leaders that the MSRB projects for its fiscal 2017, which begins on Oct. 1, that 3.2% of its revenues will be funded by MA fees.

Dodd-Frank also required MAs to become subject to a federal fiduciary duty to put their issuer and other clients' interests first before their own. MSRB Rule G-42, which took effect on June 23 of this year, establishes core standards of conduct for MAs under which they owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" to their clients requiring MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The rule requires written documentation of the advisory relationship between an MA and its client, including: the scope of services to be performed and the disclosure of any conflicts of interest or legal and disciplinary events; the specific fee structure associated with the engagement, and a

prohibition against the MA acting as a principal in muni transactions.

New Rule G-44 establishes supervisory and compliance requirements for MAs under which they must develop, implement and maintain supervisory procedures reasonably designed to ensure their MA activities comply with all regulatory requirements.

The MSRB has extended a number of its rules to MAs, including G-17 on fair dealing, G-20 on gifts and gratuities, and G-37 on political contributions. Rule G-37, which took effect on Aug. 17, is designed to prevent pay-to-play practices of giving contributions to state or local officials who can award MA business.

The MSRB also amended its Rule G-3 on professional qualifications requirements to define two classifications for MA professionals: representatives and principals. Both classifications of MAs are required to take and pass the Series 50 Municipal Advisor Representative Examination. The MSRB is developing a separate qualification exam for principals. The board also amended its Rules G-8 on books and records and G-9 on preserving records to require MAs to retain records on general business proceedings, gifts, gratuities, and written supervisory procedures, among other things.

Singer said MSRB protects municipal issuers and other entities through three mission-driven objectives: rules for broker-dealers and MAs that promote fair, and prevent fraudulent and manipulative, market practices; the collection and dissemination of underwriting and trade data; and education and outreach activities. The letter details those activities as well as improvements that have been made to EMMA.

The Bond Buyer

By Lynn Hume

September 20, 2016

House Financial Services Committee Holds Hearing on Municipal Securities Regulators.

On September 22, the House Financial Services Committee hosted a hearing with witnesses from the SEC, MSRB, FINRA, PCAOB and FASB to discuss their agenda in regulating accounting, auditing and municipal securities. Ranking Member Carolyn Maloney (D-N.Y.) asked about enforcement actions taken in the municipal market. The SEC's Jessica Kane replied that the MCDC initiative was introduced to address the lack of compliance with continuing disclosure initiatives, and called the program "incredibly successful." MSRB Executive Director Lynette Kelly's testimony focused on the "significant strides" made by the Board to promote and foster increased transparency in the municipal securities market.

- Hearing Summary
- Written testimony submitted by the MSRB
- Additional information about the hearing

How MCDC Has Changed Continuing Disclosure Practices.

LOS ANGELES – Municipal market participants here shared concrete examples of how disclosure is improving in the wake of the Securities and Exchange Commission's continuing disclosure voluntary enforcement initiative.

They pointed to the increased use of third party consultants and better written policies and procedures during a Tuesday panel focused on the effects on disclosure of the SEC's Municipalities Continuing Disclosure Cooperation initiative at The Bond Buyer's California Public Finance Conference.

They gave their examples during a Tuesday panel focused on the effects on disclosure of the SEC's Municipalities Continuing Disclosure Cooperation initiative at The Bond Buyer's California Public Finance Conference.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The commission most recently announced 71 settlements with issuers from 45 states on Aug. 25. Those issuers joined 72 underwriters that represented 96% of the underwriting market by volume and paid a combined $18 million as part of their MCDC settlements. It is unclear if the SEC plans to pursue additional issuer settlements.

Cyrus Torabi, a shareholder with the law firm Stradling Yocca Carlson & Rauth and moderator for the MCDC panel, said along with other panelists that the initiative has succeeded by focusing the muni industry's attention on disclosure in a way it had not been focused before.

"One thing that I have certainly noticed is that on almost every deal, there is a third-party consultant," he said. "Most underwriters require that. It's basically a market practice."

Torabi compared that general standard with one he remembers when he first started in munis. He said there would be a brief question on a phone call about whether the issuer had been in compliance with prior disclosure requirements. If the issuer said yes, that was enough to put it in the official statement.

Torabi and Eric Goldstein, principal administrative analyst with the Metropolitan Water District of Southern California, also said that underwriters as well as disclosure and underwriter's counsel have generally heightened their scrutiny of official statements.

Goldstein cited as an example a recent due diligence call he was on where close to half of the 38 written questions focused on disclosure. He added that the metropolitan water district did not file under MCDC.

Stephen Heaney, director of public finance for Stifel, said his firm, which paid $500,000 in a settlement under MCDC, has a new focus on due diligence in the aftermath of the voluntary enforcement program "in order for the SEC not to come back and get us again."

Torabi said one idea for firms and issuers to consider when thinking about strengthening future disclosure is to be clearer about when the information will be filed. Many times, an issuer's disclosure undertakings say that it will file its continuing disclosure information something like six months or 180 days after its fiscal year ends, he said.

“Those types of deadlines create ambiguity,” he said. Instead, firms should set an “actual, hard date” and stick to it, Torabi added. Several market groups, including the National Federation of Municipal Analysts, have suggested that in the past.

Torabi also noted that the SEC’s Rule 15c2-12 on disclosure requires the filing of audited financial statements, but not necessarily the full audited annual financial report. He recommended that one way for issuers to minimize liability would be to only file updated financial information instead of its entire comprehensive audited financial report as part of their continuing disclosure.

Heaney said that there should be discussions about what to include in disclosures from a financial perspective leading up to the filing of the primary offering document.

“If something was important enough to be put in the initial offering [documents] and it’s financial, then it really ought to be available to those in the secondary market,” Heaney said.

Bill Oliver, NFMA’s industry and media liaison who was in the audience during the panel, said he agrees with Heaney about information that is material for primary market investors being material for secondary market disclosure.

“This is essential for maintaining bond market liquidity,” he said.

Oliver added that the main lesson from MCDC is that compliance with secondary market disclosure needs to be taken seriously by issuers and that the idea of providing less about financial information and other relevant areas is flawed.

“Any suggestions that issuers provide less information to the market fails to understand the message that the SEC is sending in its MCDC program,” Oliver said. “The market needs more complete and timely financial information for the secondary market to function properly. The emphasis should be on providing more relevant information as quickly as soon as possible to the market, not in reducing issuer disclosure to diminish future liability.”

Heaney also addressed the idea of participants trying to determine what the SEC considers material under its Rule 15c2-12 requirements, saying the idea “seems to be continuing to be nebulous.” He urged underwriters and issuers to take an attitude of “if you’ve got mistakes, lay them out.”

During a separate panel later in the day, Mary Simpkins, senior special counsel with the SEC’s Office of Municipal Securities, briefly addressed the question of materiality by pointing out the examples of actionable conduct listed in the commission’s 143 MCDC settlements.

“With respect to MCDC, I think we have already given you 143 examples of situations which we have found to be material,” she said. “No matter how much guidance we put out, it’s never going to cover everything. If you’re not sure, just disclose it. You don’t have to figure out exactly where the line is.” In the first panel, speakers also touched on good guidelines issuers can have in place regarding disclosure.

Goldstein and other panel members highlighted the importance of written policies and procedures for issuers, something he said the metropolitan water authority has had formally since 2013. Its procedures outline the information that will be in annual filings, what triggers the need for a material event notice, as well as the duties of staff in preparing and filing disclosure information. He added the authority’s board approves primary disclosure documents twice a year and that with every approval, the staff reminds board members of their responsibility to review the information.

Kathleen Marcus, also a shareholder with Stradling, noted the importance of written policies and

procedures in connection with possible SEC enforcement actions, especially when an entity is seeking leniency.

“If you have policies in place, if you have designated people, you are going to be in a much better place if you get in the crosshairs of the SEC,” she said.

Issuers also need to stay on top of material events, the panelists said. Torabi used one of his clients as an example of an effective way to do that, saying that it has designated a staff person to check every one of the ratings associated with their deals every other Monday to see if they have changed. He and other panelists highlighted the need for such a point person who can focus on material events disclosure.

Goldstein recommended that issuers also make use of outside compliance firms like Lumesis as a “second set of eyes.”

The Bond Buyer

By Jack Casey

September 21, 2016

Why Dealers Are Struggling with Proposed Markup Disclosure.

LOS ANGELES – Dealers are struggling with how to comply with the Municipal Securities Rulemaking Board’s proposed markup disclosure requirements and whether they can create computer programs or rely on pricing services for compliance.

Their struggle was evident from panel discussions at The Bond Buyer’s California Public Finance Conference here.

Peg Henry, deputy general counsel for Stifel and former general counsel at the MSRB who moderated a panel on regulation, said the MSRB’s proposed prevailing market price guidance will prove problematic for dealers trying to create a computer program to comply with the requirements.

The MSRB filed rule changes with the Securities and Exchange Commission earlier this month that would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation they send the customer.

The rule filing contains guidance for dealers on how to establish the prevailing market price of a municipal security in order to calculate their compensation – the markup or markdown.

The guidance establishes a waterfall of factors for dealers to consider when determining the prevailing market price. They would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price.

They would then make a series of successive other considerations if that data is not available.

They can look at contemporaneous trades of the muni in inter-dealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

But dealers have told the MSRB that it would be difficult or impossible to establish computer models to go through the waterfall of factors.

During the session, Henry asked Robert Fippinger, the MSRB's chief legal counsel, if third party pricing services could qualify under the rule as economic models.

Fippinger said, "In the description of the economic model, I think the words … at least suggest without saying that the economic model could be developed by somebody outside the firm."

But he added that if a dealer chooses to use an outside pricing service, it would be in effect endorsing that service's analysis as comparable to the economic model envisioned by the guidance. He said he is not sure if pricing services would be able to rise to the level of economic models.

Meanwhile, Mary Simpkins, senior special counsel with the SEC's Office of Municipal Securities who was on that same panel, said OMS is exploring possible regulatory solutions that could address whether issuers should in some way be required to disclose information about their bank loans and privately placed securities. Issuers so far have only been encouraged to voluntarily disclose these financings.

The MSRB circulated a concept release earlier this year that asked whether it should require municipal advisors to disclose information about their issuer client's bank loans or privately placed municipal securities.

While the idea gained some traction, the majority of those who responded said they thought it would be a better idea to have the SEC address such a requirement in amendments to 15c212.

Participants on a panel on direct purchases on Thursday agreed that 15c212 would be an effective way to address bank loan disclosure.

Scott Nagelson, managing director and head of US Bank's Government Infrastructure Group, said he thinks an amendment to the rule "would be healthy."

"Standardizing [disclosure] would be a positive for all parties," he said. "I think we need to go ahead and do that and stop talking about it."

Rudy Salo, a partner with Nixon Peabody, also said that such a change "probably is the best fix" as it would keep small issuers who may only have one private placement in recent years from having to take on an unnecessarily large disclosure burden and keeping all issuers focused on the importance of ongoing disclosure.

Lawyers, regulators, and market participants on other panels also talked about how regulators could best address compliance questions and concerns from the market on disclosure and other issues.

Dave Sanchez, senior counsel with Norton Rose Fulbright and a former lawyer with the SEC's OMS who was on a second panel on regulation, said it was clear from the first panel that regulators' focus moving forward is "much more granular" and centered on issues included in the SEC's 2012 report on the municipal market.

"The 2012 SEC report laid out in broad categories what the SEC wanted to work on and I think a lot of what has happened since then and a lot of what is on the horizon is merely execution of that," Sanchez said.

He also said “the real big trick” moving forward for regulators within the SEC, MSRB, and Financial Industry Regulatory Authority is making sure there is consistency in the examination of dealers and municipal advisors and the enforcement of existing regulations.

“The coordination needs to increase five to tenfold,” he said. “I think folks that have experienced examinations … see a disconnect in what they hear from policymakers and what they experience on the ground.”

Additionally, he said, market participants need to realize that when responding to the SEC with comments and suggestions, their tendency to always put “their thumb on the scale” in insisting on their view can paralyze the commission from getting anything done and that a more effective approach would be to go for “80% of what they want instead of 110%.”

On the other side, he noted that regulators have a tendency to pursue “easy rules for them to hit someone with a violation” and that there needs to be “a little bit of relaxing on that point.”

One main issue for the market discussed during both panels was possible improvements to disclosure, including potential changes to the SEC’s Rule 15c212. Several market groups have recently asked the SEC to explore such changes or additional guidance. The rule was adopted for primary market disclosure in 1989 and then amended in 1994 to cover secondary market disclosure. It was amended again in May 2010, mostly adding and clarifying existing material event notices.

The Securities Industry and Financial Markets Association shared a white paper with the SEC in April that listed a number of proposed changes, including giving municipal advisors some continuing disclosure responsibilities. The National Federation of Municipal Analysts sent a letter in August asking the commission to review 15c212 with an eye toward establishing more standardization in terms of the form, content, and timing of the information the rule requires to be disclosed.

Panelists briefly discussed SIFMA’s idea for giving MAs some continuing disclosure responsibilities.

Leslie Norwood, managing director and co-head of municipal securities for SIFMA, explained that the white paper suggested that the SEC create an amendment to the rule or issue guidance that would raise the duty of municipal advisors and make them responsible for checking statements and offering documents on competitive transactions when an MA is engaged by an issuer in preparing an official statement.

MSRB Rule G42 on core duties of municipal advisors states that MAs have a duty of care with respect to the information they provide in preparation of an official statement and Norwood said that could be the basis for the change.

Sanchez, who was joined on his later panel by PFM’s chief compliance officer Leo Karwejna, emphasized the importance of interpretive guidance both on disclosure questions and others facing the market instead of new rules or undertakings that some view as giving more certainty.

“People always want certainty in the market,” he said. “It’s not going to happen. Across the board, you’re not going to have that level of certainty you want [and] honestly, that’s okay.”

He added that “the great thing about interpretive guidance … is [it is] actually not binding.”

“If you don’t agree … you have the ability to act differently,” he said. “At the same time, they give you more detail and more comfort on how you act on a day-to-day basis, which is what the market wants.”

Karwejna said he considers guidance “to be the most important thing [regulators] could do.”

“Interpretive guidance [and] staff guidance within the SEC is still a lift,” Sanchez said. “But it is much less of a lift than a full-blown rule.”

Both he and Karwejna suggested the SEC address disclosure through such updated guidance.

“I think they should focus on the practical elements of clearly delineating who is responsible for what,” Karwejna said, referring to the issuers, MAs, underwriters, and others who participate in disclosure.

Sanchez added that the SEC should work to “really push through interpretive guidance that addresses all of these questions from [the standpoint of] each participant” rather than “continue to jury-rig rules through 15c212 or put Rule G42 to partially apply to antifraud, which just really confuses the market and doesn’t solve [the] main issue which is to have better disclosure.”

Underwriters have “very legitimate questions” about their roles and the differences that arise between competitive and negotiated sales, he said. It would also be helpful to have written guidance from the commission that confirms that MAs’ responsibilities depend on their scope of services, Sanchez added.

Karwejna said he sees the real challenge for the SEC on 15c212 as considering what interests are really being protected and how it wants to make sure the rule is doing that.

“That to me doesn’t mean changing so that issuers have … to be directly regulated,” he said.

Sanchez responded by saying direct regulation “could be extremely simple” like the commission saying “issuers, you are required to do a contract that has these 15 things.”

“You [would] actually still preserve your gatekeeper role for broker-dealers because broker-dealers have the due diligence obligation anyway,” Sanchez said. “I think by letting underwriters affirmatively off the hook but putting a soft, not complicated, not paper-heavy requirement on issuers would get you where you need to go because in order to accomplish the transaction, you still have all these gatekeepers that are required to look at [the] documents.”

The Bond Buyer

By Jack Casey

September 22, 2016

NASACT Signs Letter Asking Senators to Support Classifying Municipal Securities as HQLA.

Read the letter.

BDA Submits Comment Letter on FINRA Gifts, Gratuities and Non-Cash

Compensation Rules.

Bond Dealers of America submitted its comment letter to FINRA in response to its request for comment on proposed amendments to its gifts, gratuities, and non-cash compensation rules.

BDA submitted its comment letter to FINRA in response to its request for comment on proposed amendments to its gifts, gratuities, and non-cash compensation rules. You can view FINRA's regulatory notice here.

FINRA has proposed to consolidate various interpretative guidance documents related to gifts and non-cash compensation into the FINRA rulebook. Additionally, FINRA is proposing to increase its gifts limit from $100 to $175 to account for the rate of inflation since the adoption of the $100 limit. BDA's letter recommends that FINRA:

- Should not raise its gifts limit, from $100 to $175, in order to remain harmonized with the MSRB to reduce any unnecessary compliance complexity for dealers
- Increase its gift limit to $200, if FINRA deems an increase necessary, to make record keeping easier to track for dealer firms

Other Notable Proposed Amendments

Expanding Non-Cash Compensation Rules:

FINRA has proposed to amend the non-cash compensation rules to cover all securities products

Internal Sales Contests:

FINRA has proposed a revised approach to internal sales contests to be based on total production of all securities

A New Requirement for WSPs:

FINRA proposes a requirement for firms to incorporate business entertainment into their written policies and supervisory procedures

Additional Information

BDA's December 2014 comment letter to the MSRB can be reviewed here.

09-23-2016

Watch Live: MSRB's Lynnette Kelly Testifies Before Congress on Market Transparency Priorities.

Watch the testimony.

MSRB Chair Nat Singer Submits Letter to Congress on Implementation of the

Dodd Frank Act.

Read the letter.

Bank Loan Disclosure Enhancements Coming to EMMA.

In order to facilitate the filing of bank loan disclosures on its Electronic Municipal Market Access (EMMA®) website, the Municipal Securities Rulemaking Board (MSRB) has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process for issuers and also enhance the ability of investors to locate available bank loan disclosures on EMMA.

The MSRB strongly encourages state and local governments to voluntarily disclose information about bank loans and other alternative financings to the EMMA website. The MSRB believes that disclosure of alternative financings is important to enable current bondholders and prospective investors to assess a municipal entity's creditworthiness and evaluate the potential impact of these financings.

Read more about the MSRB's market leadership in the area of bank loan disclosure and access additional resources and information.

NABL: House Financial Services Committee Approves Financial CHOICE Act.

On September 13, the House Financial Services Committee approved H.R. 5983, the Financial CHOICE Act, by a vote of 30 to 26. Under H.R. 5983, any funding the Municipal Securities Rulemaking Board gets from enforcement actions would go to the Treasury Department for deficit reduction. The bill would also move the Securities and Exchange Commission's (SEC) Office of Municipal Securities back to the SEC Trading and Markets Division, eliminating its direct reporting to the SEC Chair. The bill also incorporates legislation from Rep. Randy Hultgren (R-IL), which would clarify that the SEC's municipal advisor (MA) rule doesn't require issuers to hire MAs. The Financial CHOICE Act will now go to the full House of Representatives for consideration, although timing is uncertain. Given the few remaining days in the legislative session, it is quite possible that H.R. 5983 will not be acted on by the full House. There is no companion Senate bill.

Click here for a video of the markup, the text of the original bill, the text of the amended bill, and the recorded vote.

SEC Commissioner: Examine Regulating Corporate Conduit Borrowers.

In a speech at the Financial Industry Regulatory Authority's (FINRA) 2016 Fixed Income Conference, Securities and Exchange (SEC) Commissioner Michael Piwowar raised the possibility of renewed discussions about the regulatory framework for municipal bonds. He said that although in the past calls to repeal the Tower amendment have been rejected, "[r]ecent conversations, however, have led me to consider whether it is time to revisit the reach of the Tower Amendment." Noting the

diversity of municipal borrowers, from large state governments to local school districts to conduit borrowers, Commissioner Piwowar said, “it is worth considering whether each of these entities should be treated the same.” He specifically raised the possibility of regulating “certain conduit borrowers” while continuing to exempt “traditional municipal issuers.” Regulation of conduit borrowers was a recommendation of the 2012 SEC Report on the Municipal Securities Market.

Click here to read Commissioner Piwowar’s speech. The 2012 Report on the Municipal Securities Market is available here.

In a First Federal Jury Trial, Miami, Boudreaux Found Guilty.

WASHINGTON – In a first-of-a-kind verdict, a Miami jury found on Wednesday that Miami and its former budget director, Michael Boudreaux, were guilty of securities fraud for faulty disclosures in connection with three 2009 municipal bond offerings.

The jury decision in the case that was pending in the U.S. District Court for the Southern District of Florida in Miami comes after a trial of just over two weeks where the Securities and Exchange Commission faced off with lawyers for Miami and Boudreaux over the fraud charges.

Andrew Ceresney, the SEC’s enforcement director, said the commission is very pleased by the ruling.

“This was the first federal jury trial by the SEC against a municipality or one of its officers for violations of the federal securities laws,” Ceresney said. “We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws.”

Benedict Kuehne, Boudreaux’s lawyer, said he expects to appeal the jury decision, according to the Miami Herald. Kuehne and the lawyers representing Miami could not be reached for comment at the time of publication.

The SEC will now have to file a motion seeking remedies from the case, including an injunction barring Miami and Boudreaux from future securities law violations and financial penalties. The SEC has also asked the judge for an order that would command Miami to comply with a prior cease-an--desist order from 2003 that resulted from an earlier securities fraud case.

“Based on the jury’s findings, the SEC anticipates that the federal district court judge will also enter a finding that the city of Miami violated [the] prior SEC order, imposed after a fully litigated administrative trial, prohibiting it from engaging in fraudulent conduct,” Ceresney said.

The jury began deliberating Wednesday morning and returned with a verdict only a few hours later. It found that Miami was guilty on all four counts that the SEC sought, which were based in fraud provisions contained in Section 17(a) of the Securities Exchange Act of 1933 and Section 10b-5 of the Securities and Exchange Act of 1934. Boudreaux was found guilty on all counts except for the first, which was based in Section 17(a)(1) and would have required the jury to find that Boudreaux “used a device, scheme, or artifice to defraud in connection with the offer to sell or sale of any securities.”

Both Miami and Boudreaux had argued that they relied on auditors in connection with the alleged fraud and misrepresentations. The jury threw out that defense, finding that neither defendant

completely disclosed the facts about the conduct at issue to the auditors, sought advice from the auditors about their specific course of action, received advice from the auditors about that course of action, or relied on and followed the advice in good faith.

The SEC first filed its complaint 2013 alleging that starting in 2008, Miami and Boudreaux misled investors about inter-fund transfers that were designed to cover up a growing general fund deficit in its fiscal years 2007 and 2008. The SEC said the misleading transfers were also meant to get more favorable bond ratings for offerings that occurred in May, July, and December 2009.

The alleged omissions and misrepresentations were made in: bond offering documents for the three offerings in 2009 that totaled $153.5 million; presentations to bond rating agencies; and the city's comprehensive annual financial reports (CAFRs) for fiscal years 2007 and 2008, according to the SEC.

The city disclosed the inter-fund transfers in each of their CAFRs and official statements, but, according to the SEC, the defendants said the transfers contained money that was not expended and was being returned to the general fund. In reality, that money had already been pledged to several ongoing capital projects and some of it was restricted by city law for designated purposes and not the general fund, the SEC said. Thus, the funds that were transferred should not have been considered unallocated, the commission said.

Lawyers for Miami and Boudreaux had argued that the commission could not base its claims on the city's 2007 CAFR, which identified a $13.1 million transfer from the capital projects fund, because it was not incorporated into any of the three 2009 bond offerings cited in the complaint. They also argued that the 2008 CAFR did not have any misrepresentations because it provided information about the purpose of each of the three inter-fund transfers that took place in 2008. Those three transfers amounted to roughly $34 million and were made from the city's capital projects fund and a special revenue fund to bolster the general fund.

Additionally, the lawyers argued that the SEC was trying to hold their clients, who they say followed Governmental Accounting Standards Board and other recognized requirements, to a higher standard that does not exist. They also argued the rating agencies that eventually made determinations based on the information the city provided took a deeper look at Miami's finances than just looking at the fund transfers.

The Bond Buyer

By Jack Casey

September 14, 2016

SEC Allows MSRB to Provide Three-Year Old Trade Data to Academics.

WASHINGTON – The Securities and Exchange Commission has approved proposed rule changes from the Municipal Securities Rulemaking Board that would authorize the board to provide three-year old trade data for academic studies that would identify dealers in some way without naming them.

