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Dealers, MAs Push for MSRB to Fix Proposed Rule Changes on Complaints.

WASHINGTON - Market groups and firms are asking the Municipal Securities Rulemaking Board to rethink proposed rule changes related to complaints, saying they should be adapted to better fit the differences in the relationships that municipal advisors have with clients and dealers have customers.

The groups and firms made their requests in letters sent to the Securities and Exchange Commission, which must approve the rule changes.

The MSRB, which proposed changing three of its rules to amend the complaint process for dealer customers and then extend that process to MA customers, did not solicit comments before submitting to the SEC, to the chagrin of dealers and MAs.

The proposal would amend MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records.

The National Association of Municipal Advisors, in a letter authored by its executive director Susan Gaffney, said that the regulation, in some ways, "is trying to fit a square peg into a round hole."

"While we have stated on numerous occasions that the new MA regulations should mirror current broker/dealer regulations whenever possible, this is an example where an alternative approach is warranted due to the difference between the nature of a broker/dealer 'customer' and a municipal advisor 'client,'" Gaffney wrote.

The PFM Group agreed with NAMA, saying that the amendments are a "mismatch of good intention" and a lack of "effective execution."

"This important distinction between the respective relationships is evidence by the disparate treatment of municipal advisors as a fiduciary under the Dodd-Frank Act and the ensuing Municipal Advisor Rule when compared to the regulatory standard of suitability for broker-dealers," PFM wrote.

The non-dealer advisory firm added: "Regrettably, the proposed rule changes do not include needed input from municipal market participants," referring to the MSRB's decision not to go out for public comment before submitting to the SEC.

Bond Dealers of America said the MSRB "is proceeding with unnecessary haste" in not first asking for public comment and, like NAMA and PFM, pointed out the "wholly different" business relationships that dealers and MAs have with their clients.

The proposed amendments would change Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint. They would eliminate the need to send a brochure and instead require other disclosures for dealer customers

and MA clients. The dealer and MA requirements would mandate the firms give notification of: their registration with the MSRB and the SEC; the MSRB's website address; and the brochure available on the MSRB's website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers would be required to notify customers with that information annually and MAs would have to share the information "promptly," but no less than once a calendar year over the course of the MA relationship.

NAMA and PFM proposed that instead of using G-10 to require that information, the MSRB should have MAs send the information along with the conflicts of interest and disciplinary disclosures that are required under MSRB Rule G-42 on core duties of MAs. PFM said that path "would be immensely more effective and less burdensome."

The firm and NAMA additionally asked for specific information about the contents of the MA brochure as well as a chance for input. BDA urged that a new brochure be created specifically for MAs instead of trying to repurpose the existing one for dealers.

The proposed revisions to Rule G-8 would require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log would have to include information about the identity of a client and the timing of the complaint as well as a description of the complaint and the action, if any, the dealer or MA took in response. NAMA is asking that the MSRB more specifically describe what it means by "complaints" and "action" while also providing examples of how to create and maintain the logs.

All complaints would be coded using a standard set of product and problem codes that the MSRB would make available, similarly to current SEC and Financial Industry Regulatory Authority requirements. PFM and NAMA requested that the MSRB allow MAs to give input on those codes. BDA asked that the MSRB work with FINRA to ensure that the problem codes are uniform and harmonized so that they do not lead to a heightened regulatory burden on firms registered with both self-regulators.

Rule G-9 would be amended to require both dealers and MAs to retain their complaint records for six years. Both NAMA and PFM argued the MSRB should keep the MA requirement at five years.

The MSRB has said the amendments would be effective six months after they are approved. BDA, citing other regulatory adjustments that dealers are currently facing, asked that the MSRB extend the effective date to one year after approval.

The Bond Buyer

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