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NAMA Wants MSRB to Withdraw Proposed Muni Advisor Advertising Rule.

WASHINGTON - The National Association of Municipal Advisors is urging the Municipal Securities Rulemaking Board to withdraw its proposed rule on MA advertising.

If it does not abandon the rule, the MSRB must make a slew of changes to it, said NAMA, many of which dealer groups and other MAs are also requesting.

NAMA and the other groups and market participants made their comments to the MSRB on its proposed new Rule G-40 on MA advertising, as well as proposed revisions to its existing Rule G-21 on dealer advertising to align it with the Financial Industry Regulatory Authority's Rule 2210 on communications with the public.

The MSRB released the proposals in mid-February, saying the new requirements would reinforce protections for investors and issuers as well as standardize requirements for dealers and MAs. Susan Gaffney, NAMA's executive director, said in the group's comment letter, that the goal of protecting the public and potential MA clients is already covered in the MSRB's Rule G-17 on fair dealing, which makes the "present proposal unnecessary." Gaffney also wrote that G-40, which would carry many of G-21's provisions over to MAs, fails to differentiate between the "products" that underwriters and investment advisors offer to retail customers and the "services" that MAs generally provide to their issuer clients.

If the MSRB decides to pursue the rule, Gaffney said, one of the "significant changes" that would have to be made would be bifurcating the rule to separately cover products and services to "better acknowledge different types of advertising." The bifurcation would be necessary because "the clear majority of MAs ... only conduct professional services advertising" instead of product advertising.

Rule G-40, as proposed, would be substantially similar to Rule G-21 but specific language would be altered so it is aligned with MA practices. It would apply to advertisements by non-solicitor and solicitor MAs and would define advertisement as any promotional literature distributed or made generally available to a municipal advisory client by an MA. Similarly to the amended G-21, G-40 would exclude certain documents from the definition of advertisement such as official statements, preliminary prospectuses, and registration statements.

NAMA is asking that "general information exclusions" listed in Securities and Exchange Commission guidance on the MA Rule be exempted from the definition of advertising. Such exclusions would include things like: information regarding a person's professional qualifications or prior experience; general market and financial information; and factual information describing various types of debt financing structures.

The MA group is also asking that requests for proposals and qualifications be excluded from the definition along with client lists, testimonials, and case studies in certain forms. Public Financial Management and PFM Financial Advisors echoed those requests in a separate comment letter saying much of that information does not include commentary or clients' opinions but instead gives

examples of the types of work that an MA has done in serving its clients.

Both PFM and NAMA said that the MSRB should eliminate the “content standards” section of proposed Rule G-40, which requires advertisements to be based on fair dealing and good faith, because that principle is already in Rule G-17.

NAMA is additionally asking that the proposed rule, which would allow an MA to say it is registered with the MSRB, also allow an MA to indicate it is registered with the SEC.

The MSRB needs to give clear guidance on how the proposed rule would apply to MA firm websites and social media platforms, NAMA said.

The Securities Industry and Financial Markets Association and Bond Dealers of America overlapped somewhat with the MAs in their comment letters, but both dealer groups focused the majority of their letters on what they said was the MSRB’s failure to properly harmonize G-21 with FINRA Rule 2210.

SIFMA said it is pleased that the MSRB is leveling the regulatory playing field between dealers and MAs, but requested a full harmonization between G-21 and Rule 2210 as well as a clarification that application of G-21 and G-40 to dealers would be based on a firm’s activities and not just on its registration as a dealer.

Leslie Norwood, managing director and associate general counsel with SIFMA, suggested that the MSRB incorporate Rule 2210 in G-21 by reference to alleviate dealer concerns about the burdens that would come from complying with differing requirements in the muni and corporate space. She also included numerous changes and considerations for the MSRB if it decides to more fully harmonize the two rules short of incorporating 2210.

One necessary area for change according to Norwood and Mike Nicholas, chief executive officer of BDA, is to abandon the “one-size-fits-all” definition of advertisement in Rule G-21 in favor of the three categories FINRA uses for communication: institutional, retail, and correspondence. That breakdown would allow firms to establish uniform procedures for communicating with the different sectors of the market and include requirements, like principal approval, needed to accompany each, the groups said.

Both dealer groups also laid out certain exceptions from the rule they said were necessary, including: private placement memoranda and limited offering memoranda; testimonials; investment analysis tools; and illustrations.

The Bond Buyer

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