The SEC is still soliciting comments on an amendment filed by the MSRB that would make clear that the new data product would not include information about list offering prices and takedown

transactions. However, the commission said in its approval order that it found the amendment to be consistent with the purpose of the proposed rule change and that there is good cause for approving the proposed rule change with the amendment on an accelerated basis.

“By enhancing transparency in the municipal securities market, the proposed rule change is reasonably designed to protect investors, municipal entities, obligated persons, and the public interest,” the SEC said in its order.

Lynnette Kelly, the MSRB’s executive director, said the MSRB has taken measures to make the data “as rich as possible for researchers while guarding against the potential for reverse engineering to identify the dealers in a particular transaction.”

“By continuing to increase the availability and usefulness of data for academics, the MSRB hopes to encourage researchers to consider more sophisticated questions and conduct further studies of market behavior,” Kelly said.

The MSRB said in its filing with the SEC that it would publish the effective date for the rule change within 90 days of the date of the SEC order and that the effective date will be no later than 270 days after the commission’s approval.

The approved changes to create the product will be made to MSRB Rule G-14 on reports of sales and purchases, which requires dealers to report municipal security trade information to the MSRB’s Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB already makes much of that reported data publicly available through its EMMA system as well as through subscription services or historical data sets.

However, none of the data currently available includes information about the identity of the dealers, something that limits a researcher’s ability to fully understand secondary market trading practices, according to the MSRB. The self-regulator said the new data is the result of requests from certain academics for an enhanced version of RTRS trade data that includes dealer identifiers.

Academics showed their support for the new product in comment letters sent to the MSRB after the self-regulator first announced the idea in July 2015. However, Bond Dealers of America and the Securities Industry and Financial Markets Association said they were concerned that the identifiers would open their members up to harmful reverse engineering.

The MSRB responded to those concerns by strengthening the conditions that would apply to academics who use the product. Any academic institution that wants to access to the data product will have to agree: not to attempt to reverse engineer the identity of any dealer; not to redistribute the data in the product; to disclose each intended use of the data; to ensure that any data presented in work product be sufficiently aggregated to prevent reverse engineering of any dealer or transaction; and to return or destroy the data if the agreement is terminated.

The data will also only be available to academics associated with institutions of higher education and will have to be at least three years old. The MSRB originally planned to require the data be at least two years old.

SIFMA, in its comment letter to the SEC on the proposed product, generally approved of the MSRB’s changes to further protect against reverse engineering but had recommended the MSRB require the data to be at least four years old.

Leslie Norwood, SIFMA managing director and co-head of municipal securities, said SIFMA generally supports the changes and is pleased with the MSRB’s amendment but is disappointed that

many of the group's concerns "were largely dismissed in the adoption of the rule changes."

"We also do not believe that the suggested limitations in the user agreement are sufficient to prevent potential misuse of the data," Norwood said.

BDA said in its comment letter to the commission that "it is still very likely that, as a consequence of this proposal, private and non-educational entities will end up possessing full trade history including dealer names for every trade released."

John Vahey, director of federal policy for BDA, said BDA appreciates the MSRB's efforts to amend the rule to reflect BDA's concerns and urges regulators to be vigilant in protecting the integrity of the marketplace in the future.

The Bond Buyer

By Jack Casey

September 14, 2016

MSRB to Facilitate Municipal Market Research with New Academic Data Product.

Washington, DC – As part of an ongoing commitment to fostering greater understanding of trading practices in the municipal securities market, the Municipal Securities Rulemaking Board (MSRB) will develop an enhanced historical data product to provide institutions of higher education with post-trade municipal securities transaction data.

"The MSRB has long supported municipal market research that helps inform our regulatory and market transparency initiatives," said MSRB Executive Director Lynnette Kelly. "By continuing to increase the availability and usefulness of data for academics, the MSRB hopes to encourage researchers to consider more sophisticated questions and conduct further studies of market behavior."

The MSRB currently makes municipal securities trade data available to academics through a partnership with Wharton Research Data Services (WRDS) and through its own historical data product. The new academic data product will allow researchers to draw additional conclusions about patterns of trading in the market by including anonymous dealer identifiers. These identifiers will assist researchers in distinguishing transactions executed by specific parties, while still protecting the dealers' actual identities.

"The MSRB has taken several measures to make the data as rich as possible for researchers while guarding against the potential for 'reverse engineering' to identify the dealers in particular transaction," Kelly said. Read the regulatory notice for more details on the parameters of the academic product.

The MSRB collects secondary market trade data through the Real-Time Transaction Reporting System (RTRS), which is made available to the public at no charge on the Electronic Municipal Market Access (EMMA®) website and on a subscription basis for a fee. When fully developed in 2017, the new historical trade data product will be made available only to academic institutions.

Date: September 14, 2016

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

Jury Finds Miami Defrauded Bond Investors.

A federal jury found Wednesday that the city of Miami and its former budget director had defrauded bond investors by failing to truthfully disclose the city's deteriorating financial condition.

The verdict came in the first federal jury trial by the U.S. Securities and Exchange Commission against a municipality. The SEC last month settled other civil cases with 71 municipal issuers as part of an agency initiative to improve disclosure.

"We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws," Andrew Ceresney, director of the agency's enforcement division, said Wednesday.

Miami City Manager Daniel J. Alfonso said the city "has put into place procedures, policies and practices to improve transparency and accountability."

City Attorney Victoria Mendez said the city is reviewing its legal options. "While we respect the jury and the judicial process, we are disappointed in the jury's verdict," she said.

The jury found that Miami had committed securities fraud while reporting on the city's finances in 2007, 2008 and 2009. According to the SEC's complaint, Miami transferred dollars earmarked for specific capital projects between funds, enabling the city to meet its own reserve-fund requirements.

Miami bond offerings were subsequently rated favorably by rating firms, which later downgraded Miami after an auditor's report forced the city to reverse most of the transfers, the SEC complaint said.

Former City Budget Director Michael Boudreaux was found not liable on one count—using a fraudulent scheme—but was found liable for negligence and misrepresentations during his time as budget director, his lawyer said. The lawyer, Benedict Kuehne, said his client plans to challenge those portions of the verdict.

Mr. Kuehne described his client as a "responsible government officer who tried to do the right thing at all times."

Mr. Boudreaux said in an interview with The Wall Street Journal in 2011 that "there was no deception on my part." He said that others implemented the ideas to transfer funds and that he was fired in 2010 after speaking to federal investigators.

This is the second time Miami has run into trouble over disclosure issues. The SEC said Wednesday that it now expects the court to find Miami violated a 2003 SEC order prohibiting the city from engaging in fraud, which followed an administrative trial.

The verdict could be costly for Miami. An SEC attorney said in court the agency would make a

request for injunctive relief and monetary penalties the next two weeks.

THE WALL STREET JOURNAL

By HEATHER GILLERS

Updated Sept. 14, 2016 11:40 p.m. ET

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

SEC, City of Miami Lay Out Final Arguments in Bond Case.

MIAMI — The U.S. Securities and Exchange Commission and the city of Miami squared off in Florida federal court on Tuesday, with the regulator accusing city officials of playing a financial shell game to cut costs on a $150 million municipal bond sale in 2009.

In a 2013 complaint, the SEC alleged that the city and Miami's former budget director, Michael Boudreaux, violated the anti-fraud provisions of federal securities law.

Both the city and Boudreaux denied any wrongdoing in their closing arguments. The SEC is seeking an injunction against both parties as well as unspecified financial penalties.

The lawsuit alleges both the city and Boudreaux failed to tell credit rating agencies and investors they had churned money through various city accounts in an attempt to keep its general fund above a minimum, city-mandated, $100 million mark.

"They were playing a shell game of such epic proportions that years later, to unwind this, the city had to take money from people who serve, firemen, policemen, in order to replenish those capital projects," Amie Riggle Berlin, senior trial counsel for the SEC said in her closing argument.

"They failed to disclose anywhere in their financial statements that the projects from which they had taken money were operating at a deficit," Berlin said.

According to the SEC's complaint, in 2007 Boudreaux wrongly told city officials that certain money he planned to transfer into the city's general fund were unused.

"The city was told the transfer was from unused funds that could be transferred back to the general fund," said Scott Cole, a lawyer representing the city of Miami.

"The money was in plain sight not in some offshore bank account. He attached his work papers to his recommendation, that's not fraud," Cole told said.

Boudreax was fired in 2010.

His lawyer, Benedict Kuehne, said he was made a scapegoat.

"He's not a CPA. He relied on city personnel. He relied on CPAs. He used the information they had, that he obtained and did his level-headed analysis," Kuehne said, adding: "He put nothing in his pocket other than the city salary he earned."

Among the transfers redirected from capital projects into the city's general fund as its overall

finances were deteriorating were $13.1 million in fiscal 2007 followed by a similar, $24.4 million-transfer the following fiscal year, according to court documents.

The SEC also implicated the city itself after elected leaders voted to approve Boudreaux's transfers and administrators signed off on audited financial reports that were later presented to ratings agencies.

This is not the first time the SEC has sought legal recourse against Miami. The city is still under a 2003 cease-and-desist order tied to a series of 1995 bond issues that also violated anti-fraud provisions of the federal securities laws.

Municipalities across the nation are watching closely as this trial is among the first where a public employee is being personally charged for actions taken in their professional positions.

By REUTERS

SEPT. 13, 2016, 5:57 P.M. E.D.T.

(Reporting By Zachary Fagenson in Miami; Editing by Daniel Bases, Bernard Orr)

SEC's Miami Win Likely to Embolden Muni Crackdown: Lawyers

NEW YORK — The U.S. Securities and Exchange Commission's courtroom victory in a fraud case against the City of Miami will likely further embolden the agency in its years-long effort to more tightly regulate the $3.7 trillion municipal bond market, securities lawyers said.

A jury took only a few hours on Wednesday to find Miami and its former budget director Michael Boudreaux liable for securities fraud in the sale of over $150 million in municipal debt in 2009. The SEC had accused the city of "playing a shell game" by shuffling money among accounts to conceal its deteriorating financial condition from investors.

The SEC told the court on Wednesday it would present a request for injunctive relief and monetary penalties within two weeks. The city and Boudreaux, who argued the fund transfers had been approved by auditors and publicly disclosed, said they planned to appeal.

The verdict is a "big boost" for the SEC, making the agency likely to sue more municipalities, Bradley Bondi, a former SEC lawyer now with Cahill Gordon & Reindel, said in an interview. The SEC has been criticized for favoring administrative proceedings over trials to resolve cases, he noted.

The SEC had subjected the municipal bond market to light enforcement, for reasons that include a reluctance to impose penalties that might be passed on to taxpayers. But its stance changed following a wave of defaults during the financial crisis.

In 2010, the agency set up a special enforcement unit for municipal securities and public pensions. Since 2012, it has brought cases against 19 municipal issuers over faulty disclosures, most of which have settled or ended in default judgments. An additional 71 issuers settled charges last month through a special self-reporting program.

Other cases have targeted municipal officials with fines. Since the start of 2013, eight officials have

been hit with SEC civil penalties, compared to just five in the 15 preceding years, Robert Doty, a litigation consultant who tracks securities cases, said.

“It is truly a sea change and we have seen the SEC ramp up its municipal enforcement very aggressively,” Stephen Crimmins, a lawyer with Murphy & McGonigle who had previously led the SEC’s trial unit, said in an interview.

The Miami case also shows the SEC is losing some of its aversion to seeking financial penalties, said Kit Addleman, a former SEC lawyer now with Haynes and Boone in Dallas.

Now the SEC feels very strongly that “in some cases conduct is egregious enough that a penalty is the only way to drive the message home that the entity needs to clean up its act,” she said in an interview on Tuesday.

The SEC had won a 2003 cease-and-desist order against the city in a previous case over similar conduct. Miami’s repeat offense was a “rare situation” among muni cases, Bondi said.

In April, the SEC, which is only empowered to bring civil charges, announced a cooperative case with the U.S. Justice Department involving the criminal indictment of a town supervisor of Ramapo, New York, and one other individual over fraudulent disclosures in the sale of $150 million municipal bonds.

The SEC also has civil lawsuits pending against Rhode Island’s economic development agency and the municipality of Victorville, California.

“We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws,” Andrew Ceresney, director of the SEC’s division of enforcement, said in a statement following the Miami verdict.

Crimmins said municipal issuers would be challenged by the SEC’s more aggressive stance. Despite raising large sums of money, they largely fall short compared to corporations in terms of gathering financial data and evaluating and reporting it.

“Obviously this is a wake up call for people in the municipal securities area,” he said.

By REUTERS

SEPT. 15, 2016, 3:57 P.M. E.D.T.

(Reporting by Dena Aubin and Sarah N. Lynch; Editing by Anthony Lin and Richard Chang)

First Municipal Advisor Political Contribution Disclosures Due in October.

Effective August 17, 2016, new provisions of MSRB Rule G-37 address municipal advisors’ political contributions and municipal advisory business. Municipal advisors are now required to disclose to the MSRB, on a quarterly basis, information about their political contributions to municipal entity officials, state or local political parties, and bond ballot campaigns, as well as information about municipal entities with which they have engaged in municipal advisory business.

This information is submitted through electronic Form G-37 by the last day of the month following

the end of each calendar quarter. The first submission period for municipal advisors opens October 1, 2016 and ends October 31, 2016.

Refer to the MSRB Rule G-37 Submission Handbook for assistance submitting political contribution disclosures. The MSRB makes these disclosures available to the public on its Electronic Municipal Market Access (EMMA®) website to facilitate public scrutiny of the potential linkages between the giving of political contributions and the awarding of municipal advisory business.

SEC Approves FINRA & MSRB (Almost) Pay-to-Play Rules.

The SEC announced August 25 that it approved FINRA's pay-to-play rules governing placement-agent or solicitor broker-dealers and was "prepared" to approve the extension of MSRB Rule G-37 to municipal advisors as well.

The two rule proposals would complete the pay-to-play suite of rules across municipal securities dealers, investment advisors, broker-dealers, and municipal advisors. The bedrock Rule – MSRB's Rule G-37 governing municipal finance professionals and dealers – has been in place since 1994. After Dodd-Frank's expansion of municipal-advisory regulation, the SEC adopted a similar rule governing registered investment advisers, Rule 206(4)-5.

The latest proposals by the MSRB and FINRA complete the picture by extending Rule G-37 to municipal advisors and adopting a similar rule governing broker-dealers working with IAs and MAs.

The SEC's Order says it's ready to approve the MSRB rule proposals, but gives interested parties until September 19th to request a hearing. That might be a gambit to get past October 1st and into the next federal budget cycle: The SEC recently argued in pending litigation challenging the MSRB Rule that a Congressional budget rider prevents the agency from spending money on any effort to approve rules requiring political contribution disclosures. I discussed that here.

The SEC's order on the MSRB proposal, Rel. No. IA-4512, File No. S7-17-16, is here.

And on the FINRA proposal, Rel. No. 34-78683, File No. SR-FINRA-2015-056, is here.

Burr & Forman LLP

by Thomas K. Potter, III

September 6, 2016

SEC Announces Enforcement Actions Under Its Muni Bond Disclosure Initiative: Akin Gump

Last week, the Securities and Exchange Commission (SEC) announced that it brought enforcement actions against 71 municipal issuers and other obligated persons as part of the SEC's Municipalities Continuing Disclosure Cooperating (MCDC) Initiative. Specifically, the SEC claims that, from 2011 to 2014, the 71 municipal issuers and obligated persons sold municipal bonds using offering documents containing materially false statements or omissions about their compliance with

continuing disclosure obligations. As it previously announced, the SEC has also brought actions against underwriters for similar violations as part of the MCDC Initiative. The MCDC Initiative is designed to encourage issuers, underwriters and obligated persons to self-report certain violations of the federal securities laws in exchange for more favorable settlement terms. In the latest round of enforcement actions, the parties settled without admitting or denying the findings, agreed to cease and desist from future violations, and agreed to certain undertakings.

Continuing Disclosure Obligations

Rule 15c2-12 under the Exchange Act requires dealers, when underwriting certain types of municipal securities, to ensure that issuers enter into an agreement to provide information to the Municipal Securities Rulemaking Board (MSRB) on an ongoing basis. Such information includes annual financial information and operating data. Event notices are also required, which are triggered by, among other things, principal and interest payment delinquencies, nonpayment related defaults, changes in applicable bond ratings, bankruptcy and other significant events. In most cases, issuers or obligated persons must submit the required disclosure on or before the date specified in the continuing disclosure agreement or provide notice of failure to do so to the MSRB through the Electronic Municipal Market Access (EMMA) website. For bonds issued after December 2010, disclosure must be submitted to EMMA within 10 business days of the event.

In addition to preventing underwriters from purchasing and selling securities in the absence of a continuing disclosure agreement, Rule 15c2-12 generally requires the offering documents to contain a description of any material failure by the issuer to comply with its continuing disclosure commitments during the previous five years. The SEC may bring an enforcement action against the issuer under Section 17(a) of the Securities Act and/or Section 10(b) of the Exchange Act for any failure to provide such required disclosure. Because, according to the SEC, it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of an issuer's ongoing disclosure representations without affirmatively inquiring as to the issuer's filing history, the SEC may also bring an enforcement action against any underwriter of such securities. To defend against these actions, underwriters must demonstrate that they have exercised adequate due diligence in determining whether issuers have, in fact, complied with such continuing disclosure obligations during prior years. To this end, the SEC has stated that an underwriter may not rely solely on a written certification from an issuer regarding the fulfillment of past filing obligations.

Municipal Market Report and the MCDC Initiative

In 2012, the SEC released its Municipal Market Report, which listed the failure of issuers to comply with their continuing disclosure obligations as a significant problem. On March 10, 2014, the SEC launched the MCDC Initiative to encourage self-reporting by issuers, underwriters and other obligated persons of continuing disclosure violations. For eligible issuers and underwriters that report such violations, the Division of Enforcement recommends that the SEC accept a settlement pursuant to which the issuer or underwriter consents to the institution of a cease-and-desist proceeding under Section 8A of the Securities Act for violations of Section 17(a)(2) of the Securities Act. Additionally, the Division of Enforcement recommends a settlement in which the issuer or underwriter neither admits nor denies the findings of the SEC. The settlement includes certain undertakings by the issuers and underwriters, including establishing policies and procedures to prevent future violations, updating past delinquent filings, cooperating with subsequent SEC investigations and disclosing the settlement in future offering documents. For eligible issuers, the Division of Enforcement will recommend to the SEC a settlement with no civil penalty. For eligible underwriters, recommended civil penalties range from $20,000 to $60,000 for each offering containing a materially false statement, depending on whether or not the offering exceeds $30 million. Caps on the aggregate amount an underwriter is required to pay range from $100,000 to

$500,000 and depend on the size of the underwriter's revenue.

Considerations for Municipal Issuers and Underwriters

Given the SEC's increased focus on this area, issuers and underwriters should continue to review their policies and procedures relating to continuing disclosure. As part of this review, it is important to review an issuer's prior disclosure for any material violations of reporting obligations. Material violations, according to the SEC, include an issuer's failure to file or timely file annual audited financial information, annual operating information and quarterly reports. Material violations also include an issuer's failure to file notices of late filings as required under the continuing disclosure agreements. It is also important for issuers to develop processes to ensure compliance with disclosure obligations going forward.

Furthermore, the SEC has stated that for issuers and underwriters that would otherwise be eligible for the terms of the MCDC Initiative but do not self-report, there is no assurance that the Division of Enforcement will recommend terms as favorable in any subsequent enforcement recommendation. Additionally, the SEC has cautioned that enforcement actions outside of the MCDC Initiative could result in the SEC seeking remedies beyond those described in the MCDC Initiative, including increased financial penalties of both issuers and underwriters. Therefore, issuers and underwriters that discover material violations of disclosure obligations will likely need to consider whether such violations should be self-reported on the SEC's MCDC Initiative Questionnaire.

Last Updated: September 2 2016

Article by Alice Hsu, Lucas F. Torres and John Patrick Clayton

Akin Gump Strauss Hauer & Feld 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.

SEC Charges 71 Municipal Issuers and Obligated Persons Pursuant to Municipalities Continuing Disclosure Cooperation Initiative: Andrews Kurth

On March 10, 2014, the Securities and Exchange Commission's ("SEC") Enforcement Division (the "Enforcement Division") introduced the Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative"). The SEC's stated intent in introducing the MCDC Initiative was to address potentially widespread violations of federal securities laws by municipal issuers and obligated persons (each, an "issuer" and collectively, "issuers") and underwriters of municipal securities in connection with representations in bond offering documents related to prior compliance with continuing disclosure undertakings. To that end, the MCDC Initiative sought to incentivize issuers and underwriters of municipal securities to self-report possible violations by offering what the SEC described as favorable, standardized settlement terms to participants.

The MCDC Initiative accepted self-reported submissions from underwriters through September 10, 2014, and from issuers through December 1, 2014. The Enforcement Division began the MCDC Initiative on July 8, 2014, by charging one California school district and then shifted its focus to municipal underwriting firms. In three separate waves (occurring on June 18, 2015, September 30, 2015, and February 2, 2016, respectively), the SEC announced enforcement actions against a total

of 72 municipal underwriting firms. In its third announcement of charges against underwriters under the MCDC Initiative, the SEC affirmatively stated that the actions would "conclude charges against underwriters." According to the SEC, the municipal underwriting firms charged comprised approximately 96% of the market share for municipal underwriting services.

On August 24, 2016, the SEC announced that it had entered into settlement agreements with 71 issuers in connection with the MCDC Initiative. The SEC found that the issuers had sold municipal bonds using offering documents that contained materially false statements or omissions about their prior compliance with continuing disclosure obligations.

A review of the cease and desist orders relative to the settlements with these issuers provides the following insights:

- The bulk of the orders related to issuers that, despite either stating within official statements that the issuers had materially complied with prior undertakings or omitting to state whether they had so complied, failed to file annual financial information, audited financial statements, or both on more than one occasion during the prior five year period. This indicates that such failures are considered material failures to comply with a continuing disclosure undertaking. For example, one issuer "filed its audited financial reports for fiscal years 2006, 2007, 2009, and 2010 late by two months, two months, a month, and nine months, respectively, and failed to file timely certain operating data for fiscal years 2008 through 2010. [The issuer] also failed to file timely notices of late filings for each of those."
- Depending on the facts and circumstances, a single failure to file audited financial statements and/or annual financial information could be considered a material failure to comply with a continuing disclosure undertaking. For example, one issuer stated that it had not failed to comply with its prior continuing disclosure undertakings in any material respect, but it had actually filed one set of audited financial statements 1,014 days late. The orders did not contain any allegations of an issuer with a single failure to file within a short timeframe (i.e. less than one month after being due).
- Depending on the facts and circumstances, even an issuer's failure to file notices of defeasances could be considered a material failure to comply with a continuing disclosure undertaking. For example, in one order, the issuer "failed to file certain notices of defeasances prior to the offering, though due before, resulting in bonds in the outstanding principal amount of over $24.5 million trading with significantly different credit structures for up to two years." No other failures by that issuer were noted within the order. However, it is implicit in the order that the failure to file potentially caused a large number of bonds to be traded without material information regarding the security for the bonds.
- As evidenced by the repeated references in the orders to issuers failing to file notices of late and delinquent filings, the filing of such notices could potentially mitigate the consequences of the issuer's original failure to file. Similarly, many of the orders emphasized the fact that filings should have been made before the offering document at issue was circulated, indicating that an issuer could potentially lessen the severity of an enforcement action if it corrects any failures prior to subsequent bond offerings.

The summaries above are provided for illustrative purposes only. Notwithstanding the general insights from the cease and desist orders summarized above, if an issuer is concerned about either ongoing compliance with its continuing disclosure undertakings or potential exposure to an SEC enforcement action, it should discuss the matter directly with its bond counsel, disclosure counsel or both. In such an event, the issuer and legal counsel should assess the unique facts and circumstances of the issuer, its continuing disclosure compliance history and the potential legal consequences, if any, in light of the guidance afforded by the MCDC Initiative enforcement actions.

