

PUBLIC FINANCE ADVISORY

Quarterly Regulatory Update



Several regulatory developments that affect the municipal markets took place in the first quarter of 2020, almost all of which were informed by the COVID-19 pandemic. Below, I have summarized the most significant regulatory developments from the past quarter affecting municipal bond underwriters and municipal advisors.

- **MSRB Webinar Discusses Continuing Disclosure in Light of COVID-19.** On March 19, 2020, the [Municipal Securities Rulemaking Board](#) (MSRB) and the Securities and Exchange Commission's (SEC) [Office of Municipal Securities](#) (OMS) hosted a [webinar](#) titled "Understanding How Continuing Disclosures Appear on the EMMA® Website." Portions of the webinar addressed questions regarding the [continuing disclosure](#) obligations of issuers, underwriters, and obligated persons in light of the current COVID-19 crisis. These questions addressed a range of scenarios, including the consequences of missing an [event filing](#) because of COVID-19, whether all issuers must make a COVID-19-related filing, and whether issuers should disclose the circumstances of a missed filing due to COVID-19 in subsequent offering documents, all of which were summarized in detail in our [March 20 Advisory](#). Generally, the SEC official presenting during the webinar conveyed that the COVID-19 pandemic does not change any of the current consequences of missing a filing deadline and does not of itself necessitate disclosure via the MSRB's [Electronic Municipal Market Access](#) (EMMA) system or in an official statement in connection with a subsequent offering, though issuers are free to make such disclosures, which may provide helpful context.
- **SEC Releases Staff Bulletin on Public Statements of Issuers and Issuer Officials.** On February 7, 2020, the SEC's Office of Municipal Securities issued [Legal Bulletin No. 21](#), "Application of Antifraud Provisions to Public Statements of Issuers and Obligated Persons of Municipal Securities in the Secondary Market," the purpose of which is to summarize [previous SEC guidance](#) regarding the application of the [antifraud provisions](#) of the federal securities laws to statements made by a municipal issuer or issuer official. Generally, the



Harsha Sekar
Associate
Denver
303.299.8165
[Email](#)

bulletin reiterates the SEC's position that the antifraud provisions apply to *all* issuer statements that provide information that is reasonably expected to reach investors and the trading markets, whomever the intended primary audience and whatever the medium of delivery. This standard applies to statements made both via EMMA (including in annual and continuing disclosure filings) and elsewhere, such as through public announcements, press releases, interviews with media representatives, discussions with interest groups, and public reports delivered to other governmental or institutional bodies, etc. The bulletin encourages municipalities to adopt policies and procedures that designate an individual responsible for compliance; establish a periodic training schedule regarding developing, reviewing, and disseminating disclosures; identify the documents, reports, etc. that customarily contain current issuer information; establish a process by which the issuer makes such information regularly available to investors; and identify the places at which the issuer makes such information regularly available to the public, which may include a central repository (such as the EMMA) or an investor-relations website. The bulletin states that reasonably designed policies and procedures, when consistently implemented, can help issuers provide more accurate, timely, and comprehensive information to investors and comply with the federal securities laws.

- **SEC Grants Extension to Municipal Advisors Regarding Annual Update to the Form MA.** On March 26, 2020, the SEC issued an [order](#) granting [municipal advisors](#) an extension relating to the requirement under [Exchange Act Rule 15Ba1-\(a\)\(5\)](#) to file an annual update to their [Form MA](#) within 90 days of the end of their fiscal year, subject to the following conditions: (a) the municipal advisor is unable to meet the filing deadline for its annual update to the Form MA due to circumstances related to the current or potential effects of COVID-19; (b) the municipal advisor promptly notifies SEC staff via email at munis@sec.gov stating (i) that it is relying on the order and providing (ii) a brief description of the reasons why it could not timely file its annual update to its Form MA; (c) the municipal advisor promptly discloses on its website (or if it does not have a website, promptly discloses to its clients) the information required in condition (b) above; and (d) the municipal advisor files the annual update to its Form MA required as soon as practicable but not later than 45 days after the original due date for filing.
- **SEC Grants Proposed MSRB Rule Changes.** On April 9, 2020, the MSRB filed [proposed rule changes](#) with the SEC to provide certain regulatory relief on a temporary basis to broker-dealers and municipal advisors, which were approved by the SEC on April 20 and which were detailed in a [Regulatory Notice](#). The proposed rule changes (a) suspend certain late fees owed for the period of March 1, 2020, through July 31, 2020; (b) modify the date by which compliance obligations must be completed under certain MSRB rules for a temporary period; and (c) extend the compliance date of certain rule changes that have yet to be implemented. Regarding item (b) above, the proposed rule changes will allow certain annual supervisory obligations under [MSRB Rule G-27](#), which governs supervision, and [MSRB Rule G-44](#), which governs the supervisory and compliance obligations of municipal advisors, to be completed on or before March 31, 2021. Further, the following supervisory obligations shall be deemed to have been timely completed for calendar year 2020 so long as they are completed on or before March 31, 2021: (i) an inspection by each dealer of a municipal supervisory jurisdiction branch office or non-branch location, pursuant to Rule G-27; (ii) dealers' annual compliance interviews or meetings, pursuant to Rule G-27; (iii) the submission of a report from the designated principal(s) to the dealer's senior management, pursuant to Rule G-27; and (iv) the completion of the annual certification by the chief executive officer(s) (or equivalent officer(s)) of a

municipal advisor, pursuant to Rule G-44. Regarding item (c) above, the MSRB is proposing to extend the compliance dates to implement: (i) its [amended and restated guidance regarding the fair dealing obligations underwriters owe](#) to issuers of municipal securities under [MSRB Rule G-17](#) (which was summarized in the [October 2019 Quarterly Regulatory Update](#)) to March 31, 2021; and (ii) its [amendments to Form G-32](#) (which were discussed in [the May 2019 Quarterly Regulatory Update](#)) to March 31, 2021.

- **MSRB Takes Additional Measures in Light of COVID-19.** On March 23, 2020, the MSRB [suspended price variance alerts for dealers](#) and on March 9, 2020, issued [MSRB Notice 2020-07](#), which seeks to remind regulated entities of their duty to discharge their supervisory requirements during the COVID-19 pandemic. MSRB Notice 2020-07 was summarized in our [March 17 Advisory](#). On March 23, 2020, the MSRB also issued MSRB [Notice 2020-08](#), which extends the comment deadline on its March 23, 2020 [Request for Comment](#) on certain proposed governance enhancements. The March 23 Request for Comment was discussed in [last quarter's Regulatory Update](#).