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MSRB Pay-to-Play Proposal Would Impact Dealer, Non-Dealer MAs.

WASHINGTON — The Municipal Securities Rulemaking Board’s proposal to extend its dealer pay-to-play rule to include municipal advisors contains provisions that would affect both dealer and non-dealer MAs, market participants said Tuesday.

The draft amendments to the MSRB’s Rule G-37 on political contributions, which the MSRB proposed for public comment Monday, would generally mirror existing dealer and dealer-MA obligations by prohibiting non-dealer MAs from engaging in municipal advisory business with state or local governments for two years after making political contributions to officials who can influence the award of MA business. But the proposal also suggests some changes to the rule affecting all MSRB registrants, tightening regulations in some ways and loosening them up in others.

The proposal, for example, provides for “cross bans” for firms that include both muni advisor and underwriting businesses. But the rule would require a link between a ban on underwriting or MA business and a contribution made to an official with the ability to influence the awarding of that type of business.

Some issuer officials can influence both types of business and a significant contribution to them from a firm or professional from either the dealer or MA side of the firm would subject both sides of the business to a two-year ban. But other issuer officials might only have influence over the MA, or only over the underwriting business. Contributions to those officials would not trigger a ban for the other side of the business.

The rule also takes a new approach to contributions that might come from MAs soliciting business on behalf of other firms, which market participants said could be potentially problematic. Under the proposal, if a contribution is made by a third-party MA or its associated persons, a ban on securities business would apply both to the dealer that hired the firm to solicit MA business and the solicitor.

A dealer generally is prohibited under MSRB Rule G-38 from making payments to a third-party to solicit muni securities business on its behalf. Under the MSRB proposal a dealer could violate G-38 and also be subject to a two-year ban on MA business with a certain issuer under G-37 if it retains an MA to solicit business on its behalf and contributions trigger the ban.

If an MA firm retains a third party MA that makes a significant contribution triggering the ban, the ban would apply both to the MA that retained the solicitor firm as well as the solicitor firm.

Ki Hong, a partner at Skadden, Arps, Slate, Meagher & Flom in Washington, said the provision raises “concerning questions” about how to control the actions of third-party solicitors. A version of this rule, proposed and then withdrawn three years ago, would have subjected only solicitors to the ban, he said.

Dealers groups reacted mostly positively, because they have long said that non-dealer MAs are unfairly able to operate without fear of how their political contributions could affect their business.

“We are pleased that the MSRB is extending Rule G-37 to cover municipal advisors,” said Leslie Norwood, associate general counsel and co-head of municipal securities at the Securities Industry and Financial Markets Association. “We are reviewing with our members the other changes the MSRB is proposing for all regulated entities, and look forward to submitting a comment letter.”

Jessica Giroux, senior counsel and senior vice president for federal regulatory policy at Bond Dealers of America, said the details of how the rule will be enforced will be important.

“We are and have been in favor of establishing a level playing field especially on this issue and we are hopeful this effort on the part of the MSRB accomplishes that,” Giroux said. “We will continue to evaluate the rule and plan to submit comments to the MSRB, however, our concern is and remains how this will be enforced.”

Nathan Howard, counsel to the National Association of Independent Public Finance Advisors, said the rule needs a close look because of the new approaches it takes.

“NAIPFA has and will continue to support restrictions on practices that have historically harmed the public interest,” he said. “This version of the rule, however, appears to contain significant variances from the version that was released in 2011 and, therefore, will require us to carefully review this proposal.”

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