The issuers included within the August 24th actions were diverse, including two states, seven state authorities, eight special districts and local authorities, six institutions of higher education (including a non-profit education foundation), 31 localities, eight school districts, five hospitals, one retirement community, one charter school, and two private service providers. All issuers received what the SEC has characterized as "favorable settlement terms." Such terms included compliance with a cease and desist order, but did not contain an admission or denial by the issuer with respect to the SEC's findings or a requirement that the issuer pay fines to the SEC. In addition, the orders required the issuers to:

- establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the proceedings;
- comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings;
- cooperate with any subsequent investigation by the Enforcement Division regarding the false statement(s), including the roles of individuals and/or other parties involved;
- disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- provide the SEC staff with a compliance certification regarding the applicable undertakings by the issuer on the one year anniversary of the date of institution of the proceedings.

It is unclear whether the August 24th charges represent the only round of enforcement actions that will be brought by the SEC against issuers. Unlike the SEC's third round of actions against municipal underwriting firms, the SEC did not indicate that this would "conclude" their actions against issuers. Rather, the SEC stated that the actions were "**the first** against municipal issuers since the first action under the initiative was announced in July 2014." But some observers have speculated that this will be the only round of enforcement actions against issuers, noting that the SEC has already shown that continuing disclosure failures are not an isolated or infrequent issue. Other observers have speculated that the SEC will now pursue enforcement actions against issuers and underwriters that did not voluntarily self report pursuant to the MCDC Initiative. Since the MCDC Initiative did not apply to individuals, the SEC could also potentially pursue individuals involved in municipal offerings containing material misstatements and omissions related to compliance with prior continuing disclosure undertakings.

While it is not clear whether more charges against issuers will follow in connection with the MCDC Initiative, it is clear that the SEC is focused on material misstatements regarding prior compliance with continuing disclosure undertakings. According to the SEC, the "diversity among the 71 entities in these actions demonstrates that continuing disclosure failures were a widespread and pervasive problem in the municipal bond market." The cease and desist orders should send a strong message that representations within bond offering documents related to prior compliance with continuing disclosure undertakings should be diligently vetted by both issuers and underwriters.

Last Updated: September 1 2016

Article by James Hernandez, Thomas A. Sage, Rick Witte and Edward B. Morse

Andrews Kurth LLP

MSRB Proposes Historic Dealer Markup Disclosure for Retail Investors.

WASHINGTON – In an historic action, the Municipal Securities Rulemaking Board has filed a markup disclosure proposal with the Securities and Exchange Commission that MSRB said will likely lower transaction costs for retail investors, enable them to better understand dealers' pricing practices, and improve investor confidence in the municipal market.

The proposal to amend rules G-15 on confirmation and G-30 on prices is similar to one that the board released in September, but includes a few changes as well as the MSRB's robust defense of why muni markup disclosure is needed.

The proposed rule changes would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup and markdown in the confirmation they send the customer.

The rule filing with the SEC also includes guidance for dealers on how to establish the prevailing market price of a municipal security in order to calculate their compensation.

If approved by the SEC, the proposed rule changes would take effect no later than one year afterwards, the MSRB said.

The board told the SEC in the filing that the proposal "would provide retail customers with information similar to that currently received by retail customers in equity trades and muni trades in which the dealer acts in an agent capacity (on behalf of the customer).

The proposal also would "enable customers to evaluate the costs and quality of the execution service that dealers provide … improve communication between dealers and their customers, and make the enforcement of Rule G-30 more efficient," the MSRB said.

"The concept of providing this type of transparency of transaction costs for municipal securities was first floated 40 years ago," MSRB executive director Lynnette Kelly said in a release. "Charges in technology and in the municipal market have made it possible for investors to receive similar transaction information as investors in the equity market. This is a meaningful and historical shift for the municipal market."

"Our proposal will provide dealer compensation information on an estimated 8,000 retail investor municipal securities transactions each day," Kelly said. "That's a significant number of people who will have additional information about the cost of their transactions."

Dealer groups, firms and some issuers had complained the proposed rule changes would add complexity to the market and be burdensome and costly.

But the MSRB told the SEC that it believes the benefits of markup disclosure far outweigh any burdens to issuers.

The board said it "recognizes that some dealers may exit the market or consolidate with other dealers as a result of the costs associated with the proposed rule change relative to the baseline."

But it added that it, "does not believe — and is not aware of any data that suggest — that the number of dealers exiting the market or consolidating would materially impact competition."

The MSRB provided evidence from a survey of pricing data on its EMMA system that it said buttresses its contention that this kind of muni market disclosure is needed.

It analyzed various data reported to EMMA by dealers from July 1, 2015 through September 30, 2015 and found the average daily number of retail-size customer transactions in the secondary market for munis in which dealers acted as principals was 15,538.

About 700 firms reported trades during the period but the top 20 with the highest volumes accounted for about 73% of the muni trades.

The MSRB found that of the retail-size customer trades in which dealers acted as principals, about 55% would have likely received markup and markdown disclosures had the rule had been in place. Of those trades, 83% of the offsetting trades occurred within 30 minutes.

For those trades where they would have been markup and markdown disclosure, the estimated median markup value was 1.2% and the median markdown value was 0.5%. The MSRB found that "many customers paid considerably more than the median value," with at least 5% of them paying markups higher than 2.25%. At least 5% of customer sales had markdowns higher than 1.51%.

The board also said that joint investor testing by the Financial Industry Regulatory Authority and the board revealed that investors do not understand how dealers are compensated when they act in a principal capacity and that investors want more information on this topic.

The biggest change from the proposal released in September to the one filed with the SEC is that the MSRB decided the markup disclosure requirement would be triggered if the offsetting transaction occurred on the same trading day rather than over a two-hour period.

The MSRB kept the same three exceptions. Markup disclosure would not be required: if the offsetting trade is done by a functionally separate trading desk; for primary market trades at the list offering price; and for municipal fund securities.

For a muni trade subject to markup disclosure, a dealer would have to calculate the markup under Rule G-30 and related guidance and express the markup as both a percentage of the prevailing market price and a total dollar amount. The dealer would also have to provide a reference or hyperlink to the "security details" for the muni on EMMA, along with a brief description of the type of information available on that page. The dealer would also have to provide the time of execution.

The proposed changes to Rule G-30 and related guidance state that a dealer 'must exercise "reasonable" diligence in establishing the market value of a security and the reasonableness of the compensation received." Also, the markup or markdown "must be a fair and reasonable amount, taking into account all relevant factors."

Rule G-30 already prohibits dealers from engaging in principal transactions with customers except at aggregate prices (including any markup or markdown) that is fair and reasonable, the MSRB noted.

The changes to Rule G-30 show how to establish the prevailing market price, upon which a dealer's costs and markup or markdown is determined. The dealer's compensation would be the amount it charges over the prevailing market price when selling bonds and the difference between what it pays and the prevailing market price when buying bonds.

The MSRB proposes a "waterfall" or hierarchy of factors that dealers should look at in establishing the prevailing market price of a muni.

First, dealers should look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. The prevailing market price should not differ if the dealer trade is with another dealer or a customer.

If the dealer believes contemporaneous trades are not representative of market value, they can rebut the presumption that they determine the prevailing market price by showing changes in interest rates, changes in the credit quality of the debt, or news that has changed the market's perception of the market value of the security.

If the dealer does not have any contemporaneous trades of the muni security, it can look at contemporaneous trades of the muni security among other dealers. If it fines none, it can look at trades of that muni security between other dealers and institutional investors with which the dealers regularly trade that same security. If there are none, the dealer can look at alternative trading systems, or other electronic platforms, where trades occur at displayed quotations.

If there are no contemporaneous trades in the muni security or quotes for it, the dealer can look at contemporaneous trades of similar securities. A muni security would be similar if it had a comparable yield. Other "non-exclusive factors" that can be used to determine similarity include: credit quality; the extent to which there are comparable spreads; general structural characteristics and provisions of issue; the size of the issue, the float or recent turnover of the issue and legal restrictions on transferability; and comparable federal and/or state tax treatment.

If these factors cannot be used to find similar securities, dealers can consider prices or yields derived from economic models, the MSRB said.

The board cautions dealers against relying on isolated transactions or quotations, saying they should be given little or no weight in establishing the prevailing market value or price.

Dealer groups are still concerned about the proposal's complexity.

John Vahey, director of federal policy of the Bond Dealers Association said that while "BDA accepts the premise that retail investors may benefit from greater information on transaction costs, we urge regulators to more fully appreciate the operational complexity of the proposed rule and the significant difference between establishing prevailing market price in the context of fair pricing and creating an automated operational process that computes prevailing market price for inclusion on a customer confirmation."

"Dealers, especially smaller dealers, will need at least 18 months to develop and test new systems designed to comply with the rule, especially with other significant effective dates, including the Department of Labor's fiduciary duty rule, fast approaching," he said.

Leslie Norwood, a managing director and co-head of the muni division at the Securities Industry and Financial Markets Association said, "We are reviewing the proposal and will send a comment letter to the SEC. At first glance, it appears to be substantially similar to the FINRA filing. We believe there are significant implementation and operational issues that will likely require additional guidance."

The Bond Buyer

By Lynn Hume

September 2, 2016

BDA Submits Comment Letter to the SEC on FINRA's Retail Confirmation Rule.

Today, Bond Dealers of America submitted a comment letter to the SEC in response to FINRA's proposed retail confirmation disclosure rule.

BDA's letter focuses on:

- The urgent need for FINRA and MSRB to harmonize their rules from a policy, testing date, and effective date standpoint
- BDA urges regulators to appreciate the operational burdens associates with automating the process for making a 'prevailing market price' judgement
- Due to the operational and technology burdens of the rule and the other major rules that will be effective in the next 18 months, BDA urges regulators to adopt an effective date no earlier than June 2018
- BDA urges the SEC to institute proceedings on both the FINRA and MSRB filings to extend the time period for assessing the rules prior to approval or disapproval

Proposal Overview

Scope of Securities: Corporate and agency debt securities

Scope of Transactions: The proposal will apply to retail trades when a dealer has entered into an offsetting principal trade in the same security in a total quantity greater than the retail trade during the same trading day

Timing of Trades: FINRA proposes to have the rule apply to offsetting principal and retail trades that are executed on the same trading day as opposed to over a certain amount of hours during a given trading day

Disclosure Computation: FINRA has proposed to base the confirmation disclosure computation on the difference between the prevailing market price that exists at the time of the retail trade and the retail trade price

Proposed Exceptions: FINRA has proposed two exceptions to the rule for 'functionally separate trading desks' and for fixed-price offering transactions executed at the fixed offering price

Proposed Effective Date: No later than 365 days after the SEC approves the rule

A recap of BDA's April 2016 Member Fly-in Meeting with FINRA and MSRB can be viewed here.

BDA's December 2015 comment letters to FINRA and MSRB can be reviewed here.

Big Banks Don't Follow Goldman on Trump Donation Ban.

Firm aims to prevent breaches of rules on muni bonds and pensions; other banks weigh contributions case by case

Goldman Sachs Group Inc. has taken a hard line on contributions by its partners to Donald Trump's

campaign for fear of running afoul of municipal bond and pension rules. Its Wall Street peers aren't following suit.

J.P. Morgan Chase & Co., Bank of America Corp., Citigroup Inc., Morgan Stanley and Wells Fargo & Co. all said they currently had no plans for a blanket contribution ban. Instead, those banks are looking at contributions on a case-by-case basis.

Donations to the campaign of Donald Trump became an issue for Goldman because of vice presidential candidate Mike Pence, who is governor of Indiana. Goldman's roughly 550 partners received an email from the compliance department in late August instructing them that as of Sept. 1 they were banned from making campaign contributions to sitting state and local elected officials or candidates running for state and local offices. The email noted that this includes the Trump campaign. Other Goldman employees wouldn't be affected by the blanket ban.

The new policy, though, doesn't affect donations by Goldman partners and other employees to groups such as the Republican National Committee, an option that remains open and that has been communicated informally within the bank, according to a person familiar with the matter.

Rather, Goldman said the focus on the Trump campaign and Gov. Pence was aimed at preventing breaches of the Securities and Exchange Commission's pay-to-play rules. Those rules seek to prevent investment advisers from using political contributions to influence government officials charged with selecting underwriters for municipal securities or advisers for government investment assets, including state pension funds.

Under a rule adopted by the SEC in 2010, political contributions to state and local officials with influence over hiring investment advisers above a few hundred dollars trigger a two-year "timeout" period, during which the investment adviser can't receive compensation from the relevant government entity. The rule applies to contributions from firms' top executives and managing partners, employees who solicit a government entity for advisory business and any political-action committees they control.

Similar rules have covered municipal-bond underwriting since the 1990s. After John McCain tapped then-Alaska Gov. Sarah Palin as his running mate in 2008, the Municipal Securities Rulemaking Board, which makes rules regulating dealers of municipal bonds, sent a notice to the broker-dealer industry informing them that contributions to the McCain-Palin campaign would trigger the ban under its rules.

The pay-to-play rules aren't an issue for Hillary Clinton's campaign because neither she nor her running mate, Tim Kaine, is a state or local government official. Mr. Kaine is a U.S. senator for Virginia and a former governor of that state, but the rules don't cover federal officeholders or former officeholders.

Goldman's blanket contribution ban is especially notable because the firm isn't among the bigger Wall Street players in the market for underwriting municipal bonds. It has, however, served as an investment adviser to the Indiana Public Retirement System.

The firm may be taking a harder line because it has previously run "afoul of the municipal-bond pay-to-play rules," said Stetson University College of Law associate professor Ciara Torres-Spelliscy. In 2012, Goldman agreed to pay $12 million to settle charges that a former banker in its Boston office worked for the political campaign of a former Massachusetts treasurer while winning bond underwriting business in the state. The fine was the largest ever imposed by the SEC at the time for pay-to-play violations, said Ms. Torres-Spelliscy.

In addition, there has been concern within Goldman about “look-back” provisions in the rules. Even if an employee who isn’t covered makes a donation, this could later become an issue if that staffer moves into an area that is covered by pay-to-play rules, such as within certain areas of the firm’s municipal-bond or asset-management businesses. That has become more of a concern as employees move into the asset-management business, according to a person familiar with the matter.

Rivals aren’t being as strict. Instead of applying a ban to all senior staff, other banks are following longstanding policies of evaluating whether a particular individual’s role would make a proposed contribution a breach of pay-to-play rules.

At Bank of America, certain employees are supposed to get clearance from compliance officials before making any political contributions, a spokesman said. Citigroup employees, depending on their role and location, can be required to get clearance for political contributions, according to a spokesman. Policies at J.P. Morgan, Wells Fargo and Morgan Stanley are generally along the same lines.

Most big banks have their own political-action committees, but they usually don’t contribute to presidential candidates.

It is unlikely that the different approaches among big banks will tilt campaign fundraising either way. Even though political contributions from Wall Street banks in this election cycle have tilted Republican, much of that has gone to defunct campaigns of former candidates for the Republican nomination and campaigns for House and Senate seats, rather than to the Trump campaign.

Mrs. Clinton is the top recipient of campaign cash from employees of many of the big banks, according to data from the Center for Responsive Politics.

THE WALL STREET JOURNAL

By JOHN CARNEY and LIZ HOFFMAN

Updated Sept. 8, 2016 3:09 p.m. ET

—Emily Glazer and Christina Rexrode contributed to this article.

SEC Fines BOK Financial Over Municipal Bond Scheme.

BOK Financial Corp. has agreed to pay $1.6 million to the Securities and Exchange Commission to settle charges it failed to exercise proper oversight over a series of fraudulent bond offerings by a Georgia businessman.

The SEC also filed a complaint against a former senior vice president at the bank, Marrien Neilson. The agency said Neilson failed to properly oversee bond offerings by an Atlanta-based businessman, Christopher F. Brogdon.

Brogdon has been charged separately with fraud and ordered to repay $85 million to investors in a scheme to buy and renovate senior-living centers.

The SEC said BOK failed in its gatekeeper role as indenture trustee and dissemination agent for Brogdon’s bond offerings. Tulsa-based BOK Financial is parent to Bank of Oklahoma, the state’s

largest bank.

“BOKF was in a crucial gatekeeper position to stand up for bondholders and notify them about material problems with the bonds, but instead turned a blind eye and chose to protect Brogdon and the fees it collected from his deals,” said Lara Shalov Mehraban, associate regional director in the SEC’s New York office, in a news release Friday.

BOK did not admit or deny the SEC’s findings. The bank agreed to pay disgorgement of more than $984,000 in fees it collected on the bond deals. BOK also will pay a penalty of $600,000 and interest of more than $83,500. “With today’s settlement agreement, we can put this matter behind us and move forward,” Scott Grauer, BOK’s executive vice president, said in a statement. “Our company has built its solid reputation by being a good corporate citizen, serving the needs of clients and communities with integrity, and never sacrificing our values in the interest of short-term results.

“The actions of a former employee in this matter are completely contrary to our guiding principles. Our board of directors and audit committee have worked with the SEC to create policies and procedures to prevent this from happening again.”

BOK took a $1.6 million charge to its first-quarter earnings for legal contingencies related to the case.

The SEC said the bank and Neilson were aware that Brogdon was withdrawing money from reserve funds for the bond offerings and didn’t replenish the reserve accounts.

BOK and Neilson also were aware one of the nursing homes put up as collateral had been closed for years, the agency said.

The SEC said Brogdon, 67, amassed nearly $190 million from dozens of municipal bond and private placement offerings for nursing homes, assisted-living facilities and other retirement community projects. The agency said he commingled investor funds, diverting investor money to other business ventures and personal expenses.

According to its civil complaint against Neilson, the SEC said she brought Brogdon in as a client to BOK in 2000.

Neilson, 66, was a senior vice president in the bank’s corporate trust department from 2007 until she was fired in July 2015.

Some employees at the bank’s corporate trust department in Tulsa raised concerns with Neilson about the Brogdon bond offerings, the SEC said.

“They described the offerings to her as a ‘house of cards’ or that Brogdon was ‘robbing Peter to pay Paul,’ phrases they also heard used by brokers who called with questions about the status of the bonds,” the SEC said in the complaint.

“Neilson herself received at least one complaint in 2012 that Brogdon was running a Ponzi scheme. Nevertheless, Neilson never escalated these complaints internally at BOKF and did not express concerns to others in Tulsa Corporate Trust about the offerings.”

Neilson, a former Broken Arrow resident, has been living in Mexico since March, the SEC said in its complaint.

THE OKLAHOMAN

by Paul Monies

September 10, 2016 12:00 AM CDT

MSRB Leverages Learning Technology to Offer Municipal Market Education.

Washington, DC – Leveraging advances in online learning technology, the Municipal Securities Rulemaking Board (MSRB) today launched MuniEdPro, a suite of interactive, online courses about municipal market activities and regulations. Each MuniEdPro course provides real-world simulations that allow the learner to understand municipal securities transactions and the related market and regulatory considerations.

"We are excited to be able to combine our goal of providing relevant educational content with the latest digital learning methodologies," said MSRB Executive Director Lynnette Kelly. "Courses that improve the understanding of the municipal securities market—which is so important to investors and state and local governments—will benefit many market participants."

MuniEdPro courses are a resource for anyone looking to enhance their understanding of how municipal securities are issued, sold and traded. However, the courses are designed for financial professionals who want to reinforce their knowledge of the municipal securities market and its regulations.

The MSRB plans to regularly add courses to the MuniEdPro course catalog, which today features courses on:

- **The Decision to Borrow:** Roles and Responsibilities of Market Participants in Fixed-Rate, Primary Market Offerings; and
- **Rules and Risks:** Applying MSRB Rules in Relation to Municipal Market Risks.

"As we fully develop our new learning management system, we welcome feedback from market stakeholders to ensure that MuniEdPro meets the needs and expectations of its users," Kelly said.

Each MuniEdPro course is available for purchase individually or by subscription for organizations that wish to make MuniEdPro courses available to employees on a bulk basis or through an internal learning management system. Read more about MuniEdPro. Click here to access MuniEdPro.

The MSRB has provided municipal market education resources for many years, including free regulatory webinars and digital content available through its Education Center.

Date: September 6, 2016

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

Piper Jaffray Fined $12,500 Over Primary Market Disclosure Violations.

WASHINGTON – Piper Jaffray & Co. has agreed to pay a $12,500 fine after the Financial Industry

Regulatory Authority found it submitted 23 disclosure documents related to primary offerings late to the Municipal Securities Rulemaking Board's EMMA system.

Representatives from the Minneapolis-based firm could not be reached for comment. The firm accepted the settlement without admitting or denying FINRA's findings.

The self-regulator found that the late filings, which violated MSRB Rule G32 on disclosures in connection with primary offerings rules, took place from November 2014 through September 2015. Each of the late filings was related to primary offerings of municipal bonds that Piper Jaffray underwrote.

Of the 23 documents, 12 were official statements, one was an amendment to an official statement, eight were notices for offerings that were exempt under Securities and Exchange Act Rule 15c212 on disclosure, and two were advanced refunding documents. The submissions were filed from one to 27 business days late. The 23 documents represented 2.4% of Piper Jaffray's submissions to EMMA during FINRA's review period.

MSRB Rule G32(b) requires that the underwriter of a primary offering of municipal securities submit certain documents to EMMA by specified deadlines. Underwriters generally have to submit the official statement linked to the offering within one business day after receiving it and at the latest by the transaction closing date.

If Rule 15c212 exempts the offering and an official statement won't be created, the underwriter must submit a notice divulging that information along with the preliminary official statement by the closing date. If there is no preliminary official statement prepared, the underwriter must give notice of that fact.

Additionally, the rule states that if a primary offering advance refunds outstanding munis and an advanced refunding document is prepared, the underwriter must submit that document and certain other information within five business days after the transaction's closing date.

FINRA found that Piper Jaffray's late filings that violated those provisions were because of turnover in the staff of the department that was responsible for submitting documents to EMMA.

The firm did not have written policies and procedures that adequately addressed the possible effect of turnover on EMMA submissions and thus also violated MSRB Rule G27 on supervisions, FINRA said.

Piper Jaffray has since modified its written supervisory procedures and its supervisory system generally with regard to instructions about the process for submitting documents to EMMA, among other steps, according to FINRA.

The Bond Buyer

By Jack Casey

August 29, 2016

Treasury Department Releases 2016-17 Priority Guidance Plan for Tax-

Exempt Bonds - And It's Already About One-Third Complete!

On August 15, 2016, the Treasury Department released its 2016 – 2017 Priority Guidance Plan (the "Plan"). Tax-exempt bonds are the last category in the Plan, but the Plan lists the priority guidance categories in alphabetical order. Had these categories been listed in order of esteem, we know that tax-exempt bonds would have been [INSERT ESTEEM-BASED POSITION HERE].

Any respectable "to-do" list includes items that already have been, or soon will be, completed. This balances against the difficult items that have languished so that the person who created the list (or had it thrust upon him or her) has some sense of accomplishment. Otherwise, the creation or review of the to-do list would be the soul crushing experience that it's intended to be. By this standard, the Plan's priority guidance for tax-exempt bonds is an exceptionally well crafted to-do list. Sure, the seven items on the list include projects that have been there (and will very likely continue to be there) for years, but it also includes two items that are complete – one of which was completed before the Plan was released! So, what's the Plan for tax-exempt bonds? Read on.

Herewith are the Treasury Department's 2016 – 2017 priority guidance plan items for tax-exempt bonds:

1. Guidance on remedial actions for tax-advantaged bonds under §§54A, 54AA, and 141.
2. Regulations on the definition of political subdivision under §103 for purposes of the tax-exempt, tax credit, and direct pay bond provisions. Proposed regulations were published on February 23, 2016. As we have previously discussed (here, here, and here), these proposed regulations require nothing short of a page-one rewrite.
3. Revenue procedure that will update Revenue Procedure 97-13 relating to the conditions under which a management contract does not result in private business use under §141. This update was released in the form of Revenue Procedure 2016-44 on August 22, 2016.
4. Final regulations on public approval requirements for private activity bonds under §147(f). Proposed regulations were published on September 9, 2008. This is one of the languishing items that needed the ameliorative counterbalancing of a completed task.
5. Final regulations on arbitrage investment restrictions under §148. These final regulations were promulgated as Treasury Decision 9777 on July 18, 2016 (finalizing proposed regulations that were published on September 26, 2007 and September 16, 2013).
6. Final regulations on the definition of issue price for tax-exempt bonds under §148. Proposed regulations were published on June 24, 2015. As those that follow the tax-exempt bond industry and those that read our blog (there should be complete identity between these groups) know, these proposed regulations are quite controversial.
7. Regulations on bond reissuance under §150. This is another perennial task on the to-do list.

