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MSRB Best-Ex Guidance Could Come in Nov.; Board Presses SEC on Bank Loans

by Lynn Hume
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WASHINGTON — The Municipal Securities Rulemaking Board may be able to publish guidance on its best execution rule as soon as next month, MSRB officials said Monday.

But possible delays could occur if the Securities and Exchange Commission decides the guidance needs to be published as rule changes or if the MSRB needs more time to coordinate with the Financial Industry Regulatory Authority, which is writing best-ex guidance for corporate debt, said Robert Fippinger, the board's chief legal officer.

Fippinger talked about the best-ex guidance in a conference call with reporters after the MSRB's Oct. 21-22 meeting in Alexandria, Va., the first meeting with the board's new chair, Nat Singer, and seven new members.

The MSRB recently informed dealers that the best-ex rule will not take effect until four months after the guidance is released. It is expected to be in a question and answer format.

MSRB executive director Lynnette Kelly told reporters that the MSRB is dealing with three high profile initiatives that have significant implications for, not just the muni market, but the securities market in general. These are: its best-ex rule; a proposed rule that would require dealers to disclose, on retail customer confirmations, markups and markdowns for principal transactions and; standards of conduct rules for municipal advisors.

The best-ex rule requires dealers 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."

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer's inquiry or order.

The MSRB filed the rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. But dealers have been clamoring for clarifications on a number of issues.

Under the proposed markup rule, a dealer buying or selling munis for its own account would be required to disclose the markup or markdown on a customer's confirmation when: it executes a transaction on the same side of the market as the customer; the transaction is greater than or equal to the size of the customer's; and the dealer transaction occurs within a two-hour window on either side of the customer transaction.

Kelly said board members met with SEC Office of Municipal Securities director Jessica Kane and deputy director Rebecca Olsen, as well as FINRA chairman and chief executive officer Rick Ketchum and director of fixed-income regulation Cynthia Friedlander.

Kelly told reporters that board members "encouraged the SEC to provide guidance on bank loans." The board wants the commission to: define whether, or in what circumstances, bank loans would be considered securities subject to SEC and MSRB rules; encourage or mandate the disclosure of bank loans and other types of indebtedness of muni issuers, and; clarify whether, or when, non-dealer municipal advisors need to register as broker dealers when placing bank loans.

Kelly said the MSRB has been discussing bank loans with the SEC for about three years. It asked the SEC to require disclosure of issuers' bank loans in a letter it sent to the commission on Rule 15c2-12 on disclosure in January. Asked if the SEC officials are willing to provide the guidance, Kelly said reporters should ask them.

Kelly also told reporters that the board plans later this year to ask for public comments on proposed changes to its Rule G-12 on "closeout" procedures, which have not been updated since 1983. These are dealer procedures for completing a transaction.

The board also expects to seek public comments later this year on the proposed rule changes that would be needed to move the muni market to a T+2 settlement cycle, in which transactions would settle in two rather than the current three days after execution.

The board also discussed how to design a continuing education program for municipal advisors. It plans to publish a request for comment on a proposed program next summer after advisors complete the Series 50 municipal advisor representative qualification exam. The board will administer a pilot qualification exam early next year and a final exam after that.
