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REGULATION

MSRB Set to Move on SHORT System

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By [Andrew Ackerman](#)

WASHINGTON — The Municipal Securities Rulemaking Board today is expected to file long-awaited rule changes with the Securities and Exchange Commission that would implement the final phase of its transparency system for auction-rate securities and variable-rate demand obligations.

The expansion of the SHORT system, for short-term obligation rate transparency, would allow the board to collect and disseminate additional ARS bidding information as well as ARS and VRDO program documents. It would follow last year's launch of the initial phase of the system that provided basic reset rates for both types of securities and the board's release in July of draft rules for the final phase.

The MSRB is expected to ask for a nine-month period to test and implement the changes following SEC approval and to request that it be able to give the market at least 60 days notice prior to the effective dates.

The proposal has been met with strong criticism from dealers, who warn it could be expensive and want the board to conduct a cost-benefit analysis before moving forward with it. Other market participants — [including one who issued a scathing letter](#) against the board yesterday — have criticized the MSRB for moving too slowly after the collapse of the auction-rate market more than two years ago.

MSRB executive director Lynnette Hotchkiss said yesterday that the reality is the board "is a leader in providing short-term transparency," noting the only category of ARS that currently has any transparency are the roughly \$70 billion of outstanding municipal ARS on its SHORT system. Further, she said, the final phase of SHORT will address one of the consistent comments the board has received since it proposed the system: that it is difficult or impossible for market participants to easily obtain credit-support documents.

"This clearly makes these documents available on a real-time basis for free for every short-term deal," she said. "That's huge, and unprecedented in any market."

Under the proposal — for which the SEC will seek public comments prior to any decision on approval — the MSRB will ask dealers to commit their "best efforts" at submitting program documents for VRDOs. This would be a change from the draft, which would have required them to post such documents. Dealers would be required to post documents for ARS.

The change reflects dealer complaints that they may not be party to the documents, which encompass bank letters of credit and standby bond purchase agreements for VRDOs. Dealers would have to keep internal records of their attempts to track down documents and would only have to post the documents they find.

The MSRB filing also differs from the original draft in that it will require dealers to submit bidding information in document form after each auction.

Dealers had complained to the board that it would be too costly and timely to extract bidding information and submit it in individual data fields, as originally proposed. That argument, along with the fact that about 80% of the auctions are consistently failing and would have little or no meaningful bidding information, appeared to sway the MSRB.

"Given the fact that most of the auctions fail, the value contained in the bidding information is not great," one MSRB official said yesterday. "Rather than have a computer interface with a number of individual fields, we thought the most cost-efficient solution for the industry and the MSRB was to collect this information in the form

of a document.”

One downside to document submissions of such data is that the board will be unable to calculate bid-to-cover ratios that quickly show the success of an auction.

However, MSRB staff said the bidding information will show whether the program dealer is bidding for its own account, a crucial piece of information that was not widely known when the ARS market collapsed in February 2008.

MSRB officials said they are willing to reconsider the submission of bidding information in separate documents if the board determines it is in the best interest of the market.

Meanwhile, Joseph Fichera, senior managing director and chief executive officer at Saber Partners LLC, released an open letter yesterday that criticized the MSRB for taking too long to fully implement the SHORT system, which may not be fully put in place until nearly three years after the collapse of the ARS market.

Fichera said the MSRB appears to be hoping that the ARS problem will just go away, “but hope can’t be a regulatory strategy.”

“The MSRB was slow to react to this crisis, and continues to respond in a piecemeal, overly bureaucratic fashion,” he wrote. “If the MSRB will not take all the actions necessary, with a sense of urgency, someone else should.”

Fichera, who has been outspoken in calling for greater ARS transparency, said he does not buy the argument that dealers cannot provide bidding information directly to a computerized system. He argued that most auctions are run by individual, and not multiple, dealer firms, so they already know who is bidding on the securities.

He also noted issuers that are self-bidding in their own auctions already have to provide key bidding information to the market, under ARS guidance the SEC provided in March 2008. The guidance, in the form of a so-called no-action letter, outlines the steps that issuers and conduit borrowers should take and the disclosures they should make in order to bid on their own ARS without triggering SEC enforcement action for securities law violations.

“The information is available and seems to be able to be provided without a burden, so what’s the issue?” Fichera said in an interview. “It seems to beg the question concerning sole broker-dealer auctions, where the broker would have the same information that the issuer would have.” He added that multi-dealer auctions only have “three or four dealers, not 50.”

Hotchkiss declined to comment directly to Fichera’s remarks, saying only that the munil ARS market is the only ARS market with any transparency.

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