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Non-Dealer MAs: Supervision Rule Could Hurt Market.

WASHINGTON — Non-dealer municipal advisors are warning the Municipal Securities Rulemaking Board's proposed rule on MA supervisory requirements could be costly to the market without greatly benefiting the issuers it is designed to protect.

The National Association of Independent Public Finance Advisors issued the warning in comments about the MSRB's proposed Rule G-44, Supervisory and Compliance Obligations of Municipal Advisors, on Monday.

While dealer groups said they approve of the MSRB's approach, NAIPFA president Jeanine Rodgers Caruso told the board in a letter that the problem this rule seeks to solve may not be big enough to justify the regulatory costs that MAs will have to pass along to issuers.

Proposed Rule G-44 would require MAs to establish, implement, maintain and enforce written supervisory procedures designed to ensure compliance with the federal securities laws and rules. It would mark the first time non-dealer MAs have been subject to supervisory requirements under MSRB rules,

To the best of our knowledge, since the enactment of the Dodd-Frank [Act] and the imposition of a federal fiduciary standard on municipal advisors, no enforcement actions have been brought against a municipal advisor for breach of fiduciary duty," Rodgers Caruso wrote. "Therefore, due to the lack of objective evidence indicating that firms have engaged in widespread violations of their fiduciary duties, NAIPFA does not believe that a need exists for the MSRB to articulate supervisory/compliance obligations at this time. In this regard, the costs, time and effort that will be required to be expended by municipal advisors will likely outweigh any incremental benefits that may be realized by municipal entities and obligated persons."

NAIPFA's letter said that many smaller MAs would likely merge or fade out of existence facing the regulatory burden of having to maintain compliance records for a minimum of five years and having to designate a chief compliance officer. Those that choose to stay in business will probably have to pass the costs along to issuers, raising borrowing costs for municipalities, the letter argues. The group, however, complimented several aspects of the MSRB's approach, such as accommodating single-member MA firms by allowing those practices to outsource the chief compliance officer job.

David Cohen, managing director and associate general counsel at the Securities Industry and Financial Markets Association, said dealer-affiliated MAs have already been complying with similar requirements under the MSRB's dealer supervisory rule, G-27. Cohen said in an interview that the proposal is "the right approach," and is a step toward creating a level playing field between historically regulated dealer-MA's and unregulated non-dealer MAs despite being less stringent than G-27. Cohen's letter to the board asks that MAs be given a minimum of six months to comply with any final G-44.

Bond Dealers of America president and chief executive officer Mike Nicholas urged the MSRB to set baseline supervisory standards that all MAs must meet, rather than allowing small advisory firms to

tailor their compliance programs in ways that might make them less stringent. The rule proposal allows small MA firms to take their size into account when designing their compliance programs.

“Small or one-man shops should not be permitted the opportunity, purposefully or otherwise, to diminish their obligation toward meeting the demands of the rule and this regulatory regime should in fact be comparable to the regulatory regimes for other entities and persons in the financial services industry,” Nicholas wrote. “We believe firms of all sizes and business models should be held to the same standard of service and should be required to meet the requirements of the law.”

The Investment Company Institute said it supports proposed Rule G-44 because it is consistent with existing obligations for broker-dealers. ICI’s comment letter requests 12-months before compliance kicks in following the adoption of the final rule.

The MSRB is also developing rules on MA conduct, fees, qualification examinations, and political contributions. The Securities and Exchange Commission must approve any proposal before it could become a rule.

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