We have been summarizing and analyzing the tax-exempt bond guidance items in the Plan as they have been released (including in the iterative form of proposed regulations), so watch this space for more as the Treasury Department continues to release its tax-exempt bond guidance.

Squire Patton Boggs – Michael A. Cullers

USA August 31 2016

SEC Investor Advocate Worried About Narrowing of Muni Market.

WASHINGTON – Financial regulators and others should work to reverse the increased narrowing of the municipal market caused by fewer retail investors and more munis concentrated among wealthier bondholders, the Securities and Exchange Commission's Investor Advocate told regulators.

"Personally, I hope we can reverse this trend toward concentration of assets among fewer investors," Rick Fleming said in a speech at the Municipal Securities Rulemaking Board's Securities Regulator Summit on Aug. 25.

Fleming said that, as of December 2015, individuals owned approximately 70% of munis either directly or indirectly through mutual funds or other pooled investment vehicles with the average age of a muni investor at 62.

"However, if you drill beneath those statistics, some interesting – and some might say troubling – patterns emerge," he said.

Fleming noted that "a mere 2.4% of households hold any municipal debt," about half of what the percentage was in 1998.

Further, the wealthiest one-half percent of U.S. households now own 42% of all municipal bonds, compared to ownership of only 24% in 1989. Additionally, the bottom 90% of households, as measured by net wealth, hold less than 5% of munis, falling from 15% in 1989, Fleming said.

"How did muni bond ownership become a lifestyle of only the rich and famous, as opposed to an investment option for the middle and upper-middle classes?" Fleming asked.

The investor advocate traced the narrowing of holdings to munis' tax exemption. While the tax-exempt status is attractive when compared to other investments, the interest rate on munis is often lower than the interest rate on other taxable fixed-income securities like corporate bonds, he said.

Households in higher tax brackets have always had more incentive to invest in muni bonds, he said, adding "this is not news." In addition, the shift from defined benefit pension plans, where the plan sponsor promises payments based on a pre-defined formula rather than individual investment returns, to defined contribution pension plans, where the employer and employee both make regular contributions to an account, "seems to have significantly deteriorated the incentive for less wealthy persons to invest in munis," he said.

Fleming said that the lower-yield for lower-tax tradeoff that munis promise to investors tends to be less attractive to individuals that have tax-advantaged retirement accounts where all holdings are tax-deferred.

"It usually makes little sense to hold tax-exempt munis within an IRA, 401(k), or 403(b), and, as we might expect, research suggests that people who direct their savings into tax-advantaged retirement accounts are unlikely to hold munis," Fleming said. That means that muni investors are likely to be individuals who are wealthy enough to have fully funded their retirement accounts, he added.

While Fleming said more study is probably needed, he added it is "worth asking whether the tax benefits of municipal bonds, which were presumably intended … to incentivize investment in munis, are actually accomplishing that objective."

"Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields," Fleming said.

“Regardless of our views on income or wealth inequality, I think we can generally agree that the projects funded by municipal securities improve the quality of life for all Americans, so we all have an interest in making sure the marketplace is attractive to investors of all stripes,” Fleming said.

He further warned that “if the current trends continue and we see fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-too-distant future.”

The Bond Buyer

By Jack Casey

August 29, 2016

SEC Aims to Exclude Municipal Advisors from its Pay-to-Play Rule.

WASHINGTON – The Securities and Exchange Commission has announced it intends to issue an order that will allow municipal advisors that are also considered investment advisors to be excluded under its pay-to-play rule for investment advisers because they are now covered under a revised Municipal Securities Rulemaking Board rule.

The SEC’s pay-to-play rule, which is found in Rule 206(4)-5 under the Investment Advisers Act of 1940, prohibits an investment advisor from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to elected officials or candidates who can influence the award of advisory business.

According to the SEC filing, the order will be issued unless the commission holds a hearing. Any interested individuals can request a hearing by writing to the commission’s secretary by 5:30 p.m. on Sept. 19.

Municipal advisors, which are now included in the MSRB’s pay-to-play rule, can only be excluded under the SEC’s rule if the commission finds, by order, that the MSRB’s revised Rule G-37 on political contributions imposes substantially equivalent or more stringent restrictions on municipal advisors as the SEC pay-to-play rule imposes on investment advisors. It also must find that the revised MSRB rule is consistent with the objectives of the SEC pay-to-play rule.

Under the MSRB’s revised rule, municipal advisors, similarly to dealers, are now barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule for dealers. It allows a municipal finance professional or municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The SEC’s filing lists six examples of how the rules are substantially similar, including the two-year ban on engaging in muni business after a contribution and the prohibition on MAs and their professionals from soliciting contributions, or coordinating contributions, to certain municipal officials with which the MA is engaging or is seeking to engage in muni business.

The SEC and MSRB are currently in a legal dispute with three Republican state groups after the groups claimed the revised MSRB rule violates securities professionals' constitutional rights to free speech by making them choose between contributing to candidates and doing their jobs. The SEC has filed a motion to have the case dismissed during the last two months but a judge has not issued an order on the commission's motion yet.

The SEC's pay-to-play rule was also subject to a legal challenge from two of the three groups but that lawsuit was thrown out after a three-judge panel ruled the Republican groups failed to follow proper appeals procedures.

The Bond Buyer

By Jack Casey

August 26, 2016

SEC: Investor Protection in the Municipal Securities Markets.

Rick A. Fleming, Investor Advocate

U.S. Securities and Exchange Commission [1]

MSRB Municipal Securities Regulator Summit
Washington, D.C.

Aug. 25, 2016

Thank you, Lynnette [Kelly], for that kind introduction and for inviting me to participate in your event today. It has been a pleasure to spend time with a variety of regulators who are on the front lines of investor protection, and I appreciate the opportunity to provide some closing remarks for your conference. Of course, I need to remind you that the views I express are my own and do not necessarily reflect those of the Commission, the Commissioners, or Commission staff.

I have been the Investor Advocate at the SEC since early 2014, and since day one, I have actively supported a variety of reforms in the municipal securities markets. My interest in these issues is explained, in large part, by the high concentration of individual investors within the muni market. As of December 2015, approximately 41 percent of municipal bonds are owned directly by individual investors, and another 29 percent are owned indirectly through mutual funds or other pooled investment vehicles.[2]

However, if you drill beneath those statistics, some interesting—some might say disturbing—patterns emerge. First, we've seen a narrowing of the market. A mere 2.4 percent of households hold any municipal debt (either direct or indirect), and that figure is about half of what it was in 1998.[3] Second, as we've seen in other areas of wealth concentration, the wealthiest households own an increasing share of total municipal debt. The wealthiest one-half percent of U.S. households now own 42 percent of all municipal bonds, as compared to ownership of 24 percent in 1989. The bottom 90 percent of U.S. households, as measured by net wealth, now hold less than 5 percent of muni bonds, falling from almost 15 percent in 1989.[4]

How did muni bond ownership become a lifestyle of only the rich and famous, as opposed to an

investment option for the middle and upper-middle classes? Ironically, the answer appears to lie with the tax advantages of muni bonds. Given the favorable income tax treatment of muni bonds, households in higher tax brackets have always had more incentive to invest in muni bonds—this is not news to this audience. However, the shift from defined benefit pension plans to defined contribution retirement plans seems to have significantly deteriorated the incentive for less wealthy persons to invest in munis.

As you are no doubt aware, the interest on municipal bonds is exempt from federal income tax, and often from state and local taxes. However, given these tax benefits, which make muni bonds attractive as compared to other investments, the interest rate for muni bonds is usually lower than the interest rate on other taxable fixed-income securities such as corporate bonds.[5]

This lower-yield for lower-tax tradeoff may be attractive for certain investors, but it tends to lose its appeal within the context of a tax-advantaged retirement account, where all holdings are tax-deferred. It usually makes little sense to hold tax-exempt munis within an IRA, 401(k), or 403(b),[6] and, as we might expect, research suggests that people who direct their savings into tax-advantaged retirement accounts are unlikely to hold munis.[7]

As employers have shifted away from defined benefit pension plans, there has been a significant increase in tax-advantaged defined contribution plans such as 401(k)s.[8] One outgrowth of this trend, however, is that muni bonds may no longer be attractive for the average investor. Today's muni investors are likely to be those who are wealthy enough to have fully funded their retirement accounts and, unfortunately, recent data suggests this may be a relatively small proportion of the population.[9]

More study is probably needed, but I think it is worth asking whether the tax benefits of municipal bonds, which were presumably intended (at least in part) to incentivize investment in munis, are actually accomplishing that objective. Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields. But whatever the cause, if the current trends continue and we see fewer and fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-too-distant future.

Personally, I hope we can reverse this trend toward concentration of assets among fewer investors. Regardless of our views on income or wealth inequality, I think we can generally agree that the projects funded by municipal securities improve the quality of life for all Americans, so we all have an interest in making sure the marketplace is attractive to investors of all stripes.

Notwithstanding the current concentration of assets, we still have a big job to do. Even though only a small percentage of U.S. households hold municipal securities, that is still millions of people, and it represents a lot of hard-earned money—approximately $3.71 trillion, in fact.[10] And, because the average age of the muni investor is 62 years old,[11] it means that a lot of those investors are seniors, whose vulnerabilities may increase as they age.

This is why I, and many of you, have been fighting for reforms in the muni markets. Although there is still plenty of work to be done, the past few years are evidence that regulators can take strides toward an innovative, flexible market while continuing to protect investors. The MSRB and FINRA have continued to enhance Electronic Municipal Market Access (EMMA) and Trade Reporting and Compliance Engine (TRACE), respectively, so investors would have better access to pricing and other important market information. The MSRB finalized its best execution guidance for dealers and the best execution rule took effect on March 21, 2016. Additionally, FINRA and the MSRB continue to collaborate on a markup disclosure rule and the MSRB is considering interpretive guidance to

assist bond dealer in establishing “prevailing market price.” These are important initiatives that will make the markets a better place for investors, which will in turn make it a better place for issuers to get the funds they need for important projects.

As I close, I would like to take advantage of the fact that I am speaking to a group of regulators, and just extend my thanks, on behalf of America’s investors, for the jobs you do. Many of you have been on examinations of dealers, making sure they abide by the rules of the road and treat customers appropriately. Others have been involved in rulemakings that will improve those rules of the road. Some of you have worked to inform consumers about investment products or warn them away from scams, or you have personally talked to them and tried to give them whatever help they need.

Most days, you probably are not thanked for the work you do, but this is not one of those days. Thank you for all you do, each and every day, with little recognition or reward, on behalf of the American public.

[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author’s colleagues upon the staff of the Commission.

[2] Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, Fourth Quarter 2015, Table L.212 (Mar. 10, 2016, 12:00 PM), http://www.federalreserve.gov/releases/z1/current/z1.pdf.

[3] See Bergstresser and Cohen, Changing Patterns in Household Ownership of Municipal Debt: Evidence from the 1989-2013, (Current draft June 2015), at Figure 1; https://www.brookings.edu/wp-content/uploads/2016/07/Bergstresser-Cohen-with-tables.pdf.

[4] Id., at Figure 2.

[5] See https://www.investor.gov/introduction-investing/basics/investment-products/municipal-bonds.

[6] See, e.g., https://www.alamocapital.com/investment-products/bonds-and-fixed-income/municipal-bonds/ (“The placement of tax-free municipal securities into a qualified account is deemed to be an anomaly because (1) historically the yield on tax-free municipal securities is less than the yield on taxable securities, (2) the normally lower yield on municipal securities is justified by comparing its yield to the after-tax yield on taxable securities, and (3) the tax-free benefit is lost when “tax-free” securities are placed into a qualified account. The interest received from a “tax-free” security is taxed at ordinary income tax rates at the time it is withdrawn from the qualified account. Therefore the normal rule is that, given a choice, tax-free securities should be placed in a non-qualified account to retain their tax-free treatment.”).

[7] Id., at 3.

[8] See Rick A. Fleming, Protecting Elderly Investors from Financial Exploitation, Feb. 5, 2015, https://www.sec.gov/news/speech/protecting-elderly-investors-from-financial-exploitation.html (“Up until 1985, the aggregate value of defined contribution plans was less than half the value of defined benefit plans. By 2012, however, defined contribution plans were more than 50 percent larger than the aggregate size of defined benefit plans.”).

[9] According to the Employee Benefit Research Institute, 74 percent of American workers have saved less than $100,000 for retirement. 2016 RCS Fact Sheet #3, Preparing for Retirement in America, at Figure 3, https://www.ebri.org/files/RCS_16.FS-3_Preps.pdf.

[10] Federal Reserve Board, supra note 2.

[11] Bergstresser and Cohen, supra note 3 at Table 10.

SEC's Investor Advocate Talks Municipal Bonds.

The U.S. Securities and Exchange Commission's Investor Advocate Rick Fleming recently gave a speech discussing the state of the the municipal securities market.

Fleming noted approximately 41 percent of municipal bonds are owned by individual investors, while another 29 percent are owned by investors indirectly through mutual funds or other pooled investments.

However, there are some "disturbing" patterns beginning to emerge. Specifically, Fleming noted a "mere" 2.4 percent of households hold any form of municipal debt, which is half of what it was in 1998. On the other hand, the "wealthiest households" own an "increasing share" of total municipal debt, as the top one-half percent of U.S. households own 42 percent of all municipal bonds.

"Given the favorable income tax treatment of muni bonds, households in higher tax brackets have always had more incentive to invest in muni bonds — this is not news to this audience," Fleming continued. "However, the shift from defined benefit pension plans to defined contribution retirement plans seems [sic.] to have significantly deteriorated the incentive for less wealthy persons to invest in munis."

Naturally, interest on municipal bonds is exempt from federal income tax, and in many cases, state and local taxes. However, the yield on municipal bonds is often less than other taxable fixed-income securities.

The lower yield could be attractive for certain investors but it does lose its appeal within the context of a tax-advantaged retirement account where all holdings are tax-deferred. As such, it makes "little sense" for investors to hold tax-exempt municipal bonds in an IRA, 401(k) or 403(b).

This leads Fleming to question if the tax benefits of municipal bonds designed to encourage investment dollars are actually accomplishing the objective.

"Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields," Fleming expanded. "But whatever the cause, if the current trends continue and we see fewer and fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-to--distant future."

Jayson Derrick, Benzinga Staff Writer

September 01, 2016 11:12am

Do you have ideas for articles/interviews you'd like to see more of on Benzinga? Please email feedback@benzinga.com with your best article ideas. One person will be randomly selected to win a $20 Amazon gift card!

MSRB Seeks Mark-up Disclosure for Municipal Securities Transactions.

Washington, DC – In an effort to improve investors' ability to assess the cost of transacting in municipal bonds, the Municipal Securities Rulemaking Board (MSRB) today advanced a plan to require dealers to provide retail investors information about compensation dealers receive when buying municipal bonds from, or selling them to, investors.

Currently, retail investors in municipal securities receive less information about the cost of their transactions than investors in the equity market. The MSRB's plan, which was submitted to the Securities and Exchange Commission (SEC) for approval, seeks to provide municipal retail investors with meaningful and useful pricing information to help them better evaluate the overall cost of their transactions.

"The concept of providing this type of transparency of transaction costs for municipal securities was first floated 40 years ago," said MSRB Executive Director Lynnette Kelly. "Changes in technology and in the municipal market have made it possible for investors to receive similar transaction information as investors in the equity market. This is a meaningful and historic shift for the municipal market."

If approved, the MSRB's proposal will require a dealer to make the new disclosure when, for example, it sells a municipal bond in a principal capacity (for the dealer's own account) to a retail customer and on the same day buys the same security from a third party. In this case, the dealer would disclose on the customer's confirmation its compensation, or "mark-up," from the "prevailing market price" of the security. In addition to providing the dollar value and percentage of the dealer's compensation on a trade, the confirmation would include a reference to trade price data about the security on the MSRB's Electronic Municipal Market Access (EMMA®) website.

"Our proposal will provide dealer compensation information on an estimated 8,000 retail investor municipal securities transactions each day," Kelly said. "That's a significant number of people who will have additional information about the cost of their transactions."

The MSRB's rule filing includes guidance for dealers on establishing the prevailing market price of a security for the purpose of calculating their compensation. Because of the significance of the proposed rule, the MSRB wants dealers to understand its intent with respect to how the rule would apply to different trading situations and the practical realities of the unique municipal market, which has more than one million individual bonds, the majority of which do not trade frequently. The MSRB's guidance specifically addresses establishing the prevailing market price for contemporaneous customer transactions; the ability of dealers to calculate their compensation at the time of disclosure to a customer; the frequent absence of pricing information for sufficiently comparable municipal securities; and the implications of transactions with affiliated dealers.

If approved, the proposed mark-up disclosure rule will be effective no later than one year following SEC approval.

Date: September 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1300
jgalloway@msrb.org

SEC Approves MSRB's Shorter Period for Resolving Interdealer Failures.

WASHINGTON — Dealers will have 10 calendar days to close out failed inter-dealer transactions now that the Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's amendments to one of its rules.

The amendments to MSRB Rule G-12 on uniform practice require the 10-day closeout period and include an option for a one-time, 10-day extension if the buyer of the municipal security consents. The SEC approved the changes on Thursday and they will take effect on Nov. 16.

The MSRB's current rules for closeout procedures are included in a years-old portion of Rule G-12 and do not mandate a closeout time period. They instead recommend that a dealer who fails to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

The MSRB said when it first proposed the changes that they would help to lessen the effect of interdealer transaction failures on the market. The self-regulator's first proposal would have set the closeout timeframe at 30 days.

The Securities Industry and Financial Markets Association responded to that proposal by asking the MSRB to instead move forward with a 15-day time period with the possibility of a 15-day extension.

The MSRB, citing concerns about small dealers being overburdened by a shorter timeframe, then proposed having a 20-day closeout time period. SIFMA, with the support of the Bond Dealers of America, responded again, saying the MSRB's concerns were unwarranted and that the time frame should be further shortened to the ultimate 10-day period with the possibility of a 10-day extension.

"Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market," said MSRB executive director Lynnette Kelly after the SEC approved the amendments. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

In addition to the changes to the timeline for resolving interdealer failures, the SEC also approved MSRB proposals to allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business-day window. The amendments will also change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after notice by telephone.

While the time period for close-outs will be significantly shortened, the three interdealer options for remedying a failed transaction will remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The Bond Buyer

By Jack Casey

August 19, 2016

SEC Announces MCDC Issuer Enforcement Actions.

The Securities and Exchange Commission (SEC) today announced enforcement actions against 71 issuers for violations in municipal bond offerings. The cases are the first brought against issuers under the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative since the deadline for issuers to self-report on December 1, 2014.

The SEC's press release announcing the enforcement actions is available here.

The orders are available here.

SEC: Issuer Settlements Show Widespread, Pervasive Disclosure Problems.

WASHINGTON – The Securities and Exchange Commission's settlements with 71 issuers announced on Wednesday under a voluntary continuing disclosure enforcement initiative showed "a widespread and pervasive problem" with continuing disclosure in the municipal bond market but have led to some improvements, the SEC's enforcement chief said Wednesday.

The settlements, which include large and small issuers as well as non-profit borrowers from 45 states, were part of the SEC's Municipalities Continuing Disclosure Cooperation initiative, which promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The settlements included disclosure failures that occurred between 2011 and 2014 and were the first ones with issuers under the initiative since the first MCDC action was announced against California's Kings Canyon Joint Unified School District in July 2014.

Andrew Ceresney, director of the SEC's enforcement division, said the commission has seen a dramatic uptick in the number of disclosure filings with the Municipal Securities Rulemaking Board since the MCDC initiative was announced in 2013.

"We think that … market participants are much more focused on [disclosure] issues and [there are many] more that are complying at a much greater rate than they were prior to the initiative," said Andrew Ceresney, director of the SEC enforcement division. "Having said that, we are obviously going to monitor the market closely to make sure that these types of violations are not continuing, but signs are that the market has gotten the message."

However, Ceresney made clear that the scope and diversity of the 71 issuers and borrowers that settled "demonstrate that continuing disclosure failures were a widespread and pervasive problem in the municipal bond market."

Ceresney refused to comment on whether the initiative's findings warrant SEC regulation of issuers' disclosures, saying this is a policy rather than an enforcement matter. He also declined to comment on whether the SEC is investigating any issuer officials in connection with the settled cases.

The enforcement chief said the SEC believes it is important to hold individuals accountable and that he can't rule out actions against individuals in the future.

Ceresney also refused to comment on whether there will be more rounds of issuer settlements under the initiative or how many reporting issuers the SEC reviewed under the program. The underwriter settlements came out in three rounds. The SEC fined 72 muni underwriting firms, comprising 96% of the market share for muni underwritings a total of $18 million.

One lawyer speculated that the SEC did not disclose whether there would be more settlements because of a disagreement within the commission about whether to proceed with the initiative.

The lawyer said it would not be surprising if this is the only round of issuer settlements because the SEC had decided to only go after the most egregious examples of issuers not meeting their disclosure obligations.

"The point is that they clearly were trying to get a representative [group], at least one from each state, and trying to show it was across-the-board," the lawyer said, adding there's "a good likelihood" the SEC "may just declare victory and go home."

Another lawyer said the wording of the SEC's announcement seems to indicate there may be more rounds. The SEC's release said, "Today's actions are the first against municipal issuers since …."

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said in the release that because the issuers voluntarily agreed to take steps to prevent future violations, both they and their investors have benefited from the initiative.

Each of the issuers settled without admitting or denying the SEC's findings and agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding continuing disclosure obligations to ensure compliance with federal securities laws. They each also agreed to designate an individual or officer responsible for ensuring they are compliant with their policies and procedures, which must be adopted within 180 days of the settlement. The designated individual will also be responsible for implementing and maintaining a record of the issuer's disclosure training.

Additionally, the issuers agreed to bring themselves into compliance with all of their continuing disclosure undertakings, including past delinquent filings, within 180 days of the settlement if they are not currently in compliance. They will have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

The issuer settlements bring the total number of settlements under the initiative to 142 actions against 143 respondents. Although there were 71 issuers named in the actions the SEC announced Wednesday, two Connecticut-based issuers, Lawrence & Memorial Hospital Inc. and its parent corporation Lawrence & Memorial Corp. were combined into one action. The 71 issuers include two states: Minnesota and Hawaii. Seven of the issuers were state authorities, including several focused on transportation, and 29 were localities, which ranged from small towns to larger counties. Additionally, there were seven local authorities, nine school districts or charter schools, and six colleges or universities. Also included were five healthcare providers, five utilities, and one retirement community.

The issuer settlements were somewhat similar to the ones for underwriters in that they included both negotiated and competitive bond deals, although negotiated transactions were more heavily represented.

The SEC also listed each issuer or obligated person's violations in bullet-point form as it did for underwriters. Numerous issuers only had one bullet point listing violations in their settlements and

the majority had three or fewer. However, some, like the Andover, Kan. and the Township of East Brunswick, N.J., had five. Berrien County, Mich. had the most bullet points listed, with seven.

The conduct the SEC cited in the settlements ranged from instances where issuers failed to disclose that they had not made continuing disclosures at all to those where the disclosures were very late or incomplete. They also included situations where issuers made false statements that they were in compliance with their continuing disclosure agreements as well as those where issuers were silent about their continuing disclosure and misled investors by omission.

Failure to file a material event notice was also mentioned for example in the settlement with Missouri-based Ascension Health Alliance, which the SEC found failed to file certain notices of defeasances before a 2012 negotiated offering.

The settlements were unlike those with underwriters in that the issuers and borrowers were not fined.

Bond Dealers of America and the Securities Industry and Financial Markets Association each said in releases that MCDC has been a difficult process for the market and urged the SEC to revise and update its Rule 15c2-12 on disclosure.

Citing its recent study of disclosure in the 50 states, SIFMA added it believes “states are in a unique position to improve municipal disclosure” and it would like to see states “adopt policies to insure that local government issuers, at a minimum, meet all federal and contractual requirements.”

The settlements may provide fuel for the National Federation of Municipal Analysts’ recent disclosure recommendations, including one calling for the SEC to regulate issuers’ disclosure practices.

