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SIFMA Keeps Up Push to Delay Suitability Rule Implementation.

Dealers want to extend the implementation of the Municipal Securities Rulemaking Board's suitability rules and make clear that a different time of trade disclosure obligation exists when selling a bond vs. purchasing one. They also want it made clear that a broker-dealer has reduced duties to sophisticated municipal market professionals.

The Securities Industry and Financial Markets Association made the requests in a comment letter to the Securities and Exchange Commission, which must now consider whether to approve amendments the MSRB offered in an effort to cut down on voluminous interpretive guidance to several of its rules.

The package the MSRB sent to the SEC includes a proposed new Rule G-47 on time-of-trade disclosures that would consolidate existing requirements for dealers to disclose material information to customers in connection with purchases and sales of munis, as well as a proposal to consolidate dealers' fair dealing obligations to experienced investors, called sophisticated municipal market professionals, with new Rules D-15 and G-48.

In addition, the MSRB is asking the SEC to approve a proposal to revise and harmonize its Rule G-19 on suitability with the Financial Industry Regulatory Authority's suitability requirements by adding considerations for analyzing the suitability of a recommendation to a customer.

Dealers have expressed approval of the goal of consolidating guidance into more easily-digestable rules, but still want refinements.

"This rule should reflect that a substantially different time of trade disclosure obligation exists when a dealer is selling a bond to a customer vs. purchasing a bond from a customer," SIFMA managing director and associate general counsel David Cohen wrote of proposed rule G-47. Under current guidance contained in the MSRB's fair dealing rule, dealers must disclose to customers, at the time of trade, all material information they know about the bonds as well as material information reasonably accessible to the market.

"Customers should know the characteristics of the bonds they own," Cohen wrote.

SIFMA is also seeking clarifications on other aspects of the proposed rule, such as when providing a preliminary official statement to a customer would be a sufficient time of trade disclosure. SIFMA members feel that Rule G-47's 'disclosure obligations in specific scenarios "may not be applicable at all when a customer seeks to sell its holdings," Cohen wrote.

SIFMA is also seeking a one-year, rather than six-month, implementation period for the MSRB's proposal to revise and harmonize its Rule G-19 on suitability with the Financial Industry Regulatory Authority's suitability requirements by adding considerations for analyzing the suitability of a recommendation to a customer. The MSRB's Rule G-19 currently requires dealers to collect information about a non-institutional customer's financial and tax status, as well as investment

objectives, before making recommendations to him or her. The proposal would expand that information to include the customer's age, investment time horizon, liquidity needs, investment experience and risk tolerance.

"Any regulatory scheme takes time to implement properly. Municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training," Cohen wrote.

But when dealing with an SMMP, the revised rules should make clear that dealers should have far fewer obligations, as the existing guidance states, he said.

"Since a dealer does not have a time of trade disclosure obligation to disclose material information that is reasonably accessible to the market to SMMPs, we believe the omission of this statement within the new rule governing time of trade disclosure obligations risks unnecessary regulatory confusion," wrote Cohen.

The Investment Company Institute also commented, urging the SEC to make sure the rules make clear that they apply to 529 college savings plans.

"We recommend that, as part of this rulemaking, the MSRB incorporate all relevant suitability guidance into Rule G-19 – not merely the guidance for products other than 529 college savings plans, as is currently proposed," wrote ICI senior associate counsel Tamara Salmon

That approach would both help to eliminate confusion and ensure that dealers who violate suitability requirements are not sanctioned under multiple rules for a single violation, as might be the case if a separate suitability rule for 529 plans exists, as under the MSRB proposal.

"For these reasons, we again strongly recommend that the MSRB include within Rule G-19 all of its suitability guidance that applies when a dealer recommends a 529 plan," Salmon said.

The SEC could approve the MSRB proposals without changes or send them back to be changed.

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