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Dealers: Raise Limit in G-37 Proposal for MAs.

WASHINGTON - Dealers want the de minimis contribution limit increased in the Municipal Securities Rulemaking Board's proposed application of its Rule G-37 on political contributions to municipal advisors, and one lawyer told the board the rule is probably unconstitutional unless it is raised.

Both the Securities Industry and Financial Markets Association and the Bond Dealers of America told the MSRB in letters filed Wednesday that the de minimis exception for political contributions to candidates for whom an individual is entitled to vote should be bumped up to \$350 from the current \$250 to be consistent with the de minimis exceptions under Securities and Exchange Commission rules for investment advisers and Commodity Futures Trading Commission rules for swap-dealers.

The Rule G-37 amendments, proposed in August, would generally mirror existing dealer obligations by prohibiting MAs from engaging in muni advisory business with state or local governments for two years after making political contributions to officials who can influence the award of MA business. The rule would apply to all MAs, but would represent the first such restrictions on the non-dealer advisors.

Hardy Callcott, a partner at Sidley Austin in San Francisco, told the MSRB that the pay-to-play rule as proposed wouldn't pass muster in the light of the U.S. Supreme Court's decision earlier this year in *McCutcheon v. Federal Election Commission*. Callcott believes the current limit of \$250, which restricts dealers and dealer MAs, is already problematic.

"As was true in 2011, unless the MSRB conforms Rule G-37 to the higher contribution limits contained in SEC Rule 206(4)-5, there is no hope that the proposed limits in Rule G-37 could be deemed 'narrowly tailored to achieve a compelling government interest,'" Callcott wrote.

Leslie Norwood, associate general counsel and co-head of municipal securities at SIFMA, told The Bond Buyer that her group suggested harmonizing the de minimis limit with SEC and CFTC rules in order to make sure the final rule complies with the Supreme Court's mandate. The rule also should provide an exception for individuals who were previously regulated by the SEC or CFTC rules and donated within those limits, Norwood wrote.

SIFMA also said that the proposal's definition of "municipal advisor representative" might be overbroad, because it captures "any associated person engaged in municipal advisory activities on the firm's behalf, other than a person whose functions are solely clerical or ministerial." SIFMA wants the term to include only individuals whose primary job is their MA work, and not those who merely do a few tasks related to MA business, Norwood said. SIFMA further requested an effective date of no less than six months after SEC approval.

Bond Dealers of America chief executive officer Mike Nicholas wrote that the BDA supports the MSRB's approach, but takes issue with the proposal's recordkeeping requirements.

"We note that the approach the MSRB has taken with respect to the draft rule may entail

unnecessary duplication for dealers,” he wrote. “For example, as is the case with some dealers, all of their employees who act as a municipal advisor also serve as bankers in an underwriting capacity. The way the MSRB has written the rule will require these employees to keep dual records and disclosures for the same contributions – contributions they are already required to monitor and disclose. We would therefore suggest to the MSRB that they consider revising the provisions of amended Rule G-37 to permit those employees to maintain one set of records and disclosures.”

The SEC must approve the proposal before it becomes final, and can require the MSRB to make changes to it.

THE BOND BUYER

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