The Bond Buyer

By Jack Casey

August 24, 2016

SEC Aims to Exclude Municipal Advisors from its Pay-to-Play Rule.

WASHINGTON – The Securities and Exchange Commission has announced it intends to issue an order that will allow municipal advisors to be excluded under its pay-to-play rule for investment advisers because they are now covered under a revised Municipal Securities Rulemaking Board rule.

The SEC’s pay-to-play rule, which is found in Rule 206(4)-5 under the Investment Advisers Act of 1940, prohibits an investment advisor from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to elected officials or candidates who can influence the award of advisory business.

According to the SEC filing, the order will be issued unless the commission holds a hearing. Any interested individuals can request a hearing by writing to the commission’s secretary by 5:30 p.m. on Sept. 19.

Municipal advisors, which are now included in the MSRB’s pay-to-play rule, can only be excluded

under the SEC's rule if the commission finds, by order, that the MSRB's revised Rule G-37 on political contributions imposes substantially equivalent or more stringent restrictions on municipal advisors as the SEC pay-to-play rule imposes on investment advisors. It also must find that the revised MSRB rule is consistent with the objectives of the SEC pay-to-play rule.

Under the MSRB's revised rule, municipal advisors, similarly to dealers, are now barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule for dealers. It allows a municipal finance professional or municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The SEC's filing lists six examples of how the rules are substantially similar, including the two-year ban on engaging in muni business after a contribution and the prohibition on MAs and their professionals from soliciting contributions, or coordinating contributions, to certain municipal officials with which the MA is engaging or is seeking to engage in muni business.

The SEC and MSRB are currently in a legal dispute with three Republican state groups after the groups claimed the revised MSRB rule violates securities professionals' constitutional rights to free speech by making them choose between contributing to candidates and doing their jobs. The SEC has filed a motion to have the case dismissed during the last two months but a judge has not issued an order on the commission's motion yet.

The SEC's pay-to-play rule was also subject to a legal challenge from two of the three groups but that lawsuit was thrown out after a three-judge panel ruled the Republican groups failed to follow proper appeals procedures.

The Bond Buyer

By Jack Casey

August 26, 2016

SEC Says 71 Muni Borrowers Lied About Disclosure Histories.

The U.S. Securities and Exchange Commission said it reached settlements with 71 state and local borrowers for lying to investors about their compliance with disclosure requirements when they sold bonds in the $3.7 trillion municipal market.

Issuers from New York's Syracuse University to Boulder County, Colorado, to Hawaii voluntary self reported "materially false statements or omissions about their compliance with continuing disclosure obligations" in bond offering documents from 2011 to 2014, the SEC said in a statement. Muni issuers are required to provide investors with annual financial reports and other material event information that could affect the value of their debt.

"Continuing disclosure failures were a widespread and pervasive problem in the municipal bond market," Andrew Ceresney, director of the SEC enforcement division, said in the statement. The

actions will bring attention to disclosure problems in the market and lead to increased compliance, he said.

The actions came under an SEC initiative to crack down on disclosure failures by offering issuers favorable settlement terms in exchange for self-reporting material misstatements and omissions about their compliance with disclosure requirements. Under terms of the settlement the issuers will "cease and desist" from future violations and establish procedures to ensure compliance in the future. The SEC has brought 143 actions over disclosure in the market, according to the release.

Minnesota Example

In 2012, the SEC said in a report that failure to properly comply with disclosure requirements was "a major challenge" for investors trying to find information about their municipal-bond holdings. In February, 14 underwriters agreed to settle allegations by the SEC that they issued bonds for municipalities that failed to make adequate disclosures.

Minnesota, for example, told investors that it hadn't failed to comply with disclosure requirements in bond issues in 2011 and 2013, when in fact it had failed to file required audit reports in 2008 and 2010 for previous bond issues, according to the SEC's order.

The state's commissioner of management and budget failed to comply "in all material respects with its commitment to provide certain types of continuing disclosure," the order says.

S&P Expectations

The settlement has afforded Minnesota the opportunity to improve its disclosure, said Myron Frans, the commissioner, who joined the agency in January 2015, in a statement in response to the SEC order.
"Transparency is a critical function of government and I am glad to report that our agency published these required disclosures last August, almost one year in advance of the SEC's order," Frans said in the statement.

Meanwhile, when the state sold nearly $799 million of general-obligation bonds earlier this month for highways, economic development and higher education, it detailed its disclosure failures in 2012 and some prior years, according to the official statement.

S&P Global Ratings, in a report Aug. 15 in anticipation of the disclosure settlements, said it would consider the potential credit implications of each agreement on a case-by-case basis, but that it would expect limited impact on the credit quality of issuers.

Bloomberg Business

by Darrell Preston

August 24, 2016 — 9:52 AM PDT Updated on August 24, 2016 — 12:25 PM PDT

SEC Charges 71 Muni Issuers for Misleading Investors.

(Reuters) – (Story corrects paragraph 4 to show a Minnesota county municipal finance official did not immediately respond to a request for comment and a state municipal finance official could not

immediately be located for comment, not that an official in Minnesota's finance department did not return a call for comment.)

The U.S. Securities and Exchange Commission has charged 71 municipal bond issuers, including the states of Hawaii and Minnesota, as well as related entities, for using offering documents that misled investors, the agency said on Wednesday.

The actions, brought under an SEC initiative that encouraged municipal bond issuers to self-report certain violations, involved conduct that occurred between 2011 and 2014, the SEC said. The initiative offered favorable settlement terms in exchange for self-reporting, the SEC said.

All of the entities involved settled with the SEC without admitting or denying the SEC's findings, the agency said.

A county municipal finance official in Minnesota did not immediately return a call requesting comment. A state municipal official could not immediately be located for comment. A Hawaii finance department spokesman could not be reached for comment.

The action covers a wide range of other issuers and entities, including the Ohio State University, the city of Memphis, the town of Hilton Head Island, South Carolina, and the Delaware Transportation Authority, according to the SEC.

The SEC said that issuers in the case sold municipal bonds using offering documents that contained materially false statements or omissions about their compliance with continuing disclosure obligations.

Continuing disclosure provides municipal bond investors with important information, such as annual financial reports, on an ongoing basis. Failure to comply with continuing disclosure mandates is a "major challenge for investors seeking information about their municipal bond holdings," the SEC said.

Settlements in the cases require the parties to reform their policies, procedures and staff training related to continuing disclosure obligations and to update past filings, among other things, the SEC said.

The cases raised hackles at the Securities Industry and Financial Markets Association (SIFMA), a trade group, which on Wednesday called for broad changes in regulation and practices, given the widespread nature of the enforcement actions by the SEC, first against dealers and now against issuers.

SIFMA supports a "robust disclosure regime" in the municipal market, but has "serious concerns" about how the SEC carried out the self-reporting initiative for municipal bond issuers, SIFMA said in a statement.

By REUTERS

AUG. 26, 2016, 11:51 A.M. E.D.T.

(Reporting by Suzanne Barlyn; Editing by Frances Kerry and Meredith Mazzilli)

SIFMA Statement on SEC MCDC Enforcement Action.

New York, NY, August 24, 2016 – SIFMA today released the following statement from Kenneth E. Bentsen, Jr., president and CEO of SIFMA, on the MCDC enforcement action announced today by the Securities and Exchange Commission:

"SIFMA supports a robust disclosure regime in the municipal market to ensure that investors have timely access to the information they need to evaluate their investments. We have serious concerns about how the SEC executed the MCDC Initiative. Given the widespread nature of the enforcement actions by the SEC, first against dealers and now against issuers, we believe that broad changes in regulation and practices are warranted.

"To that end, as outlined in our June 2016 letter to SEC Chair White and in our April 2016 white paper, we urge the SEC to revise and update Rule 15c2-12 to improve interpretive guidance with respect to compliance. We also encourage the MSRB to leverage its existing infrastructure and technology to improve investor access to disclosures. In addition, as found in our recent 50-state review of state policies governing local government bond issuance, information disclosure and financial audits, we believe the states are in a unique position to improve municipal disclosure and would like to see states adopt policies to insure that local government issuers, at a minimum, meet all federal and contractual requirements."

Release Date: August 24, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

S&P: What Will A Continuing-Disclosure Settlement Mean For Muni Credit?

The Securities and Exchange Commission (SEC) is expected to soon start releasing Municipal Continuing Disclosure Cooperation (MCDC) initiative settlements with governmental entities. The MCDC initiative was offered to issuers and underwriters of municipal debt during a defined period in 2014 as a voluntary way to notify the SEC of potential continuing disclosure violations, in exchange for pre-defined settlements. The violations are related to SEC rule 15c2-12. (More background on the MCDC initiative is available on the SEC's website, www.sec.gov.)

As settlements are announced we expect to consider the potential credit implications of each on a case-by-case basis. Disclosure practices are an important part of our assessment of management, but we do not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices. Our expectation is that there would be very limited credit impact as ratings determinations would still come down to the individual credit fundamentals.

The MCDC Initiative

The MCDC initiative encouraged issuers and underwriters to report in 2014 violations of 15c2-12 which had occurred over the prior five years. The SEC offered the MCDC initiative as it believed that there were "potentially widespread violations" and that the general attitude toward adherence to the disclosure rules needed to be heightened throughout the market. The SEC has not revealed who self-reported.

Types Of Settlements

Underwriters
The SEC's enforcement division was charged with reviewing each case reported in the MCDC initiative. It has so far made public settlements entered into with underwriters and is now expected to start releasing settlements with issuers. The underwriter settlements did not require the underwriters to admit or deny any findings, but along with other provisions the underwriters would need to hire an independent consultant (approved by the SEC) to review internal practices and then implement any recommendations to further enhance compliance with 15c2-12. The underwriter settlements to date have included civil penalties, referred to as fines by those who have paid. The MCDC initiative included a maximum fine of up to $500,000 for the largest underwriters, and there have been 72 firms paying various-sized civil penalty fines to date. The fines have ranged from $40,000 to the maximum, according to the SEC.

Issuers
As the SEC actions are shifting to the issuer, we expect settlements to address disclosure violations in a different way. The primary difference, per the MCDC guidelines, is that the issuer settlements will not come with civil penalty fines. According to the SEC's standardized settlement terms, the focus of the issuer settlements will be on establishing management practices within the municipal issuer to ensure remediation of past violations and to avoid future violations.

Increased 15c2-12 Compliance Expected

The increased focus by the underwriter on compliance requirements and improved issuer filings per the 15c2-12 rules is expected to improve overall disclosure practices and enhance the quality and quantity of information available to the marketplace. We believe increased transparency is important in order to track and analyze credits, particularly those that do not come to market frequently. Notwithstanding the credit impact of individual settlements, we view the MCDC initiative as positive for the muni market, but we do not believe the initiative, in and of itself, is likely to result in changes to any current credit ratings.

Materiality Or Malfeasance

Even though the settlements are related to SEC securities law (albeit without admitting any violations), they are unlikely in our view to trigger any immediate rating actions. In our analysis of credit, we assess disclosure issues relative to their materiality to credit. Thus, we anticipate looking at each case on its own, taking into consideration the materiality of the violation in relation to the rating, based on the applicable rating criteria. That said, should the violation be malfeasance, then there could be a more immediate impact on the rating.

Assessment Of Management

We anticipate that, in general, the major credit consideration relating to the MCDC initiative will be around the capabilities of the management team. Management is an important component of our rating criteria in each sector of U.S. public finance. However, we note that management is only one input to the total rating, which underscores why we don't expect significant rating volatility if there are disclosure deficiencies identified, all other factors being equal. Management's plan, however, to remediate any violations would be an important component of our analysis of the capabilities of the management team.

Only a rating committee may determine a rating action and this report does not constitute a rating action.

Primary Credit Analyst: Geoffrey E Buswick, Boston (1) 617-530-8311;

geoffrey.buswick@spglobal.com

Secondary Contact: Jane H Ridley, Chicago (1) 312-233-7012;
jane.ridley@spglobal.com

15-Aug-2016

GFOA: Your Action Requested on Senate-Side High Quality Liquid Assets Legislation.

On February 1, 2016, the House of Representatives voted unanimously to approve HR 2209, bipartisan legislation that would require federal regulators to classify all investment-grade, liquid, and readily marketable municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, classifying foreign sovereign debt securities as HQLA while excluding investment grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Some members of the Senate Banking Committee are seriously considering the introduction of companion legislation to HR 2209, and GFOA urges our members to send letters to Senate members asking them to sign on as cosponsors of the bill, especially from the following jurisdictions. A draft letter is available here.

Richard Shelby, Chairman (R-AL)
Sherrod Brown, Ranking Member (D-OH)
Tom Cotton (R-AR)
Bob Corker (R-TN)
Mike Crapo (R-ID)
Joe Donnelly (D-IN)
Heidi Heitkamp (D-ND)
Dean Heller (R-NV)
Mark Kirk, (R-IL)
Robert Menendez, (D-NJ)
Jeff Merkley (D-OR)
Jerry Moran (R-KS)
Jack Reed (D-RI)
Mike Rounds, (R-SD)
Ben Sasse (R-NE)
Charles E. Schumer (D-NY)
Tim Scott (R-SC)
Jon Tester (D-MT)
Patrick J. Toomey (R-PA)
David Vitter (R-LA)
Mark R. Warner (D-VA)
Elizabeth Warren (D-MA)

Background
In September 2014, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (OCC) approved a

rule establishing minimum liquidity requirements for large banking organizations. The liquidity coverage ratio rule was designed to ensure that large banks maintain liquid assets that can easily be converted to cash during times of national economic crisis. The rule identifies HQLA to meet this requirement, but fails to include municipal securities in any of the acceptable investment categories—despite including foreign sovereign debt.

Following approval of the new rule, GFOA and our state and local association partners have urged the Federal Reserve, FDIC, and OCC to amend the rule to classify investment-grade, liquid, and readily marketable municipal securities as HQLA. On May 21, 2015, the Federal Reserve Board issued a proposed rule that would designate certain investment grade municipal securities as HQLA. While the GFOA is extremely grateful for the Federal Reserve's recognition of the liquidity features of municipal securities, we have some concerns with the proposal, which we raised in our comment letter. Such concerns include the proposal's failure to include revenue bonds as HQLA, and the limit on the total amount of general obligation securities that a financial institution can hold of no more than 5% of the institution's total amount of HQLA.

Meanwhile, the FDIC and OCC refuse to modify the rule for municipal securities. In the absence of cooperation from these agencies, GFOA is working with bipartisan champions in Congress to change the rule through legislation (HR 2209) and preserve low-cost infrastructure financing for state and local governments and public-sector entities.

Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

GFOA

Wednesday, August 17, 2016

Impact of Pay-to-Play Rules in the 2016 Election Cycle: K&L Gates

The federal Pay-to-Play Rules may impact campaign contributions in the 2016 election and, in particular, campaign contributions to a major party's presidential campaign. Financial institutions that do business with, or seek to do business with, state or local pension plans should be aware of the business consequences that a political contribution in the 2016 election cycle may trigger.

In particular, vice presidential candidate Mike Pence's authority over the Indiana Public Retirement System ("INPRS") and the Indiana Education Savings Authority ("IESA") as Governor of Indiana may limit political contributions from a wide spectrum of financial institutions and their associates to the Donald Trump presidential campaign. Investment advisers, brokers, dealers, municipal securities dealers, municipal advisors, swap dealers and security-based-swap ("SBS") dealers (collectively, the "Covered Institutions"), and their associates are all potentially impacted.

Governor Pence is an "official" of INPRS and IESA under the Pay-to-Play Rules because he appoints members of their boards of trustees. As a result, direct or indirect contributions to the Trump campaign could trigger a two-year "time-out" that would prevent Covered Institutions from collecting fees from, or engaging in certain activities with, INPRS and the Indiana CollegeChoice

529 Savings Plans or the Indiana CollegeChoice CD 529 Savings Plan, of which IESA serves as the governing board.

This article summarizes the four principal federal Pay-to-Play Rules currently in effect: Securities and Exchange Commission Rule 206(4)-5 (the "SEC Rule"); Municipal Securities Rule Making Board Rule G-37 (the "MSRB Rule"); Commodity Futures Trading Commission Regulation 23.451 (the "CFTC Rule"); and SEC Rule 15Fh-6 applicable to SBS dealers and major securities-based swap participants.

In addition, the Pay-to-Play Rules broadly prohibit a person from doing indirectly what the person would have been prohibited from doing directly. Accordingly, a payment to a political action committee ("PAC") or political party that is soliciting funds for the purpose of supporting an official of an issuer could be treated as a contribution made directly to such official.

SEC Pay-to-Play Rule
The SEC Rule was adopted in 2010 and modeled on the MSRB Rule. [1] It prohibits "Covered Advisers" [2] from receiving compensation for providing advisory services to a government entity client (such as INPRS) for two years after the adviser or a Covered Associate (as defined below) has made a contribution to an "official" of the government entity, or has solicited from others or coordinated contributions to an "official" of the government entity. The SEC Rule defines "Covered Associate" as: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any PAC controlled by the investment adviser or by any person described in parts (i) or (ii).

In addition, a contribution to a political party, PAC, or other committee or organization may trigger the two-year "time-out" if the contribution is, for example, earmarked for or known to be provided for the benefit of a particular political "official." [3] An "official" means any individual (including any election committee of the individual) who was, at the time of a contribution, a candidate (whether or not successful) for elective office or holds the office of a government entity, if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

Accordingly, a candidate for federal office may be an "official" as a result of holding a state or local office. For example, the SEC Rule covers contributions to Trump's presidential campaign because his running mate, Governor Pence, is an "official" under the SEC Rule given his current office of Governor of Indiana.

Under the SEC Rule, Covered Associates (but not Covered Advisers) may make a contribution up to the de minimis amount per election without triggering the two-year "time-out" on advisory fees. This de minimis amount is $150 in an election where a Covered Associate may not vote for the candidate and $350 in an election where a Covered Associate may vote for the candidate.

MSRB Pay-to-Play Rule
The MSRB Rule prohibits brokers, dealers and municipal securities dealers (each, a "Covered Municipal Dealer") from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with municipal entities if certain political contributions have been made to officials of such municipal entities.

Under the MSRB Rule, a Covered Municipal Dealer is prohibited from engaging in municipal

securities business with a municipal entity for two years after the Covered Municipal Dealer, a municipal finance professional of the Covered Municipal Dealer or any of their controlled PACs makes a contribution to any official of the municipal entity who can influence the selection of the Covered Municipal Dealer.

In addition, effective August 17, 2016, municipal advisors are prohibited from engaging in municipal advisory business with a municipal entity for two years after the municipal advisor, a professional of the municipal advisor or any of their controlled PACs makes a contribution to an official of the municipal entity who can influence the selection of the municipal advisor.

The MSRB Rule also prohibits Covered Municipal Dealers and municipal advisors, and their professionals, from soliciting or coordinating contributions from any person (including an affiliated entity) or PAC to an official of a municipal entity with the ability to select a Covered Municipal Dealer or municipal advisor with whom the Covered Municipal Dealer or municipal advisor does or is seeking to do business.

The MSRB Rule permits a municipal finance professional or a municipal advisor professional (but not Covered Municipal Dealers or municipal advisors) to make a contribution up to $250 in an election where the individual may vote for the candidate without triggering the "time-out." There is no de minimis exception if the municipal finance professional or municipal advisor professional is not eligible to vote for the candidate.

Other Pay-to-Play Rules

The CFTC Rule restricts swap dealers from offering to enter into or from entering into a swap or a trading strategy involving a swap with a governmental special entity, if the swap dealer (or a covered associate of the swap dealer) made or solicited contributions to an official of that governmental special entity during the preceding two years, with limited exceptions. When proposing the rule, the Commodity Futures Trading Commission stated an objective of harmonizing the CFTC Rule with the MSRB Rule and the SEC Rule that already covered many swap dealers. Accordingly, the application and terms of the CFTC Rule to swap dealers are very similar to the MSRB Rule and the SEC Rule described above.

SEC Rule 15Fh-6 restricts SBS dealers from engaging in certain activities with a municipal entity, if the SBS dealer (or a covered associate of the SBS dealer) made or solicited contributions to an official of that municipal entity during the preceding two years, with limited exceptions. [4] The SEC stated that Rule 15Fh-6 was designed to subject the SBS dealers to the same types of restrictions as the CFTC Rule.

FINRA has proposed a similar rule that would apply to executives of broker-dealers.

In addition, many states and localities have also adopted pay-to-play rules that are applicable to persons who contract with their governmental agencies.

Contributions to the Trump/Pence Campaign

The Governor of Indiana appoints members of the boards of INPRS and IESA. This power to appoint board members, who make the decisions whether to hire or terminate service providers, makes Governor Pence an "official" of INPRS and IESA for purposes of the Pay-to-Play Rules.

Because the presidential and vice presidential candidates of a political party run on a single ticket, a contribution to the Trump presidential campaign would be subject to the Pay-to-Play Rules. In addition, contributions to the Republican Party or to a PAC supporting the Trump presidential campaign may trigger a "time-out" as well because the Pay-to-Play Rules apply to contributions that

the donor knows will benefit a particular official.

Other Campaigns
In addition to the Trump/Pence campaign, Covered Institutions should be mindful of the ramifications of the Pay-to-Play Rules with respect to other donations this election cycle. As both Hillary Clinton and Tim Kaine are not "officials" for purposes of the Pay-to-Play Rules, a contribution to the Clinton/Kaine campaign would not be subject to the Pay-to-Play Rules. There are, however, other candidates for whom a campaign contribution may trigger the Pay-to-Play Rules.

Financial institutions should assess whether the Pay-to-Play Rules present a business risk in the 2016 election campaign, not just with respect to firm contributions but also those of their associates and related PACs, given their current or potential investors or clients. If so, they should review their compliance policies and procedures accordingly.

Notes:
[1] "Political Contributions by Certain Investment Advisers," SEC Release No. IA-3043, www.sec.gov/rules/final/2010/ia-3043.pdf.

[2] The SEC Rule applies to investment advisers registered or required to be registered with the SEC, "foreign private advisers" not registered in reliance on Section 203(b)(3) of the Investment Advisers Act, and "exempt reporting advisers."

[3] "Staff Responses to Questions About the Pay to Play Rule," www.sec.gov/divisions/investment/pay-to-play-faq.htm.

[4] SEC Rule 15Fh-6 was adopted in April 2016 and became effective on July 12, 2016.

K&L Gates

by Clifford J. Alexander, Ruth E. Delaney, Sonia R. Gioseffi

18 August 2016

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC's approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer's discretion. Read details of the rule change in the regulatory notice.

“Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market,” said MSRB Executive Director Lynnette Kelly. “Dealers share the MSRB’s desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers.”

Acceleration of the MSRB’s close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

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

BDA Submits Comment Letter to the SEC on FINRA’s U.S. Treasury Transaction Reporting Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA’s proposed rule to require reporting of U.S. Treasury security transactions to TRACE.

BDA’s comment letter expresses general support for the proposal. However, BDA urges regulators to not implement fees or pursue public dissemination of Treasury transaction information in the future. In addition, BDA urges FINRA and federal banking regulators to work to adopt a rule that would require non-FINRA member financial institutions to also report Treasury transactions to a central repository.

Proposal Summary:

FINRA has filed proposed rule with the SEC to require the reporting of certain transactions in U.S. Treasury securities to TRACE. The proposal has been published in the Federal Register and it has a 21-day comment period. Comment letters are due by Monday, August

Scope of Transactions to be Reported: Bills, Notes, Bonds, STRIPS

Timing of Reporting: FINRA has proposed end-of-day reporting within current TRACE hours.

Modifiers: FINRA has proposed two different modifiers for reporting purposes.

> **Modifier S:** FINRA has proposed a modifier for reporting spread trades between on-the-run and off-the-run Treasuries where transaction prices entered into the reporting fields for the spread trade could be different from the current market price for the given Treasury.
>
> **Modifier B:** FINRA has proposed a second modifier for a Treasury trade executed in connection with a Treasury futures contract.

Fees: FINRA does not propose charging trade-reporting fees for Treasury trades to FINRA members.

Timing of the Rule's Effective Date: Once the rule is approved by the Commission, FINRA will issue an effective date notice within 90 days. The rule will go into effect no later than 365 days from Commission approval.

