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Muni Groups Urge SEC To Require MA Supervision Rule Changes.

WASHINGTON - The Municipal Securities Rulemaking Board failed to address concerns that its proposed municipal advisor supervision rule will be too costly and burdensome, non-dealer MAs told the Securities and Exchange Commission this week.

National Association of Independent Public Finance Advisors counsel Nathan Howard told the SEC in a comment letter that proposed Rule G-44 on supervisory and compliance obligations of municipal advisors, as well as proposed amendments to Rules G-8 on books and G-9 on preservation of records, remain substantively unchanged after it asked MSRB to reduce the burdens.

Rule G-44 would require MAs to establish, implement, maintain and enforce written supervisory procedures designed to ensure compliance with the federal securities laws and rules. It would mark the first time non-dealer MAs have been subject to supervisory requirements under MSRB rules., NAIPFA remains concerned that the burdens of those requirements would drive up costs for issuers and force smaller MAs out of the business altogether.

Meanwhile, Dave Sanchez, a former SEC muni office lawyer who most recently served as general counsel at a dealer firm, suggested some changes he told the commission would help avoid confusion and reduce regulatory burdens. For example, Sanchez wrote, the portion of the proposal requiring "prompt" amendment of written procedures after rule changes should be altered to "within a reasonable time after changes occur in the applicable rules." That language matches the requirement of the existing G-27 rule governing dealer supervision requirements, and would help reduce confusion for dealer-affiliated MAs who will have to comply with the new rule as well as existing supervision requirements.

The proposal's revisions to Rules G-8 and G-9 on preservation of records would require MAs to keep and maintain records of their compliance policies for at least five years and records of those responsible for compliance for at least six years after they are no longer in charge of compliance. If the SEC approves the set of proposals, it will be the first of the new MA rules to get the final go-ahead.

Dealer groups largely support the MSRB proposal, but Bond Dealers of America chief executive officer Mike Nicholas told the SEC that the rule still offers too much wiggle room for smaller MAs. The proposal allows small MA firms to take their size into account when designing their compliance programs.

"As the BDA mentioned in our April letter to the MSRB, we believe draft Rule G-44 provides too much flexibility to small firms by allowing [them] to determine and make accommodations for themselves simply because of their size," Nicholas wrote. "As a result, we requested that the MSRB set forth certain minimum standards that all municipal advisor firms must meet when establishing supervisory and compliance procedures but still allow these firms appropriate flexibility to decide how to implement such procedures."

“We continue to believe that the draft Rule G-44 is biased toward larger firms and that the accommodations smaller firms are allowed to make should be more circumscribed,” he continued. Nicholas told the SEC that all implementation of the MSRB’s MA rules should be delayed until they are all complete.

The Securities Industry and Financial Markets Association asked for at least six months between approval and implementation.

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