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MSRB Proposal Would Govern How Muni Advisors Advertise.

PHOENIX – The Municipal Securities Rulemaking Board is seeking approval for both a new rule restricting the advertising practices of municipal advisors and modifications to its existing rule governing broker-dealer advertising to bring it more in line with other regulators' rules.

The MSRB filed the proposals for the new Rule G-40 on advertising by municipal advisors and the amendments to Rule G-21 on advertising by municipal securities dealers with the Securities and Exchange Commission Thursday evening.

If the filing is approved by the SEC, it would establish a set of rules for muni advisor advertising that the National Association of Municipal Advisors said last year was not necessary because MSRB's Rule G-17 on fair dealing already covers these issues.

The MSRB first proposed the new rule and the G-21 amendments in February 2017 but has now asked the SEC to approve them nine months before they become effective.

G-40 would define an "advertisement" as "any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public," including such things as telemarketing scripts or press releases.

The rule prohibits advertising that is misleading, disallows projections of performance, and "must consider the nature of the audience to which the advertisement will be directed as well as provide details and explanations appropriate to the audience."

Under the proposed rule, every advertisement must be approved in writing by a municipal advisor principal, and the advisor must keep updated records of all such advertisements.

"The proposed new standards for fairness and accuracy in municipal advisor advertising will augment the MSRB's core regulatory framework intended to protect municipal entities and obligated persons," said MSRB Executive Director Lynnette Kelly. "Under MSRB rules created to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, municipal advisors are subject to core standards of conduct, supervision obligations, regulations to address pay-to-play activities and professional qualification requirements."

"Proposed Rule G-40 is well-tailored for municipal advisors and municipal advisor solicitors but is similar to advertising standards for dealers, which have been in place for nearly 40 years," Kelly added.

Municipal advisors also are not permitted to use testimonials in their advertisements. The MSRB made some changes from its original request for comment, and now proposes to allow dealers to use testimonials under some circumstances.

The MSRB added clarifications to the proposals for both G-40 and G-21 that make clear that firms can't omit material information from advertisements if omitting those facts or information would

make the ad misleading.

The Securities Industry and Financial Markets Association said in a statement that while it appreciates the MSRB's efforts to harmonize rules and level the playing field between broker-dealer firms and muni advisor firms, it is disappointed that some of its suggestions were not adopted in the MSRB's final proposal.

"With respect to testimonials, although we appreciate the revisions to harmonize MSRB Rule G-21 with FINRA 2210(d)(6), we do not agree that such testimonials should be prohibited by municipal advisors," said SIFMA managing director, associate general counsel, and co-head of munis Leslie Norwood. "SIFMA supports the principles in the rules that communication to the public must be fair and balanced, but those principles also should apply to the related regulatory burdens."

The proposals are subject to SEC approval, including the SEC's own public comment process. The SEC could choose to approve the proposals as submitted, or could decide they need some tweaking.

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