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MSRB to Seek Further Comment On Rule Defining Sophisticated Municipal Market Professionals.

The Municipal Securities Rulemaking Board plans to issue a request for comment to solicit further feedback on a proposal to drop the requirement that Securities and Exchange Commission-registered investment advisors affirm their status as sophisticated municipal market professionals.

The MSRB plans to issue the request for comment regarding MSRB Rule D-15 "within the next week or so," Ernie Lanza, chief regulatory and policy officer of the MSRB, said on Wednesday.

Rule D-15 defines the term sophisticated municipal market professional, or SMMP for short. Under the rule, an SMMP is defined by three essential requirements: the nature of the customer, dealer determination of customer sophistication and an affirmation by the customer.

The MSRB's plan to issue the comment request was mentioned by Frank Mazzarelli, director, market regulation at MSRB, during his remarks at the Government Finance Officers Association's 7th Annual MiniMuni Conference last week. The request for comment will seek "further feedback on amending [the] SMMP definition for municipal entities and SEC-registered investment [advisors]," a slide accompanying Mazzarelli's GFOA event remarks said.

"BDA welcomes the MSRB's attention to Rule D-15," Michael Decker, senior vice president for research and public policy at the Bond Dealers of America, said. "The rule has been on the board's books for years, and it is appropriate to undertake a review to determine whether amendments are necessary."

The requirement to obtain customer affirmations from SMMPs is an issue BDA will focus on, Decker said.

"No such affirmations are necessary for Qualified Institutional Buyers in the taxable world," he said. "We look forward to providing input."

The Securities Industry and Financial Markets Association also welcomed the MSRB's plan to issue the comment request.

"SIFMA has been urging MSRB to amend Rule D-15, and is pleased that the MSRB is planning to request comments on the rule," Leslie Norwood, managing director, associate general counsel and head of the municipal securities division at SIFMA, said in a statement provided via a spokesperson.

SIFMA believes that not only should SEC-registered investment advisors be exempt from the Rule D-15 attestation requirement, "but this exemption should be extended to state registered investment advisers, who have essentially the same duties as federally registered investment advisers but a smaller amount of assets under management," Norwood's statement said.

"MSRB looks forward to reviewing comments on the upcoming RFC rather than addressing individual comments in advance," Lanza said Wednesday in response to The Bond Buyer's request to

address points raised by BDA and SIFMA.

Mazzarelli's remarks about the planned request for comment came nearly three years after the MSRB in February 2023 issued a request for comment, which asked for input on draft amendments to Rule D-15 that would exempt SEC-registered investment advisors "from having to make certain affirmations in order to qualify for" SMMP status.

The Feb. 16, 2023, request for comment also pertained to MSRB Rule G-47, which relates to time of trade disclosure. Rule D-15 and Rule G-47 were approved by the SEC in March 2014.

In accordance with the Rule D-15 nature of the customer requirement, the customer must be a bank, savings and loan association, an insurance company, or a registered investment company; an investment advisor registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office carrying out similar functions); or any other person or entity having at least $50 million in total assets.

Under the rule's customer affirmation requirement, the customer must indicate affirmatively that, among other things, it is exercising independent judgment in evaluating the dealer's recommendations and the quality of execution by the dealer of the customer's transactions.

In the February 2023 request for comment, the MSRB proposed to exempt investment advisors registered with the SEC from having to make such affirmations in order to qualify for SMMP status under the rule. Such investment advisors "generally maintain over $100 million in regulatory assets under management and owe a fiduciary duty to their clients," the MSRB said in its February 2023 comment request.

"The MSRB understands that these investment advisers are typically very sophisticated and, as a result, some market participants have questioned whether the burdens associated with obtaining an attestation from these professionals is sufficiently outweighed by the protections afforded to them," the comment request said.

"The MSRB is sensitive to the cost-benefit analysis associated with the application of its rules and seeks comment below as to whether the MSRB should remove the attestation requirement for commission-registered investment advisers to qualify as SMMPs," the February 2023 comment request said.

By Kathie O'Donnell

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