THE BOND BUYER
Thursday, May 14, 2015 | as of 12:38 PM ET

ENFORCEMENT

MSRB's Kelly: SEC Bank Loan Enforcement Case Could Be Coming

BY KYLE GLAZIER
MAY 14, 2015 12:14pm ET

LAS VEGAS — A Securities and Exchange Commission enforcement action over securities treated as bank loans could be coming soon, Municipal Securities Rulemaking Board executive director Lynnette Kelly told muni analysts meeting here.

Kelly made the remark during an industry roundtable at the National Federation of Municipal Analysts Conference meeting on Wednesday.

During the roundtable, talk quickly turned to bank loan disclosure, a key issue for analysts who worry that undisclosed issuer liabilities in the form of bank loans could be hampering their abilities to accurately assess a municipal credit.

Issuers currently have no obligation to disclose the details of their loans, though the raw numbers are reflected in their audited financial documents each year.

The MSRB has been asking issuers to voluntarily disclose the terms of their bank loans. Kelly said that poor bank loan disclosure clearly undermines the muni market. But she said that fewer than 100 voluntary disclosures have appeared on EMMA since the MSRB began asking for them.

"There has not been a significant embracing of this option on EMMA," Kelly said. "It has not been the home run that we were hoping for."

The panel also talked about the difference between bank loans and securities, a distinction that is not always clear. Some transactions that are structured as, and classified by, banks as "loans" can be municipal securities that are subject to federal securities laws and MSRB rules. Kelly told the group that she believes the SEC is looking into whether muni securities are being illegally treated as loans and should consider providing guidance on the matter.

"Maybe a well-publicized enforcement action will draw a little more attention to how precise that determination needs to be," Kelly said.

Ben Watkins, the director of Florida's division of bond finance and chair of the Government Finance Officers Association's debt committee, said many issuers probably do not feel a burning desire to disclose their bank loans. Not only is that information generally reflected in annual financials, Watkins pointed out, but larger more sophisticated issuers might see it as advantageous to keep the terms of their loans secret from other potential lenders. Bank loans appeal to issuers precisely because they are simpler than muni bonds, he said.

"That's one of the primary selling points of the banks," Watkins said. "You don't have to go through this onerous process."

Dee Wisor, an attorney at Butler Snow in Denver, Colo. who was on the panel representing the National Association of Bond Lawyers, said that most issuers probably view their disclosure obligations under the SEC's Rule 15c2-12 as an exhaustive list and are unlikely to undertake extra work. The MSRB has urged the SEC to review that rule for possible updates.

When talk turned to the SEC's Municipalities Continuing Disclosure Cooperation initiative, Watkins blasted the SEC's "regulation through fear and intimidation."

"That was a monumental waste of time, effort, and resources," Watkins said of the MCDC.

The GFOA is working on quantifying how much time and money issuers spent trying to comb back through ten years of bond issuances to see if they should self-report inaccurate disclosure statements in their offering documents for lenient settlement terms with the SEC, Watkins said. He said he hopes that will help the SEC change its approach in future initiatives, but is not hopeful.

"I fear more of the same, to be quite honest with you," he said.

SourceMedia