08-15-16

S&P Releases MCDC Settlement Commentary.

On August 15, 2016, S&P released commentary discussing the potential affects a continuing-disclosure settlement would have on muni credit from. The commentary explains that the credit rating agency does "not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices." The second-round issuer settlements will be focused on management practices and the capabilities of the management team, as opposed to the underwriter settlements issued in the first round which required external oversight and civil penalties. As management practices are a part of the broader rating criteria, S&P acknowledged that the issuer settlement will be taken as a part of the credit analysis and thus do not expect significant volatility if there are disclosure deficiencies identified. See the commentary below.

Download:

MCDC Settlement Commentary

Wednesday, August 17, 2016

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC's approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer's discretion. Read details of the rule change in the regulatory notice.

"Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market," said MSRB Executive Director Lynnette Kelly. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

Acceleration of the MSRB's close-out procedures stems from its effort to promote regulatory

efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

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

Why Dealers and Academics Are Clashing Over MSRB Trade Data Proposal.

WASHINGTON – While dealer groups are pushing the Municipal Securities Rulemaking Board to place more restrictions on its proposal to share trade data with academics, researchers say the ones the MSRB has already floated threaten to render the data hard to use or even useless.

"It's not going to get as much use as we would like it to because of all the legal rules that it looks like are going to be imposed," said Bart Hildreth, a professor in the Andrew Young School of Policy at Georgia State University and former MSRB board member.

The Securities and Exchange Commission and Financial Industry and Regulatory Authority already get the full scope of MSRB trade data, with the identities of dealers, for audit and enforcement purposes.

The academic trade data product, which the MSRB first proposed in July 2015 after academics periodically asked for data for studies, has drawn support from market participants for its potential to increase transparency, but dealer groups like Bond Dealers of America and the Securities Industry and Financial Markets Association are still concerned that the introduction of anonymous identifiers could open their members up to the detrimental effects of reverse engineering. An anonymous identifier would allow the MSRB to show all of the trades of a dealer without identifying the firm.

Under the proposal, the data would be made available only to researchers associated with a higher education institution who subscribe and pay a fee. The data would be that gathered from required reports dealers make to the Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB makes some of that post-trade information available now, but none of it currently contains dealer identifiers.

The dealer groups' concerns led the MSRB to make several changes to the proposed product before submitting it for approval with the SEC earlier this year, including lengthening the wait time before data can be released to three years from two and bolstering the steps the self-regulator said it would take to combat the threat of reverse engineering.

The MSRB also agreed with a dealer suggestion to exclude primary trades from the product's data sets by not including list offering price and takedown transactions. But BDA and SIFMA both asked for further changes in recent comment letters to the SEC.

Leslie Norwood, managing director and associate general counsel with SIFMA, and Sean Davy,

SIFMA's capital markets division managing director, said the three-year timeframe before data would be released was still too short and asked for it to be released after four instead of three years.

Mattia Landoni, an assistant professor of finance at Southern Methodist University, said, in response to the proposed longer delay, that it is important that researchers are able to write about topics that people are interested in at the time that the researcher releases his or her findings.

"With a three-year delay, that means I would be able to write [a] paper in the best case, three years later and in the worst case [even] later because [I] will have moved onto something else," he said.

Mike Nicholas, chief executive officer of Bond Dealers of America, said BDA "remains extremely concerned" with the risks associated with the proposal and added it is "simply inappropriate" to give higher education institutions the dealer-specific transaction information that dealers are required to submit to the MSRB.

"Because of the interconnected nature of our markets, it would only take one large dealer working in collaboration with a researcher at an institution of higher education to completely identify the dealer names that match MSRB's 'dealer identifier' and then have full visibility and transparency into the business strategy and transactions of every dealer," Nicholas wrote.

He added that the dealer-specific transaction data that the product would provide could easily be exposed to hacking attempts or a freedom of information act request if the data is being held by an academic at a public university.

Landoni said academics would not be opposed to agreeing to the MSRB rules designed to prevent misuse of the product.

"None of us would have a problem with promising not to reverse engineer individual dealer strategies," he said. "That's just not what we do."

Hildreth said that many universities, especially state schools, are going to have "real difficulty" in agreeing to the liability restrictions the MSRB would tie to reverse engineering that would have to be agreed to if academics wanted to access the product. He also said it is unclear how confidentiality rules tied to the data would transfer if for example a PhD candidate started a dissertation at one school but then moved schools during the several years it took to get the dissertation published.

Both BDA and SIFMA urged the MSRB to group similar dealers together and use the groups instead of the anonymous identifiers. However, SIFMA added that it would like to see the MSRB widen the eventual product's availability to any not-for-profit organization that has a separately identifiable research department and regularly publishes research reports instead of just academics with higher education institutions.

Hildreth and other academics said the dealer identifiers are important.

"Without dealer identifiers [the research process] is going to be less rigorous," he said. "The delay in the data [release] just adds to that."

"It's not going to be as used as the research community would like it to be used out of the gate," Hildreth said. "But then again, I respect MSRB's concern about what the market is telling them."

The Bond Buyer

By Jack Casey

August 11, 2016

Why Market Groups Want SEC Disclosure Guidance.

WASHINGTON – Five municipal market groups are asking the Securities and Exchange Commission for guidance that would help create a streamlined process for issuers to amend their continuing disclosure agreements without running afoul of Rule 15c2-12 on disclosure.

The groups, which include the Government Finance Officers Association, Bond Dealers of America, and the Securities Industry and Financial Markets Association, made their request in a letter to Jessica Kane, director of the SEC's office of municipal securities. The National Association of Bond Lawyers and the National Association of State Auditors, Comptrollers and Treasurers also signed the letter.

An SEC spokesman declined to comment on the letter.

The groups said their request stems from discoveries that issuers and underwriters made while reviewing continuing disclosure agreements (CDAs) as part of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The issuers and underwriters found that many of the issuers' agreements had ambiguities and inconsistencies that often resulted in overlapping, varying, and outdated information in the required disclosures.

The groups attributed these problems to the SEC's allowing issuers, in its 1994 amendments to Rule 15c2-12, to be flexible in drafting CDAs. As a result of this flexibility, there has not been a uniform CDA that everyone has used over the last 20 years and disclosure obligations have differed depending on the specifics of the issuance, according to the groups.

"In some cases, a CDA may require information that may be no longer relevant, available or able to be produced without significant burden or cost," the groups wrote. "Under current guidance … there is no simple way to amend and fix such CDAs."

For example, an issuer that has been active in the market for a number of years may have one previous CDA for a water utility issuance that said it will continue to provide investors with specific tables from rate reports on the water utility. That issuer might then embark on a new bond issue for capital improvements to the water system ten years later and include internally prepared financial information and operating data for the water system that excludes rate tables because they are less applicable and harder to obtain. Unless the issuer can amend its ten-year-old CDA, it will be contractually obligated to bondholders to produce the old tables until the bonds are paid or redeemed while still providing the annual updates to the information promised in the most recent CDA.

"We think that if the amendments that an issuer wants to make to an outstanding [CDA] are in keeping with that issuer's current practice and are consistent with what an issuer would commit to if they were issuing the bonds today and they don't have any material adverse effect on outstanding bondholders, that should be a reasonable set of guidelines for making amendments to outstanding continuing disclosure agreements," said Michael Decker, managing director and co-head of munis with SIFMA.

Jessica Giroux, general counsel and managing director for Bond Dealers of America, said the organizations sent the letter with the hope of getting "some commonsense changes … based upon

what the practitioners in the field see as something that might streamline the system and not burden any one individual player."

The SEC's current requirements for amending CDAs include that the amendments only be made in connection with a change in circumstances that arises from a modification in: legal requirements; law; or the identity, nature, or status of the obligated person, or type of business conducted. The amended disclosure undertaking also must have complied with the requirements of 15c2-12 at the time of the primary offering after taking into account any amendments or interpretations of the rule as well as any change in circumstances. Finally, the amended CDA must also not impair the interests of bondholders.

The groups are asking the SEC to provide interpretive language that classifies a change in issuer disclosure practices as fitting into the "change in circumstances that arises from a change in legal requirements" guidance. They also are asking the SEC to agree that it would fit with current guidance to have the information required in the amended CDA be consistent with the disclosure that would be included in a primary market offering document if the bonds were issued today.

Additionally, they want the commission to sign off on the idea that a CDA change is acceptable if both the amendment to the CDA does not materially impair the interests of the bondholder and the notice through the Municipal Securities Rulemaking Board's EMMA system is an appropriate way to notify bondholders of the changes.

The letter is the product a subset of the many municipal market organizations that began discussing ways to improve disclosure after the SEC began its MCDC initiative. MCDC was first announced in March 2014 and allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements. The initiative has already led to settlements totaling $18 million with 72 underwriters representing 96% of the market by underwriting volume. The SEC has been contacting issuers that self-disclosed violations, but it is unclear when issuer settlements will be released.

Some groups see the collaboration as a way to preempt any SEC action to further regulate disclosure in the market.

Several representatives of the organizations that signed the letter said the larger group of organizations will continue to share ideas on improving disclosure, but could not point to any specific initiatives or future letter they have planned.

The Bond Buyer

By Jack Casey

August 9, 2016

Behind California's Effort Targeting Bond Measure 'Pay-to-Play'.

LOS ANGELES — California Treasurer John Chiang's efforts to combat "pay-to-play" activities among local bond issuers received mixed reviews from municipal bond industry participants.

Chiang announced policies July 27 designed to limit what he called questionable municipal bond

industry bankrolling of local bond election campaigns.

He has asked all finance firms that wish to participate in the sale of state issued bonds to sign certificates by the end of August pledging to not engage in what Chiang describes as pay-to-play practices related to bond measure campaign funding.

Chiang's program asks that the 105 financial and law firms in the state's pools, made up of 13 advisory firms, 26 law firms, and 66 underwriters, take the pledge. But he has gone a step further by extending it to any financial firms that do state business, Schaefer said.

"There are any number of state agencies that want to hire bond counsel for non-transactional work, who look to the state's pool," said Tim Schaefer, California's deputy treasurer for public finance. "That is why we wanted to up the ante."

The idea is that "if you want to do business in Sacramento, we want you to take the pledge that you will not engage in this activity, because we think this activity is corrosive for California issuers," he said. "The idea is not to humiliate anyone, or put them in the penalty box, because we are not a regulator; it is to change this behavior that is bad for California taxpayers."

Chiang's efforts continue the work of former treasurer Bill Lockyer and former Los Angeles County Treasurer and Tax Collector Mark Saladino, who both criticized what they saw as a pay-to-play environment in the state's municipal bond market.

Lockyer announced in 2012 that the state would no longer work with financial firms that engaged in pay-to-play or that had been involved in the sale of what he considered to be egregious capital appreciation bond deals.

"We certainly salute and applaud what Lockyer did, but if we thought it was sufficient, we would not be taking it to the next level," Schaefer said. "We are not deeming Lockyer's efforts a failure, but we will just have to wait and see if we get a better effect – and I think we will get a better effect."

Municipal bond firms are already charging lower fees, said Adam Bauer, president and chief executive officer of Fieldman, Rolapp & Associates.

"We have already seen the costs come down when we negotiate the underwriters' discount," Bauer said. "That has come down from years' past."

Bauer said he did not know if previous efforts by Lockyer or enforcement efforts by the Municipal Securities Rulemaking Board and U.S. Securities & Exchange Commission are responsible for the decline; or what part increasing competition among municipal finance firms has played.

Issuers are free to set their own standards and requirements above and beyond those set by the MSRB and other regulators, said Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association. But SIFMA does advocate that such requirements are clear and effective to achieve their stated goals, she said.

Twelve of SIFMA's biggest dealer firms signed a letter in July 2013 asking the MSRB to adopt further restrictions on bond ballot contributions by broker-dealers, and each of those firms pledged a two-year moratorium on making any such contributions related to bonds they sought to underwrite.

Chiang's program is another step in the right direction, Bauer said, because firms that engage in such activities make it harder for ethical firms to compete.

“I think it is great they are doing something like this,” Bauer said. “But the firms in the pool are not the firms I understand to be doing this type of thing.”

The financial advisory firms engaged in “pay-to-play” bond measure activities do not have the resources to go after the state’s business, Bauer said.

He believes the activities the treasurer is targeting are more prevalent in smaller districts that don’t have the resources to pay for campaign services.

“The steps that Lockyer took set the tone and it is not now taking place in the areas in which I work, but I think it is good to formalize it so there is more pressure to conform by firms who operate outside of the norm,” he said.

A Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using “pay-to-play” tactics.

Some underwriting firms in the state pool that used to provide free bond campaign services to school districts have discontinued the practice, Bauer said. He knows of one firm where the person who had that role split off from the company to form her own firm to avoid the conflict.

Another area where Chiang has expanded Lockyer’s efforts is by including bond counsel in the mix.

Restrictions placed under Rule G-37 by the MSRB and the U.S. Securities & Exchange Commission do not apply to bond counsel, because those entities only regulate broker-dealers, said Lisa Greer Quateman, a partner with Polsinelli, one of the law firms in the state’s pool.

“We personally do little school bond work, so we have happily executed the certification and are unaffected by it,” Quateman said. “Polsinelli was very comfortable signing the certification.”

Though school district general obligation bond referendums have been the focus of previous efforts, Schaefer said Chiang’s efforts are aimed at all local bonds.

Quateman said some lawyers would actually like to have Rule G-37 apply to law firms. But she said there are others who are concerned about how such restrictions would impact their First Amendment rights to participate in the political process.

“I am very happy that I am able to participate in the political process and help worthy candidates get their messages out,” Quateman said. “I am glad I am free to do that. I think the MSRB was very careful in the way it shaped Rule G-37.”

Quateman also thinks the treasurer was careful in how he structured his certificate so that it only asks participants to certify that they will not make campaign contributions toward bond transactions on which they plan to bid.

But Benjamin Keane, a managing associate at law firm Dentons and a member of its ethics & disclosure team, thinks there may be reason for concern.

The treasurer’s certificate is more all-encompassing than MSRB and SEC restrictions, Keane said in an interview.

“While the addition of a few basic certifications statements may seem minor to the untrained eye, requiring affirmative statements such as these will also almost certainly heighten the compliance

risk borne by the regulated community," Keane wrote in a blog post he co-authored with Dentons partner Stefan Passantino. "After all, the "inadvertent non-compliance" defense is dramatically more difficult to assert, and a "false statement" indictment is dramatically more easy to obtain, when affirmative certifications are a compliance obligation."

Firms that wish to be included in the state's bond pool have to make an affirmative statement that neither the firm, or any officer, director, partner, co-partner, shareholder, owner, or employee will make any cash or in-kind service contribution.

That differs from MSRB and SEC regulations where the restrictions are directed at the companies or directors of the company, Keane said.

He will be watching to see if some of the larger companies in the pool are removed if a shareholder or employee violates this rule, he said.

"It doesn't just include contributions to ballot measures, but to any campaign in the state," Keane said. "It is harder for an underwriter in the pool to tell its employees that they cannot donate to any ballot measures in the state than to restrict them from any activities that involve bond campaign services."

The treasurer's office not only wants to impact the way financial firms operate in California, but hopes to set an example for the entire $3.7 trillion municipal bond industry.

"We are hoping this will bend the discussion similarly to what Lockyer's efforts did," Schaefer said. "It has already attracted more attention than what Lockyer did, because this one has more teeth to it."

The treasurer's office did not act capriciously, Schaefer said, adding that it has been meeting for a year to line up support. Supporters include the California Association of County Treasurers and Tax Collectors.

"You would be startled by the number of people at financial firms who reached out and said 'Thank you for doing this,'" Schaefer said. "Now they feel like they won't get undo pressure to do what the fringe players are doing."

Schaefer said Lockyer laid the groundwork for Chiang's efforts.

"It increased awareness of the phenomenon, because this situation we are trying to address lives in the shadows," Schaefer said.

No contracts are signed outlining what occurs in pay-to-play arrangements.

"Pay-to-play cases even in white collar cases can be hard to prove, because they are often quid pro quo," Keane said.

School districts or municipalities that later hire financial firms who donated to a bond measure campaigns or provide free campaign services don't sign contracts agreeing to pay higher fees on the transaction.

California Attorney General Kamala Harris had an opinion earlier this year that school district officials could be subject to penalties if they hired someone who had contributed to a bond campaign, Keane said.

“But you run into a situation of how do you prove that quid pro quo is going on?” Keane said. “It is difficult to show unless there is smoking gun evidence.”

The Bond Buyer

By Keeley Webster

August 11, 2016

Kyle Glazier contributed to this article.

Has The California State Treasurer’s Office Gone Underground?

Late last month, the California State Treasurer’s Office announced a “move to stop ‘Pay-to-Play’ school bond campaigns”. According to the announcement:

> Municipal finance firms seeking state business will be required to certify that they make no contributions to bond election campaigns. Firms that fail to do so will be removed from the state’s official list of acceptable vendors and barred from participating in state-issued bonds.

The Treasurer’s office has sent a letter to prospective underwriters advising them of the imposition of this “new minimum qualification” and requesting that they return a certification form by August 31, 2016.

However well intended, I question whether this action is legal. California’s Administrative Procedure Act provides:

> No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Cal. Gov’t Code § 11340.5(a). A “regulation” is broadly defined as “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.” Cal. Gov’t Code § 11342.600. It cannot be gainsaid that the Treasurer’s “new minimum qualification” is a “standard of general application” and hence a “regulation” within the meaning of the APA.

I contacted the Treasurer’s office and received the following response:

> The Treasurer’s Office has the sole authority to establish a pool of qualified underwriters for State bond work and enter into agreements in connection with State bond sales. (Government Code section 5703.) As a matter of longstanding practice, the Treasurer’s Office has established such pools not just for underwriters, but also for bond counsel firms and financial advisors. Generally speaking, the pools are “re-established” every two years via a Request for Qualifications process. Much like any other procurement process initiated by government agencies, the Treasurer’s Office issues an RFQ that outlines the types of

> services the office may contract for, minimum qualifications for both entrance into and on-going membership in the pools, and proposal requirements. Interested firms then submit proposals and those firms that meet the minimum requirements are admitted to the pools. The recently announced requirement for municipal finance firms was introduced in conjunction with this process. It is an on-going requirement for current pool members and will be incorporated into the next round of RFQs, when the pools are re-established in the near future.
>
> Because this is a procurement process relating to this office's need to contract for services with municipal finance firms, the Administrative Procedures [sic] Act does not apply, as it does not apply to other procurement processes utilized by government agencies throughout California. Generally speaking, the requirements and qualifications for procurements are laid out in the procurement documents themselves and not through regulations adopted pursuant to the Administrative Procedures Act.

The Treasurer's office may think it has a good dog, but I don't think it will hunt.

Government Code Section 5703 does not exempt the Treasurer's office from compliance with the APA. As explained in this determination from the California Office of Administrative Law (OAL):

> Provisions of a contract, which are rules of general applicability interpreting a statute (or a regulation), are not shielded from APA challenge. There is no express statutory language which provides that agency rules placed in contract provisions are exempt from the APA. Applying Government Code section 11346, which requires that exemptions be expressly stated in statute, OAL presumes that no such exemption exists.
>
> In addition, it appears the Legislature intended that there be no exemption for contract provisions. Exempting public contracts was – and is – a clear policy alternative. The federal APA first enacted in 1946, exempted "matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts" (emphasis added) from rulemaking requirements. In enacting the California APA in 1947, the Legislature rejected a proposal to exempt "any interpretative rule or any rule relating to public property, public loans, public grants or public contracts" (emphasis added) from APA notice and hearing requirements. It therefore seems that the 1947 Legislature considered and rejected the idea of following the federal example of exempting rules contained in public contracts from notice and comment requirements.

1998 OAL D-30 (footnotes omitted). See also 2000 OAL D-17 ("The fact that a rule or criteria may have been issued or utilized as part of a bidding and proposal process does not insulate them from scrutiny under the APA.").

Readers with a long memory may recall that in 2009 I challenged a CalPERS' attempt to impose disclosure requirements on placement agents without complying with the APA. After the OAL accepted my petition for review of the requirements, CalPERS backed down and adopted regulations under the APA. See CalPERS' Proposed Placement Agent Disclosure Rule Likely to be Amended.

by Keith Paul Bishop | Allen Matkins Leck Gamble Mallory & Natsis LLP

8/11/2016

Memphis Ministry's Conduit Debt Put on Watch by S&P on HUD Probe.

Credit ratings on about $360 million of multifamily-housing bonds issued by Global Ministries Foundation, a Tennessee-based operator of low-rent apartments, were placed under review for possible downgrades by S&P Global Ratings because the U.S. Department of Housing and Urban Development is probing the non-profit.

The placement on CreditWatch with "negative implications" affects 23 municipal-debt issues sold in states including Alabama, Florida, Indiana, Louisiana and Tennessee, the rating company said in a news release.

"In our view, effective ownership and management are essential to an affordable housing program's economic feasibility and sustainability," S&P said. "The HUD investigation therefore warrants our review of GMF's full portfolio and our assessment of the project owner's overall strategy and management."

GMF has come under scrutiny after the the U.S. Department of Housing and and Urban Development cut rent subsidies to more than 1,000 residents at GMF apartments in Memphis because the buildings were infested with roaches and had numerous health and safety violations. The loss of the federal funds caused bonds issued for the apartments to default, pushing the price to as little as 21 cents on the dollar.

HUD Section 8 subsidies support 15 of the 23 bond issues. S&P said that if it confirms that any of the Section 8 properties are at risk of losing their subsidies, it could downgrade or withdraw its ratings. Most of the issues carry investment-grade ratings, while four are already considered junk.

S&P said it was reviewing its assessment of GMF's strategy and management "based on our view of GMF's lack of strategic planning for the properties' current state and weak operational effectiveness."

"GMF is fully cooperating with recent HUD inquiries and requests for documentation, and we will continue to aid HUD and other government representatives should they have additional inquiries," said GMF spokeswoman Audrey Young in an e-mailed statement. "In the interim, GMF remains focused and committed to its mission to provide housing to some of America's families most in need of safe, affordable housing."

Daryl Madden, a spokesman for HUD's Office of Inspector General, confirmed that search warrants were executed at GMF's office in Cordova, Tennessee, and a third party based in Dexter, Missouri. The Commercial Appeal of Memphis reported that the third party was the Gill Group, which appraised many of the properties GMF has purchased in Memphis.

Bloomberg Business

by Martin Z Braun

August 9, 2016 — 1:16 PM PDT

MSRB Files Rule Change and Guidance Related to ABLE Programs.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a rule change under MSRB Rule G-45 to delay reporting of information by underwriters to programs established to implement the Achieving a Better Life Experience Act (ABLE). The MSRB's filing also provides guidance under MSRB Rules G-42 and G-44 to municipal advisors to sponsors or trustees of municipal fund securities, including ABLE programs. The amendments are effective immediately.

Read the regulatory notice.

View the SEC filing.

MSRB Provides Guidance on Trade Reporting Rule.

The Municipal Securities Rulemaking Board (MSRB) today published guidance in question-an--answer format to support compliance with MSRB Rule G-14, Reports of Sales or Purchases of Municipal Securities. Rule G-14 requires municipal securities dealers to report all executed transactions in most municipal securities to the MSRB's Real-Time Transaction Reporting System (RTRS) within 15 minutes of the time of trade, with limited exceptions.

Amendments to Rule G-14 to enhance post-trade price transparency became effective on July 18, 2016.

View the new guidance.

Memphis Ministry's Muni-Bond Sales Being Investigated by SEC.

The U.S. Securities and Exchange Commission is investigating a Tennessee ministry that owns two municipal bond financed low-income apartment complexes in Memphis that were infested with roaches, caked with sewage and replete with broken windows and damaged walls.

The SEC's Atlanta office is conducting an inquiry into Global Ministries Foundation and the 2011 sale of about $12 million of bonds to purchase the Warren and Tulane apartments, according to a letter filed in U.S. court in a case brought by the bondholders' trustee. The trustee, Bank of New York Mellon Corp., sued GMF in May and won the appointment of a receiver after the bonds defaulted.

"We believe you may possess documents and data that are relevant to an ongoing investigation being conducted by the staff of the United States Securities and Commission," EC senior counsel Michael Adler wrote in a July 18 letter to the receiver, Donald Shapiro. "Accordingly, we hereby provide notice that such evidence should be reasonably preserved and retained until further notice."

