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NAMA: Some MSRB Gift Rule Changes Are Unclear or Could Lead to Abuse.

WASHINGTON — The Municipal Securities Rulemaking Board's proposed changes to extend its gift rule to municipal advisors "remain unclear in crucial areas" and "do not go far enough to prevent abuses" by both MAs and broker-dealers, the National Association of Municipal Advisors said.

NAMA made the comments in a letter to the Securities and Exchange Commission on MSRB Rule G-20 on gifts, gratuities, and non-cash compensation that was signed by the group's president, Terri Heaton.

The rule already applies to dealers. The MSRB is asking the SEC to approve the proposed amendments in an effort to develop a regulatory regime for municipal advisors as mandated by the Dodd-Frank Act. The modified rule would take effect six months after SEC approval.

The rule currently prohibits dealers from giving any thing or service of value, including gratuities, that exceeds $100 per year to a person if the payments or services are related to municipal securities activities of the employer of the recipient.

The board would extend for MAs several exceptions from the $100 restriction, including "normal business dealings," like gifts of meals or tickets to entertainment if the regulated entity or associated persons host the event and the number of gifts is not "so frequent or so extensive as to raise any question of propriety," the MSRB said. Also exempted would be "legitimate business functions" that the Internal Revenue Service recognizes as deductible expenses and infrequent gifts like those for weddings and funerals.

The proposed rule changes also would prohibit MAs and dealers from getting reimbursed through bond proceeds for certain entertainment expenses related to a muni offering if the expenses were not "ordinary and reasonable."

Heaton said in the group's letter that several key amendments to the rule need clarification or further change.

The references to "municipal securities activities" and "employees" of municipal entities may not fit the goal of the rule Heaton said, because there are questions as to whether issuers engage in municipal activities as the MSRB defines them. In addition, people who could be swayed by gifts, such as municipal board members, may not be "employees" of the municipality.

She recommended the MSRB codify interpretive guidance into the rule and "make explicit in either a definition of municipal securities activities or in supplementary material that municipal securities activities includes the activities of issuers."

The letter also asks that the exemption for normal business dealings be eliminated and the gift amount be raised to no more than $250 per year rather than $100 per year for both MAs and dealers.

“By exempting items such as meals and tickets to theatrical, sporting, and other entertainment events, the MSRB leaves open a plethora of opportunities for abuse,” Heaton said.

She added that the change would allow the rule to match up with MSRB Rule G-37 on political contributions, which permits municipal finance professionals to make donations of up to $250 to any candidates for whom they can vote without triggering the rule’s restrictions.

NAMA also asked the MSRB, which also sought to amend its Rule G-8 on books and records, to require a regulated entity to keep records for all gifts, whether subject to the limit or excluded. The proposed recordkeeping requirements do not require records for occasional gifts that are exempted and Heaton argued that would “not provide any effective mechanism for ensuring that” the gifts are occasional or should be exempted.

“The imposition of a recordkeeping requirement with respect to such gifts would not be an entirely new burden and, importantly, would provide meaningful protection against pay-to-play activity as well as providing a meaningful way for regulators to determine whether such gifts give rise to questions of impropriety or conflicts of interest,” Heaton wrote.

NAMA agreed with the MSRB that MAs should keep records for five years, which Heaton called the standard requirement in other MSRB recordkeeping rules. The proposed changes would require five years of records for MAs but six years for dealers.

Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association, said SIFMA supports the rule, but takes issue with the different periods for keeping records for MAs and for dealers. She said the rule should be uniform and fair for all the participants.

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