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Dealers: MSRB's Suitability Rule Shouldn't Differ From FINRA's.

The Municipal Securities Rulemaking Board should craft a single rule to set suitability requirements for investors ranging from sophisticated municipal market professionals to 529 college savings plans, according to comments received by the board Monday.

The comments are in response to the MSRB's request for input on its proposal to modify Rule G-19 on suitability so that it mirrors the Financial Industry Regulatory Authority's suitability Rule 2111, which took effect in July 2012. The proposed changes are part of the board's effort to make its rules more efficient and effective by paring down the more than 30 pages of interpretive guidance that now accompanies its fair dealing rule.

Rule G-19 currently requires dealers to collect information about customers' financial and tax status, as well as investment objectives, before making recommendations to non-institutional customers. The proposal would expand that information to include the customer's age, investment time horizon, liquidity needs, investment experience and risk tolerance. Guidance to Rule G-17 on fair dealing already exempts dealers from requirements to perform a customer-specific suitability determination for recommendations to the sophisticated professionals, but the rulemaking board is breaking that part of the guidance out into a different rule.

That approach risks confusion, Securities Industry and Financial Markets Association managing director and associate general counsel David Cohen wrote. The association's members believe that the revised suitability rule should generally be the same as FINRA's rule, and breaking regulations included in Rule 2111 out into multiple rules could be problematic.

"We believe the MSRB should eliminate or justify any other differences – as separate rules covering the same conduct will unnecessarily lead to regulatory confusion and increased compliance costs," Cohen wrote. "The MSRB's omission of its SMMP exemption from this 'harmonized' suitability rule risks this unnecessary regulatory confusion."

Robert McCarthy, director of regulatory policy at Wells Fargo Advisors, also told the MSRB that taking a different approach from FINRA could be counterproductive.

"WFA respectfully requests that MSRB reconsider its plan to handle the SMMP exemption separately from the revised suitability rule," McCarthy wrote. "Treating a municipal dealer's suitability obligations to SMMPs differently than a FINRA member's institutional suitability duties as reflected in FINRA 2111(b) undermines MSRB's broader objective to 'promote regulatory efficiency.'"

Mike Nicholas, president and chief executive officer of the Bond Dealers of America, added the voices of smaller dealers in support of more closely-harmonized rules.

"While we are encouraged by many of the changes in Proposed Rule G-19 that would harmonize MSRB Rule G-19 with FINRA's Suitability Rule 2111, we are concerned that the differences in the

Proposed Rule G-19 from FINRA's Suitability Rule are not necessarily justified, particularly with respect to the treatment of institutional investor accounts," Nicholas wrote.

Comments also indicate that dealers and investment firms do not think the MSRB should withhold suitability requirements for tax-advantaged 529 college savings plans from the revised G-19 and address it elsewhere.

"We appreciate the MSRB's specific attention to 529 plans," wrote Tamara Salmon, senior associate counsel at the Investment Company Institute. "We recommend, however, that, in lieu of adopting another suitability rule that would, presumably supplement Rule G-19 with respect to 529 plan recommendations, the MSRB incorporate provisions specific to 529 plans in Rule G-19."

The MSRB hopes to send its revised suitability rule, along with other rules stemming from G-17 interpretations, to the Securities and Exchange Commission for approval late this year.

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