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Dealers Want SEC to Delay Consideration of SMMP Changes.

WASHINGTON - Dealer groups are making a final push for changes to the Municipal Securities Rulemaking Board's proposed best execution rule, warning the Securities and Exchange Commission that it should hold off on any changes to how firms interact with sophisticated municipal market professionals until the MSRB can solicit comments on them.

Securities Industry and Financial Markets Association managing director and associate general counsel David Cohen made his group's case in a letter filed with the commission Monday. Cohen told The Bond Buyer that SIFMA believes the MSRB has taken a thoughtful approach to developing its Rule G-18 on Best Execution of Transactions in Municipal Securities, which would require dealers to use "reasonable diligence" when handling orders and executing municipal security trades for retail investors to "obtain a price that is as favorable as possible under prevailing market conditions."

But changes to the MSRB's definition of SMMPs, to whom dealers would owe only a duty to deal fairly, would be costly and warrant market commentary, Cohen said.

The proposed changes did not appear in the MSRB's first best execution draft floated in February. The MSRB's SMMP definition has been harmonized for the past two years with the Financial Industry Regulatory Authority's rule governing institutional accounts. Dealers could get a single letter from an SMMP stating that it will exercise independent judgment in evaluating dealer recommendations. The letter could satisfy both FINRA and MSRB requirements. But the new definition requires further affirmations from an SMMP customer, such as a statement that it has access to "established industry sources" of information, such as the MSRB's EMMA system and rating agency reports as well as other "material information."

That would require new letters and a costly overhaul of dealers' automated systems, Cohen said.

"It is unclear what the MSRB's rationale is for these changes," he wrote to the SEC. "The record does not reflect any commenters, SMMP or other, requesting such a change or suggesting that SMMPs were not protected adequately."

The SEC should decline to approve the D-15 changes until the MSRB seeks comment on that section specifically, Cohen told The Bond Buyer. "There should be an opportunity for a thoughtful discussion," he said.

SIFMA suggested keeping affirmations harmonized with FINRA requirements and adding language to the SMMP definition that requires a dealer wishing to treat a customer as sophisticated to have "a reasonable basis to believe is capable of evaluating investment risks, and market value, and execution quality independently."

Bond Dealers of America chief executive officer Mike Nicholas wrote the commission that the expanded customer affirmation under D-15 is of little value, but said his group continues to remain somewhat confused about how dealers' obligations under the new rule would differ from their current obligations. BDA is very concerned about how regulators will approach enforcement of the

rule, he said.

Dealers have said from the start that “best execution” is an equity market concept, and Nicholas told the SEC that the term “best execution” should be swapped for “execution diligence” in some instances. SIFMA has previously suggested its own “execution with diligence” standard.

The SEC must approve the MSRB proposals before any can take effect.

THE BOND BUYER
BY KYLE GLAZIER
SEP 29, 2014 4:52pm ET

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