The letter from the SEC was filed as part of the receiver's report to the court for the period July 1 through July 31.

"GMF will continue to fully cooperate with the government's investigation as called upon," Audrey

Young, a spokeswoman for GMF, said in an e-mail statement.

In March, the U.S. Department of Housing and Urban Development cut off rent subsidies for more than 1,000 residents that backed the bonds and said it would relocate them because of numerous health and safety violations. As a result, the Warren and Tulane bonds defaulted.

GMF, which is run by Richard Hamlet, a Baptist minister, has built a 10,500-unit, low-rent real estate empire with money raised in the $3.7 trillion municipal-bond market. In 2011, GMF issued $12 million in bonds through the Memphis Health, Educational and Housing Facility Board, to finance the purchase of Warrant and Tulane in an area where as many as 40 percent of the families live in poverty. A Las Vegas-based environmental consultant concluded that the apartments were in "good to fair" condition at the time and an appraiser valued them at more than $15 million, according to an official statement for the bond issue.

The SEC told the receiver, Shapiro, to preserve documents created on or after June 1, 2010, by Hamlet, and three members of his staff or those related to the 2011 bond issue, HUD, and the GMF Preservation of Affordability Corp., the ministry's housing non-profit arm. The housing unit transferred $7.1 million to the ministry in 2014, according to federal tax filings, subsidizing its missionary work, which includes training pastors, producing a national radio program and undertaking evangelistic crusades overseas.

Bloomberg Business

by Martin Z Braun

August 11, 2016 — 5:22 AM PDT Updated on August 11, 2016 — 6:15 AM PDT

BDA and Others Submit Comments to the SEC on CDAs.

Today, BDA and other associations sent a letter to the SEC Office of Municipal Securities on amending issuer continuing disclosure agreements (CDAs).

"In the Adopting Release for the 1994 Amendments to Rule 15c2-12, the Securities and Exchange Commission ("SEC") promoted flexibility in drafting CDAs required by the amended Rule while adhering to a basic framework, in line with the official statement for the particular offering. As a result, there is no uniform CDA used by all over the last twenty years. Under current guidance, however, there is no simple way to amend and fix such CDAs and thus we are requesting that the SEC address this issue by elaborating on the SEC's outstanding guidance on CDA amendments."

You can find the final letter here.

NFMA Issues Comment Letter on Primary and Secondary Market Disclosure in the Municipal Market.

Read the NFMA's letter.

Issuers: Watch a Step-By-Step Video on Customizing EMMA Issuer Homepages.

Watch the video.

Who Will Be Joining the MSRB Board in October.

WASHINGTON – Colleen Woodell, former chief credit officer of global and corporate government ratings with S&P Global Ratings, will become the Municipal Securities Rulemaking Board's new chair on Oct. 1.

In addition to Woodell, the MSRB board elected Arthur Miller, a managing director at Goldman Sachs & Co., as vice chair as well as six new members at its quarterly meeting late last week. The six new members, chosen from more than 100 applicants, represent a change from the normal seven the board would name for a new fiscal year because the MSRB is starting its multi-year transition to a board whose members who serve for four years instead of three.

"The new class of board members includes highly experienced and knowledgeable public representatives and municipal securities professionals," said MSRB chair Nat Singer. "They join an exceptional new leadership team that will oversee the MSRB's pursuit of its mission to protect investors, municipal entities, obligated persons, and the public interest."

Woodell has been an MSRB board member since 2013 and is currently serving as its vice chair. Prior to her role as CCO of global and corporate government ratings, she worked as S&P's chief quality officer and team leader for U.S. public finance. She has also worked for First Albany Corp., Fitch Investors Service, and Moody's Investors Services. Woodell is a former member of S&P's analytic policy board and a past president and member of the board of governors of the Municipal Forum of New York. She has a bachelor's degree from Wells College in Aurora, N.Y.

Miller, who currently chairs the MSRB's finance committee, joined Goldman in 1985 and, in addition to his current position, has worked in the firm's new product development group and its fixed income research group. He earned his bachelor's degree from Princeton University and also holds 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.

Of the six new members who will be joining the 21-member, majority public board, three are public and three are regulated.

The public members include J. Anthony Beard, chief financial officer of the city of Atlanta, and Robert Brown, treasurer at Case Western Reserve University in Cleveland. Beard is responsible for the oversight and management of Atlanta's financial condition and also advises the city's mayor and city council on municipal finance and other matters. Brown manages Case Western's debt and swap portfolios, credit rating agency relationships, investor relations, and relationships with the financial industry.

Julia Cooper, director of finance for the city of San Jose and former member of the Government Finance Officers Association's debt committee, will also join the board as a public member. She is responsible for oversight of the city's accounting, treasury, revenue management, and

purchasing/risk management divisions. She has worked for San Jose for 29 years and has been responsible for the city's municipal debt issuance and management since 1990.

The regulated members who will join include Jerry Ford, president of the Florida-based municipal advisory firm Ford & Associates, Inc. Ford, whose firm specializes in tax-exempt financing, has worked as a financial advisor to a wide array of municipalities for the past 32 years.

Kemp Lewis, senior managing director at Raymond James & Associates, Inc., and Edward Sisk, managing director and head of public finance with Bank of America Merrill Lynch, are the other two regulated members who will be joining the board. Lewis leads Raymond James' northeast public finance group. Sisk leads a team of investment bankers responsible for municipal underwriting in the U.S.

Members slated to leave the board on Oct. 1 include: Singer; Robert Cochran, co-managing director and chairman of the board for Build America Mutual Assurance Company; Marcy Edwards, former senior financial policy advisor for the District of Columbia; Lakshmi Kommi, director of debt management for the city of San Diego; James McKinney, senior advisor with William Blair & Co; and Brian Wynne, co-head of public finance and head of the municipal syndicate desk with Morgan Stanley.

As part of the board's first of three fiscal years shifting to four-year tenures, Woodell, a public member, received a one-year extension.

Two regulated members, Miller and Lucy Hooper, executive vice president of Davenport & Co., will receive one year extensions for the MSRB's fiscal year 2018 along with public member Richard Froehlich, chief operating officer and general counsel for the New York City Housing Development Corp. Five new members will join the board for fiscal year 2018.

In fiscal year 2019, the last year of transition, three public members and two regulated members will receive one-year extensions while five new members join the board. The public members are: Richard Ellis, senior director of compliance and communications with Utah Educational Savings Plan; Chris Ryon, managing director of Santa Fe, N.M.-based Thornburg Investment Management; and Mark Kim, chief financial officer for the D.C. Water and Sewer Authority. The regulated members receiving an extension are Patrick Sweeney, senior vice president and manager of the municipal securities department for Fidelity Capital Markets and Renee Boicourt, managing director and partner with Lamont Financial Services Corp.

By fiscal year 2020, no further extensions will be needed and five new members will join the board. After that, new classes will be named annually in a repeating sequence of six members, then five members, then five members, then five members.

The Bond Buyer

By Jack Casey

August 2, 2016

MSRB Files Clarifying Amendment to Rule G-37.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange

Commission (SEC) an amendment to MSRB Rule G-37 to clarify that, consistent with the current regulatory policy under existing Rule G-37, contributions by persons who become associated with a dealer and become municipal finance professionals of the dealer, if made prior to August 17, 2016 are subject to the two-year look-back in Rule G-37 and may subject a dealer to a prohibition on municipal securities business.

The amendment is in addition to amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, and related amendments to MSRB Rules G-8, on books and records, and G-9, on preservation of records, and Forms G-37 and G-37x that are effective on August 17, 2016 and extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business.

Read the regulatory notice.

Read the SEC filing.

GFOA: August Recess Is Here - Are you Ready?

Throughout the month of August, your congressional delegation typically puts business on hold in Washington D.C. and heads home. The August Recess is designed to give members of Congress and their staff some time to reorient themselves, so it's one of the very best times for constituents to meet with their members of Congress. Your advocacy during this period of time means the most because it allows your Congressional member to come face-to-face with the impact of federal preemption legislation, especially because of the deep fiscal impacts these have on localities within their districts. In the next several weeks, please consider meeting with your members of Congress and discussing the key 2016 issues below.

Bank-Qualified Debt Legislation

Bank-qualified bonds were created in 1986 to encourage banks to invest in tax-exempt bonds from smaller, less-frequent municipal bond issuers, and to provide municipalities with access to the lower-cost borrowing that they need in order to provide services and invest in schools, roads, bridges, and other projects. Governments issuing $10 million or less in bonds per calendar year can designate those bonds as bank-qualified, which allows them to bypass the traditional underwriting system and sell their tax-exempt bonds directly to local banks. But since bank-qualified bonds were created in 1986, the program's $10 million cap has not kept pace with inflation or the cost of labor, land, and materials associated with most public infrastructure projects. Increasing the cap to $30 million not only brings the program into the modern age but also enables governments to increase the amount of bank-qualified bonds they can issue and realize corresponding cost savings. For example, a cost savings of 25 to 40 basis points on a 15-year, $30 million bond at current interest rates ranges from $696,000 to $1.1 million.

Senator, SUPPORT & COSPONSOR S3257, the Municipal Bond Market Support Act of 2016
Representative, SUPPORT & COSPONSOR HR2229, Municipal Bond Market Support Act of 2015

Preservation of the Tax Exemption on Municipal Bonds

On November 8, 2016, voters across the United States will not only elect a new president but will also fill 34 Senate seats and all 435 House seats. Moving into the 115th Congress, elected officials are thinking about which proposals will make a significant impact in the post-election season. Now is

the time for state and local governments to make sure Congress understands the issues that are of crucial importance to their communities—such as preserving the tax exemption on municipal bonds. The tax exemption on municipal bonds is an essential tool for jurisdictions across the United States for the creation and maintenance of infrastructure.

What needs to be communicated to senators and representatives: 1) it is essential for my jurisdiction that you preserve this critical public financing tool to promote job creation and improve the nation's infrastructure; and 2) We request that you ensure that state and local governments retain the authority to set their own tax policies.

What can I do?

Step 1: Figure out where your member of Congress will be and when during August. They often travel around the district while at home. Be sure to ask to set an appointment, preferably when you can get to sit down in a relaxed setting. This link will direct you to your senators' and representative's local contact information.

Step 2: Draft an op-ed and send it to your local newspaper. Your local paper is an extremely powerful mode of communication, and an op-ed piece that articulates your position on current legislation will be widely distributed for your entire district to read. GFOA's suite of advocacy materials, available on GFOA's Federal Government Liaison webpage, provides information you can use to craft a general message—but make sure to emphasize the infrastructure unique to your jurisdiction.

Step 3: If you do schedule an appointment with your member of Congress or his or her staff, or if you plan to see him or her at a local event, glance at the talking points for Bank-Qualified Debt and the talking points for preserving the tax exemption, and feel free to add in as many district-specific descriptive details as possible.

Please let Emily Brock, director of the Federal Liaison Center, know if you need any additional information, when your op-ed goes to print, and if you do have a discussion with your member of Congress. We look forward to working with you during the August Recess.

GOVERNMENT FINANCE OFFICERS OF AMERICA

Wednesday, August 3, 2016

Why MSRB Is Giving a $5.5M Rebate to Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board plans to rebate $5.5 million proportionally among dealers, file a proposal with the Securities and Exchange Commission on markup disclosure, and scrap the idea of requiring municipal advisors to disclose information about their issuer client's bank loans or privately placed municipal securities.

The board approved these actions at a wide-ranging meeting late last week.

The rebate will go to dealers that paid underwriting, transaction, or technology fees in the first nine months of the MSRB's fiscal year 2016, which started on Oct. 1, 2015. The decision was part of the board's discussions about the MSRB's budget and operating plan, both of which received approval.

MSRB executive director Lynnette Kelly said the rebate is a result of, among other things, the self-regulator consistently coming in under budget, which pushed the reserve funds above the board's set target. The last time the MSRB gave a rebate was in 2014.

The markup proposal the MSRB board approved for filing with the SEC would require dealers acting as principals to disclose on retail customer confirmations the markups and markdowns on same-day muni transactions, a departure from an earlier proposal to only incorporate trades within two hours of the transaction. The filing would also include guidance on how to calculate the prevailing market price, previous versions of which dealers and issuers have criticized as unworkable and overly burdensome to dealers. The markup disclosure proposal is a "top priority of the board right now," Kelly said. "I would expect [the filing] would be within the next couple of months."

The MSRB's most recent proposed changes to its Rule G-30 on prices and commissions to facilitate prevailing market price calculations is similar to a process the Financial Industry Regulatory Authority already uses. The process would require dealers to base their determination on a "waterfall" of factors, such as contemporaneous trades of the same or similar munis.

The MSRB plans to make some changes to the prevailing market price calculations in light of market participants' comments but the changes are still in progress, Kelly said. She added the board will continue coordinating with FINRA on markups.

Many market participants had also criticized the MSRB's now abandoned bank loan concept release, saying it would, among other things, threaten MAs' fiduciary duty to their clients under MSRB Rule G-42, which lays out municipal advisors' core duties. Many of the groups instead said the best way to ensure bank loan disclosure would be to amend SEC Rule 15c2-12 on disclosure, under which the SEC regulates, among other things, the actions of broker-dealers in primary offerings of munis.

Kelly said the MSRB board still believes that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness but added the commenters brought up good points, such as the possible unintended consequence of an issuer foregoing an MA to avoid having to disclose bank loans.

"The MSRB will continue to raise awareness of the need for bank loan disclosure among regulators and market participants," she said. "We also plan to encourage industry-led initiatives that support voluntary disclosure best practices."

Kelly said the MSRB plans to enhance its EMMA system both on the submission side and search side in response to criticisms from issuers and others about the difficulty they have had filing and finding bank loans on EMMA. Issuer officials who sit on the Government Finance Officers Association's debt committee expressed their frustrations about EMMA's bank loan system to MSRB chair Nat Singer in May during a meeting at the GFOA's annual conference.

In addition, the MSRB may soon get information such as yield curves from third parties which will it provide on EMMA. Board members agreed during their meeting that such information would benefit investors and issuers. Kelly said the information will be added "in the not too distant future."

The board plans to discuss an update to the MSRB's 2012 Long-Range Plan for Market Transparency Products, which includes EMMA improvements, but will wait until it has its strategic planning session in January 2017, Kelly said.

The board plans to file with the SEC amendments to Rules G-8 and G-9 on record-keeping as well as to G-10 on delivery of the investor brochure to both modernize requirements for dealers' handling of

complaints by customers as well as to establish such requirements and processes for municipal advisors. The MSRB has not created a complaint system for MAs yet because of the self-regulator's relatively recent regulatory authority over advisors.

Additionally, the MSRB plans to file two interpretations with the SEC for immediate effectiveness related to Achieving a Better Life Experience (ABLE) programs, which allow individuals to open tax-advantaged savings accounts to help support individuals with disabilities. The MSRB is treating the ABLE accounts similarly to 529 college savings plans. The proposed interpretation for MSRB Rule G-42 on core duties of municipal advisors will explicitly provide that current 529 plan and local government investment pool guidance is equally applicable to ABLE programs. It will also clarify in its Rule G-44 on MA supervisory and compliance obligations that MA sponsors or trustees of 529 or ABLE plans are subject to the rule's supervision requirements.

The board will also file a change with the SEC for immediate effectiveness to Rule G-45 on reporting of information on muni fund securities. The change will delay the date that submissions are due from underwriters of ABLE plans to the reporting period ending June 30, 2018.

An additional and separate rule amendment the board approved would change Rule G-34, which details when underwriters and financial advisors must apply for a CUSIP number assignment for a new municipal issuance. The amendment would harmonize the definition of underwriter in Rule G-34 with that listed in Rule G-32. Rule G-32 takes its definition from that provided in SEC Rule 15c2-12(f)(8), which includes but is not limited to "a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering."

Kelly said the MSRB historically has included placement agents and dealers that purchase securities from an issuer as principal in Rule G-34's definition of underwriter, but that the change would codify that interpretation.

The Bond Buyer

By Jack Casey

August 1, 2016

State GOP Parties: SEC Was Legally Required to Reject Rule G-37 Changes.

WASHINGTON — The Securities and Exchange Commission was legally required by fiscal 2016 appropriation act provisions to reject changes to Rule G-37 that extended political contribution restrictions to municipal advisors, three state Republican groups told federal appeals court judges.

Lawyers for the three groups, which have sued the SEC for approving the rule changes, made their arguments in a response to an SEC motion to dismiss the suit that was filed in the Sixth Circuit Court of Appeals in Cincinnati. The parties are asking the court to throw the SEC's motion out. The court has halted proceedings in the case until it issues an order on the SEC's motion.

The SEC contends that it could not take any action on changes to the Municipal Securities Rulemaking Board's Rule G-37 because fiscal 2016 appropriations act provisions prohibit it from using funds to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions."

Under the Dodd-Frank Act, the commission has 45 days after it publishes an MSRB rule to approve it, disapprove it, or decide to take more time to consider it. The rule is considered approved if the SEC hasn't taken any action at the end of the 45 days.

The commission's inaction led to the rule's ultimate approval under that provision. It is scheduled to take effect on Aug. 17.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim that because the SEC opted to do nothing, and allowed the rule to be considered approved after the 45 days, it violated the appropriations act provisions by effectively finalizing the rule.

"The appropriations act required the SEC to disapprove the MSRB's proposed rule [and] not allow it take effect," the state GOP groups told the judges.

"Had the SEC disapproved the MSRB's rule, it would not have 'finalized, issued, or implemented' the rule; it would have prevented those very outcomes," wrote Christopher Bartolomucci, a partner with the law firm Bancroft in D.C. and the lead author of the parties' response to the SEC's motion to dismiss. "Thus, both the language and purpose of the act refute the SEC's perverse contention that, because it could not act to finalize or issue the MSRB's rule, the SEC had to sit back until the rule was finalized and issued."

The state parties' suit against the SEC and MSRB claims the revised Rule G-37 unconstitutionally forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional or a municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The state parties are disputing the SEC's argument that because of the circumstances under which the revised rule was approved, the approval doesn't constitute a "final order" by the commission, as defined in the Securities Exchange Act of 1934 or "agency action" as defined in the Administrative Procedure Act (APA). The absence of both standards means there are no grounds for the parties to challenge the rule in court, the SEC is arguing.

Lawyers for the state parties claim that the Exchange Act makes clear that when the MSRB proposes or revises a rule, the SEC is required to either approve or disapprove it. There is only one way for the SEC to carry out that duty under the Exchange Act, they argue: "by order."

"Thus, whether the SEC explicitly approves a proposed rule or simply declines to disapprove one, the result is the same — the proposed rule is 'approved by the commission' and becomes law," Bartolomucci and the parties' other lawyers wrote.

They also cited the 1986 Supreme Court case, Bowen v. Mich. Acad. Of Family Physicians, that held there is a "strong presumption that Congress intends judicial review of administrative action."

“The Supreme Court has repeatedly recognized that a court must find ‘clear and convincing evidence of [congressional] intent’ before precluding judicial review,” the lawyers added, citing Bowen. “Here we have just the opposite. The entire statutory scheme is designed to force SEC orders of approval or disapproval on proposed rules, which ensures that, before any proposal from an [self-regulatory organization] becomes binding law, it is approved by the SEC and made subject to judicial review.”

The APA also backs up the argument that the SEC approval is a reviewable “order,” the parties’ lawyers argue. The act defines “order” as “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking,” according to the parties’ lawyers. Under that definition, the revised G-37 approval constitutes an “affirmative” and “final disposition,” they say.

The MSRB has maintained that Rule G-37 is a “vital measure promoting the integrity” of the muni market and has said it intends to “vigorously defend” its policies.

The Bond Buyer

By Jack Casey

July 28, 2016

Municipal Securities Rulemaking Board Names Woodell Chair.

The Municipal Securities Rulemaking Board named former S&P Global Inc. executive Colleen Woodell as chair, effective Oct. 1.

Woodell, who served as chief credit officer of global corporate and government ratings succeeds Nat Singer, the senior managing director at Swap Financial Group. Arthur Miller, managing director at Goldman Sachs Group Inc., will serve as vice chair, the $3.7 trillion municipal market’s self-regulator said in a statement. The terms of the chair and vice chair are one year.

New board members include J. Anthony Beard, the chief financial officer of Atlanta; Robert Clarke Brown, treasurer of Case Western Reserve University; Julia H. Cooper, director of finance for San Jose; Jerry W. Ford, president of Ford & Associates Inc.; Kemp J. Lewis, a managing director of Raymond James & Associates and Edward J. Sisk, a managing director of Bank of America Corp.’s Merrill Lynch unit.

The board positions have been extended to four years from three, an action approved by the Securities and Exchange Commission — which oversees the MSRB — earlier this year in an attempt to smooth transitions between members.

The board, comprised of 11 independent public members and 10 members from firms regulated by the MSRB, sets policies and oversees the operations of the organization.

Bloomberg Business

by Molly Smith

August 2, 2016 — 10:19 AM PDT

BDA Submits Comment Letter to the SEC on FINRA's TRACE Academic Data Set Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA's rule proposal to create a new TRACE data set for institutions of higher education.

BDA's letter opposes the creation of the new data set because it would create unnecessary business risks for broker-dealers. BDA requests that FINRA re-propose the rule proposal and have dealers grouped anonymously by size as opposed to individually.

New Academic Data Set: FINRA filed an updated proposal to create a TRACE Academic Data set exclusively available for research purposes and available only to institutions of higher education.

The proposal still includes an anonymous dealer identifier that will allow academics to research TRACE-reported transactions per dealer. However, based on BDA's comment letter and other industry comment letters the proposal has been amended to include the following features designed to protect dealer identities:

- **36 Month Delay:** FINRA's 2015 proposal included transaction data that was aged by 24 months. The updated proposal includes a 36-month delay.
- **Unique Dealer Identifiers per Data Request:** Based on a BDA request, each institution that requests data will receive different dealer identifiers for each data set.

BDA's August 2015 letter to FINRA (available here) expresses BDA's opposition to the 2015 version of the academic data set because it would include a dealer specific identifier.

BDA Submits Comment Letter to the SEC on FINRA's CMO Reporting and Dissemination Proposed Rule.

Today, BDA submitted a comment letter to the SEC on FINRA's rule proposal to require a new reporting and dissemination regime for CMOs.

BDA's letter expresses appreciation for the amendments that FINRA has proposed to its February 2015 request for comment. However, BDA argues that FINRA's proposed $1 million threshold for real-time dissemination will create a bifurcated market in which small-to-medium sized dealers and retail customers will be disadvantaged. Therefore, BDA urges FINRA to file an amendment to eliminate the $1 million threshold.

Proposed TRACE Reporting and Dissemination for CMOs:

- **60-Minute Trade Reporting Requirement:** FINRA proposes a 60-minute reporting requirement for CMO transactions.
- **Weekly or Monthly Dissemination for Trades Greater than $1 million:** CMO trades greater than $1 million in principal size for securities that are traded at least five times by at least 2 MPIDs over a given week or month would be subject to weekly and/or monthly reporting.
- **Real-time Dissemination for Trades less than $1 million:** CMO trades of less than $1 million would be required to be reported to TRACE within 60 minutes for immediate dissemination.
- **Pre-issuance CMO Transactions:** FINRA proposes to require TRACE reporting for transactions

that occur prior to issuance to occur no later than the first settlement date for the security.

BDA's April 2015 comment letter to FINRA on TRACE reporting and dissemination for securitized products, including CMOs can be read here.

MSRB Releases Muni Market Stats for 2016, Q2.

View the stats.

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 27-28, 2016 where it advanced several substantive rulemaking proposals and engaged in corporate and financial oversight matters in preparation for the start of the MSRB's upcoming fiscal year.

Operating Plan and Budget
The Board discussed and approved the organization's operating plan and budget for the fiscal year that begins October 1, 2016. The plan includes numerous objectives consistent with the MSRB's strategic goals and its mission to protect investors, state and local government issuers, other municipal entities, obligated persons and the public interest. The Board's discussion of the MSRB's budget included an extensive analysis of the MSRB's organizational reserves, resulting in the approval of a $5.5 million rebate distribution of excess reserves to brokers and dealers who paid any underwriting, transaction or technology fees during the first nine months of FY 2016. The excess reserves result from underwriting and trading volumes exceeding budgeted levels as well as careful management of expenses. The rebate will be distributed proportionately in September, relative to the fees paid. Details of the MSRB's operating plan will be announced at the start of its fiscal year.

Mark-Up Disclosure
At its meeting, the Board acted on multiple initiatives related to improving transparency in the municipal bond market and the activities of dealers and municipal advisors. It voted to file with the Securities and Exchange Commission (SEC) a rule proposal that would require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of same-day principal transactions. The proposal is also to include related guidance on the establishment of the prevailing market price used to calculate mark-ups. The mark-up disclosure proposal, which has been under development for several years, seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market. The MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on its parallel confirmation disclosure initiative for transactions in corporate bonds.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this Board for several years," said MSRB Chair Nat Singer. "Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making."

Bank Loan Disclosure
In another transparency-related issue, the Board discussed comments received on a concept release

to improve disclosure to investors of direct purchases and bank loans by municipal securities issuers. The Board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness and evaluating the impact of these financings on existing and potential investors. However, in light of comments received in response to the concept proposal, the Board will not pursue rulemaking at this time but will continue to raise awareness about the issue among regulators and market participants, and encourage industry-led initiatives that support voluntary disclosure best practices. In order to facilitate the filing of bank loan disclosures on EMMA, the MSRB has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process by issuers and also enhances the ability of investors to locate available bank loan disclosures.

"Our concerns about the need for improved disclosure of bank loans and other financings by municipal entities and obligated persons has not diminished whatsoever," Singer said. "While we acknowledge that MSRB rulemaking is not the best approach at this time, we continue to urge market participants to consider this shortcoming in our market."

Customer and Client Complaints
As part of its effort to update certain MSRB rules, the Board agreed to file with the SEC amendments to MSRB Rules G-8 and G-9, on recordkeeping and retention, and to MSRB Rule G-10, on delivery of the investor brochure. The changes modernize requirements for dealers' handling of complaints by customers and simplify the process by which dealers provide customers with regulatory information. The amendments also establish requirements for municipal advisors' handling of client complaints and establish a process for municipal advisors to provide municipal entity and obligated person clients with regulatory information. Separately, the Board agreed to extend, as relevant, to municipal advisors existing guidance for dealers under MSRB Rule G-32, on the use of electronic media to deliver to and receive information from customers.

ABLE Programs
In other municipal advisor rulemaking, the Board agreed to file with the SEC for immediate effectiveness two rule interpretations related to municipal advisors that provide advisory services to sponsors or trustees of Achieving a Better Life Experience (ABLE) programs. The proposed interpretation to MSRB Rule G-42, on duties of non-solicitor municipal advisors, will explicitly provide that current guidance applicable to 529 college savings plans and local government investment pools is equally applicable to interests in ABLE programs. The interpretation to MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, will clarify that municipal advisors to sponsors or trustees of 529 plans or ABLE programs and other municipal fund securities are subject to Rule G-44's supervision requirements. The Board also agreed to file with the SEC for immediate effectiveness a proposed change to MSRB Rule G-45, on reporting of information on municipal fund securities, to delay until the reporting period ending June 30, 2018 the date submissions are due from underwriters of ABLE programs.

Definition of Underwriter
In its final regulatory action, the Board agreed to file an amendment to MSRB Rule G-34, which details when underwriters and financial advisors must apply for the assignment of a CUSIP number for a new issue of municipal securities. If approved by the SEC, the amendment would harmonize the definition of underwriter in Rule G-34 with that of MSRB Rule G-32, which defines underwriter as "a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering." The MSRB has historically interpreted the underwriter definition in Rule G-34 to include placement agents and dealers that purchase securities from an issuer as principal, and the

proposed amendment codifies the rule's original intent.

EMMA and Market Transparency
The Board discussed an update to its 2012 Long-Range Plan for Market Transparency Products and agreed to defer until its strategic planning session in January 2017 action on an updated plan. The Board did address the potential addition of third-party market indicators, including yield curves, to the MSRB's Electronic Municipal Market Access (EMMA®) website and agreed that the associated benefits for investors and issuers warrant adding such yield curves to EMMA.

Date: August 1, 2016

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

U.S. Muni Regulator Scraps Pursuit of Bank Loan Disclosure Rule.

The Municipal Securities Rulemaking Board (MSRB) said on Monday the U.S. muni market's self-regulating group would not pursue "at this time" a rule to facilitate disclosure of bank loans taken out by states, cities, schools and other bond issuers.

The board, which regulates muni dealers, bond underwriters and financial advisors, but not state and local government issuers, has been trying to devise a way to boost disclosure of such private loans because they add to an issuer's overall debt burden and could include terms impairing the rights of bondholders.

The MSRB's decision likely means that most investors would be deprived of this information. The regulator said in March that only a small number of issuers had disclosed the loans and other private debt sales on its Electronic Municipal Market Access or EMMA website.

"The board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness," MSRB Executive Director Lynnette Kelly told reporters on a conference call.

But feedback from market participants indicated a rule would not necessarily capture all bank loan activity by muni bond issuers, according to Kelly. She said the board would instead continue to push for voluntary disclosure, while making it easier for issuers to submit bank loan information on EMMA.

"We preserve our ability in the future to do rule-making, but we wanted to give it a little more time," Kelly said.

At its meeting last week, the MSRB voted to send a proposed rule to the U.S. Securities and Exchange Commission aimed at enhancing transparency of transaction costs charged to muni bond investors by dealers, Kelly said. While the board is self-regulating, its rules are subject to approval by the SEC.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this board for several years," MSRB Chair Nat Singer said in a statement. "Transparency around dealer compensation will allow investors to assess their transaction costs and

use that information in their decision-making."

Kelly said the MSRB was also considering adding market indicators to its EMMA website, including yield curves that would be provided for free by private-sector vendors.

Reuters

(Reporting by Karen Pierog; Editing by Richard Chang)

Mon Aug 1, 2016 3:05pm EDT

California Treasurer Cracks Down on Pay to Play.

PHOENIX – California State Treasurer John Chiang announced policies Wednesday designed to limit what he calls questionable municipal bond industry bankrolling of local bond election campaigns.

Chiang announced that municipal finance firms seeking state business will be required to certify that they will make no contributions to local bond election campaigns.

California officials are concerned with "pay to play" tactics in which bond counsel, underwriters, and financial advisors are offering to fund or provide campaign services in exchange for contracts to issue the bonds once they are approved by voters. Chiang's move was backed by a coalition of county treasurers and tax collectors.

Those campaign payments or services, often made in connection with local school bond ballot measures, could violate state laws governing the use of bond proceeds and public funds, according to a recent California Attorney General's opinion. That opinion, which was not legally binding on courts, rested on a 1976 California Supreme Court case, Stanson v. Mott, in which the court ruled that public money could be used only to provide "a fair presentation of relevant information" related to a bond question.

"There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts," Chiang said in a statement. "Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds, which are vital tools for building classrooms and meeting the educational needs of our communities."

The new policy on bond campaign contributions applies to firms and their employees, and includes both cash and-in kind service contributions made either directly or through third parties. Firms that fail to make the pledge will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The California Association of County Treasurers and Tax Collectors expressed "solidarity" with Chiang, and California Forward, a nonpartisan group that works for government efficiency, also praised the move.

"Public trust should not be compromised in an effort to secure voter support for local bond projects," said James Meyer, the group's president.

Robert Doty, the president and proprietor of AGFS, a municipal securities litigation consulting firm in Annapolis, Md. who previously worked in California, said a few prominent California underwriter

firms might be affected, but believes most have stopped making such contributions.

Doty said such ballot campaign contributions are “a particularly sleazy activity that makes most market participants uncomfortable.”

Common Cause, another advocacy group, blasted pay-to-play as undemocratic.

“Pay-to-play government contracts have no place in a democracy,” the group said in a statement. “School bond underwriting contracts should go to the most qualified firm, not the one that agrees to make the biggest ballot measure campaign contribution.”

A past Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using “pay-to-play” tactics.

In 2013 twelve dealer firms asked the Municipal Securities Rulemaking Board to crack down on the behavior, which registrants are required to report to the board.

California currently has 66 underwriters, 26 law firms, and 13 advisory firms in the Treasurer’s muni bond business pool.

The Bond Buyer

By Kyle Glazier

July 27, 2016

Calif. Treasurer to Boot Bond Counsel That Back Campaigns.

SACRAMENTO — California Treasurer John Chiang announced Wednesday that he will bar municipal finance professionals—including attorneys—from working on state-issued bond sales if they and their firms continue bankrolling local bond election campaigns.

The move is an attempt to curb so-called pay-to-play politics in the industry, which has been plagued for years by accusations that law firms, advisors and underwriters make generous campaign contributions—mostly to school bond committees—with expectations of securing work preparing and selling the debt approved by voters. Such arrangements can inflate fees and create conflicts of interest for finance firms, the treasurer said.

“There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts,” Chiang said in a prepared statement. “Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds.”

In a letter sent to firms on Wednesday, Chiang asked them to submit by Aug. 31 “affirmative statements” that neither they nor their partners or employees will contribute to fundraising, polling, get-out-the-vote efforts or any other type of advocacy work on behalf of a general obligation bond campaign. Those that don’t could be tossed out of the treasurer’s public finance pool, Chiang said. That pool currently includes 26 law firms authorized to serve as bond counsel.

It’s difficult to calculate how much money a firm could lose by leaving the state pool. The amount of

work an underwriter or legal group receives fluctuates greatly depending on the size and number of offerings in the works in any given year as well as the intricacies of the debt vehicles, Deputy Treasurer Tim Schaefer said.

But being a firm qualified by the treasurer's office carries a sort of stamp of approval that's valuable in securing other work.

"That's our hammer," Schaefer said.

Public finance leaders with Orrick, Herrington & Sutcliffe, historically one of the biggest players in bond counsel work in California, declined through a spokesman to comment on Chiang's letter. Messages left with three other law firms that are members of the treasurer's pool—and have also contributed in recent years to local school bond campaigns—were not returned.

The treasurer's directive has the backing of the association representing county tax collectors and treasurers. In most counties, treasurers by law or custom serve as the agent for school bond sales, Schaefer said. Good government groups Common Cause and California Forward also endorsed the new rules.

"Our hope is by cobbling together this coalition that we can persuade our local governments, especially school districts, to be more discerning," Schaefer said.

In the past, leaders of firms that provide bond counsel services have said that they make political contributions based on long-standing working relationships, not in expectation of some financial windfall.

"We are building a relationship," then-Orrick chairman Ralph Baxter told the Recorder. "How would an elected official feel if we don't make a contribution? Of course we think about that."

In January, Attorney General Kamala Harris issued an opinion concluding that it's illegal for a school district to contract with a municipal finance firm for election services in exchange for guaranteeing that firm post-election bond sales work. Most arrangements aren't so black and white, said Schaefer, who founded a public finance consulting firm in Orange County and has spent decades in the industry.

"It lives in the shadows and it's circumstantial evidence," he said. "But there is enough anecdotal evidence that we think it's a problem and it needs to be addressed."

Cheryl Miller, The Recorder

July 27, 2016

Why the SEC Says it Can't Fight a Challenge to a Pay-To-Play Rule.

WASHINGTON — The Securities and Exchange Commission is arguing it can't fight a lawsuit challenging a revised rule to curb municipal securities pay-to-play activity because the fiscal 2016 appropriations act prohibits it from spending money on any rules governing political contributions.

The Sixth Circuit Court of Appeals in Cincinnati, where the suit is pending, has responded by halting proceedings until it can issue an order on the SEC's motion for dismissal of the suit. The SEC is

arguing that the restrictions, along with federal statutes, prevent the three state Republican parties from challenging it over the latest revisions of the Municipal Securities Rulemaking Board Rule's G-37 on political contributions.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional (MFP) or a municipal advisor professional (MAP) to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim Rule G-37 is unconstitutional because its political contribution language forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The state parties also argue that Congress did not empower the SEC or MSRB to regulate political contributions and instead made such regulation the exclusive jurisdiction of Congress and the Federal Election Commission.

In bringing their suit against the SEC and MSRB, the three state GOP groups relied on a provision of the Securities Exchange Act of 1934 that allows for appeals court review of a "final order" of the commission, according to the SEC lawyers. The parties also cited sections of the Administrative Procedure Act (APA) that would allow for court review of the MSRB rule if it can be proved that an SEC "agency action" took place.

The SEC's motion to dismiss the suit argues that there was neither a "final order" from the commission nor any "agency action" leading up to the rule's approval.

The Dodd-Frank Act states the SEC has 45 days after the date a proposed MSRB rule is published to approve, disapprove, or decide to take more time to decide on the rule. If the commission does none of those, the rule is deemed approved at the end of the 45-day period.

SEC lawyers said the commission, after publishing the proposed changes, did not take further action on the rule because of the restrictions in the fiscal 2016 appropriations act. The act prohibited the SEC from using any funds to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations."

But under Dodd-Frank, the SEC's inaction meant the revised rule was subsequently deemed approved 45 days after the commission published it. It is scheduled to take effect on Aug. 17.

"The commission did not approve or disapprove the proposed rule change, nor did it institute proceedings to determine whether to disapprove it, within the relevant time frame," said the SEC lawyers. "The commission did not issue an order regarding the amendments to Rule G-37 and it did not publish any further notice regarding the rule."

The commission never met the definition of "agency action" as laid out in the APA, according to the commission's lawyers. The act defines agency action to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent denial thereof, or failure to act."

"Except for 'a failure to act' … each 'agency action' requires an affirmative and discrete act 'of an

agency,'" the SEC lawyers argue, something that did not happen during the course of approval.

The lawyers defended against the possible applicability of the "failure to act" portion by pointing to three Supreme Court cases that determined a failure to act means the agency did not take an action it was required to do and could be compelled to do by a court.

The definition does not apply to the SEC in this case because the state Republican groups are not asking the court to force the commission to take an action and even if they were, the court could not do so because of the appropriations act, the SEC's lawyers wrote.

A lawyer for the three Republican state groups said they plan to file a response within the next few days and do not believe the court will grant the SEC's motion.

The MSRB has maintained that Rule G-37 is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend the policies it believes should be in place to address quid pro quo corruption and the appearance of this type of corruption."

Rule G-37 was previously challenged after the SEC first approved it for dealers in 1994. Alabama bond dealer William Blount filed suit against the MSRB and SEC, arguing the rule violated his constitutional right to free speech. The D.C. Circuit Court rejected that argument in a 1995 ruling, saying the rule was "narrowly tailored to serve a compelling government interest." The Supreme Court declined to take up Blount's appeal after the ruling.

The Republican groups from New York and Tennessee that are currently opposing G-37 also unsuccessfully challenged an SEC-approved pay-to-play rule covering investment advisors. The U.S. Court of Appeals for the District of Columbia dismissed that lawsuit in August 2015 on a technicality, finding the two groups missed the 60-day deadline to challenge the rule after it went into effect.

The Bond Buyer

By Jack Casey

July 27, 2016

Why the MSRB is Shortening its Dealer Closeout Timeframes.

WASHINGTON – The Municipal Securities Rulemaking Board wants to cut in half a proposed requirement to mandate municipal securities transactions be closed out within 20 days of settlement after dealer groups pushed for the shorter timeframe.

The MSRB proposed a move to a 10-day closeout requirement, with the option for a one-time 10-day extension if the buyer of the municipal security consents, in a partial amendment with the Securities and Exchange Commission. The 10-day requirement, which the MSRB proposed on Monday, would join other proposed changes to MSRB Rule G-12 on uniform practice that the MSRB filed with the SEC for approval on May 11.

"Shortening the close-out period from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days will further reduce the risk and cost associated with interdealer [failures]," the MSRB said in its amendment.

The partial amendment mirrors suggested alterations that the Securities Industry and Financial Markets Association and Bond Dealers of America had proposed.

“We emphasize in our [comment] letter and the MSRB states in its amendments that failed transactions don’t get better with age,” said Leslie Norwood, associate general counsel and co-head of munis for SIFMA. “To that end, we are very pleased that the MSRB is taking this step to give investors greater certainty and reduce the risk and cost for regulated broker-dealers.”

John Vahey, director of federal policy for BDA, said BDA’s members “are pretty satisfied with the way the rulemaking is going.”

Under the MSRB’s current Rule G-12, there is no specific time requirement for closeouts, only a recommendation that any dealer that fails to deliver securities to another dealer by the agreed upon settlement date close out those interdealer trade failures within 90 days of the settlement date.

When the MSRB first proposed changing the rule, it recommended there be a requirement that failures be closed out no later than 30 days after settlement. SIFMA responded to that proposal by suggesting the MSRB instead require a closeout within 15 days of settlement with the possibility of an extra 15 days if the buyer consents.

The MSRB then changed its proposal to require a closeout within 20 days after the settlement date, citing both concerns that smaller dealers would be overburdened by a shorter timeline and a desire to ensure all dealers operated under the same, fixed timeline.

SIFMA said the concerns weren’t warranted and again argued the time period was too long. Both SIFMA and BDA then recommended the 10-day timeline with the possibility of a 10-day extension.

The dealer groups also brought up other issues, with SIFMA saying it would be “extremely helpful” to know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won’t agree to do so. BDA asked for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). ACATS facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The MSRB said in a footnote in its partial amendment that both concerns are “beyond the scope of the original proposed rule change and current proposed rule change.”

In addition to the changes to the timeline for resolving interdealer failures, the MSRB is also asking the SEC to approve proposals that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business-day window. The MSRB proposal would also change the earliest day for execution to four days after electronic notification instead of the rule’s current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a “buy-in” and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB plans to give dealers a 90-day grace period after SEC approval to come into compliance with the changes.

The Bond Buyer

By Jack Casey

July 26, 2016

SIFMA Submits Comments to the SEC on FINRA and MSRB Proposed Rules.

SIFMA submitted comments to the Securities and Exchange Commission (SEC) on the Financial Industry Regulatory Authority's (FINRA) Rule Filing SR-FINRA-2016-024 and the Municipal Securities Rulemaking Board's (MSRB) Rule Filing SR-MSRB-2016-09. MSRB and FINRA are proposing to create new Real-time Transaction Reporting System (RTRS) and Trade Reporting and Compliance Engine (TRACE) academic historical trade data products that would include anonymized dealer identifiers.

The RTRS and TRACE Academic Data Products would be made available only to institutions of higher education. SIFMA continues to support the MSRB's and FINRA's efforts to improve market transparency to investors and promote regulatory efficiency. Both FINRA and the MSRB have made a number of modifications to the proposals to address our concerns and we have provided comments on those modifications.

While we appreciate FINRA's and the MSRB's responsiveness on a number of aspects, we believe that the proposals, in some cases, could provide additional protections without impeding the goals of promoting academic access and research. SIFMA's comments include concerns about the scope of data available, data aging requirements, anonymizing dealer identities, and concerns about the potential for reverse engineering.

Read the letter.

July 28, 2016

MSRB Files Amendment to Proposal to Modernize Close-Out Procedures.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission an amendment to its proposal to update MSRB requirements for municipal securities dealers related to the close-out process of failed inter-dealer transactions. The amendment seeks to shorten the close-out period under MSRB Rule G-12 from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days in order to further reduce the risk and cost associated with inter-dealer fails.

View the amendment.

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

The Municipal Securities Rulemaking Board (MSRB) today published an agenda for its upcoming Board of Directors meeting, to be held July 27-28, 2016 in Washington, DC. The Board of Directors meets quarterly to oversee the strategic direction of the organization, make policy decisions, and authorize rulemaking and market transparency initiatives.

View the MSRB Board of Directors meeting agenda.

How Ramapo, N.Y. and its Attorney Are Disputing SEC Fraud Charges.

WASHINGTON – The town of Ramapo, N.Y. and one of four individuals charged with securities fraud by the Securities and Exchange Commission for misleading muni bond investors are disputing the charges and urging a federal judge to dismiss the case.

They are asking for a jury trial if the judge fails to dismiss the SEC's complaint.

Ramapo and town attorney Michael Klein detailed their defenses in recently filed separate answers to the SEC's April 14 complaint filed in the U.S. District Court for the Southern District of New York in Manhattan.

They argue, among other things, that they relied on the advice of others. Ramapo relied on advice from accounting and auditor professionals as well as legal counsel while Klein relied on legal counsel and the advice of the town's finance department and independent auditors, their lawyers said.

They also argue that the charges should be dismissed because nobody has suffered any loss or damage as a result of the alleged actions.

The SEC alleges that Ramapo, the Ramapo Local Development Corp., and the four individuals fraudulently hid the town's financial troubles in bond documents for 16 muni securities offerings made between September 2010 and September 2015.

The town not only wanted the town's financial picture to look good, but was also trying to prevent further political fallout from a minor league baseball stadium project that did not have Ramapo citizens' support, according to the SEC.

Fourteen of the offerings were from the town and two others were from the RLDC but were guaranteed by the town and related to the baseball stadium. The commission charged the town and each of the individual defendants with either knowingly or negligently engaging in the fraud.

The town faced deficits ranging between $250,000 and $14 million between the town's fiscal years 2009 and 2014, the SEC alleges. But the defendants, through a series of fabricated receivables over that time period, were able to make it look like the fund actually had positive balances of between $1.4 million and $4.1 million, according to the commission.

The commission is charging the town and each of the individual defendants with either knowingly or negligently engaging in the fraud. Both the town and Klein are also charged with aiding and abetting violations by the bond-issuing RLDC.

The SEC is seeking an unspecified amount of civil penalties and has asked the court to bar each of the named individuals from the muni market.

The commission also has asked the court, through various undertakings and injunctions, to require Ramapo and the RLDC to retain for five years a court-appointed independent consultant, an independent auditing firm acceptable to the commission staff, and, if either want to issue munis, an independent disclosure counsel also acceptable to the staff.

Ramapo and Klein claim the SEC failed to state a claim or provide particular evidence of any material misstatements or omissions that would support the charges. Ramapo's lawyer argues that the SEC's allegations "are improperly vague, ambiguous … confusing, and omit critical facts."

Their lawyers contend their clients acted within the bounds of federal and state laws and did so "in good faith and in a commercially reasonable manner."

Ramapo's lawyer also asserts the SEC's claims for injunctive relief should be barred because the "adverse effects of an injunction far outweigh any benefit from an injunction."

Klein contends no investor could have reasonably relied upon his alleged misrepresentations or omissions, if they exist. He also says that any amount that the SEC claims the defendants owe is attributable to the actions of the other defendants and not to him.

In addition, Klein's lawyer claims the court does not have personal jurisdiction over his client. Klein lives in Airmont, N.Y., approximately an hour away from the New York City.

Both defendants say the SEC should also be barred from bringing the charges by the statute of limitations, usually six years for fraud charges according to Klein's lawyer. They say they reserve their right to bring up future defenses as may be appropriate. Ramapo, through its lawyers, says it maintains the right to adopt and assert defenses used by co-defendants.

The town and Klein are the only defendants to have filed an answer to the SEC's charges. The three other individuals facing charges are: Christopher St. Lawrence, supervisor and director of finance for Ramapo; Aaron Troodler, the former executive director of the RLDC; and Nathan Oberman, the town's deputy finance director. Lawyers for the other defendants either could not be reached or did not have a set date by which an answer would be filed.

The U.S. District Attorney for the Southern District of New York, in a connected action, successfully indicted St. Lawrence and Troodler on 22 counts of wire fraud, securities fraud, and conspiracy to commit securities fraud.

The Bond Buyer

By Jack Casey

July 21, 2016

EMMA Now Indicates ATS and Non-Transaction-Based-Compensation Trades.

Read the MSRB Announcement.

Hultgren Introduces Municipal Advisor Choice Act in Congress.

On June 28, Rep. Randy Hultgren (R-IL) introduced H.R. 5596, the Municipal Advisor Choice Act. The bill amends the Securities Exchange Act of 1934 by specifying that municipal issuers are not required to engage municipal advisors when issuing securities. The bill was referred to the House Financial Services Committee. “Washington’s regulatory regime has again confused consumers, investors and other participants in the market, and the Municipal Advisor Rule is only the latest example,” Hultgren said. “The Municipal Advisor Choice Act ensures that both issuers of municipal debt, and those who advise them, know their obligations under the rule. I look forward to clearing up the confusion surrounding this rule and urge quick action on this legislation.”

Bill Information
