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Dealers, Non-Dealer Firm Want Changes to Gifts Proposal.

WASHINGTON — The Municipal Securities Rulemaking Board’s proposal to extend gifts and gratuities regulation to municipal advisors may be too vague or over-reaching and should be reworked to establish uniform recordkeeping requirements, dealers told the self-regulator.

At the same time, a major non-dealer firm said the proposal should be used to fix a gap in the existing rule.

The MSRB proposed the amendments to its Rule G-20 on gifts and gratuities, which is already in place for broker-dealer advisors, in October. The rule currently prohibits a dealer from giving directly or indirectly any thing or service of value, including gratuities, in excess of \$100 per year to a person if that gift is related to the muni securities activities of the employer of the recipient. The amendment would clarify that the gifts also cannot be related to muni advisory activities.

While market participants widely agree that MAs should be brought under these restrictions, there are concerns that some of the terms are not well defined or are vague enough to create potential regulatory gaps.

“We are concerned that the provision prohibiting reimbursement of entertainment expenses leaves too much room for interpretation and lacks clarity regarding the type of expenses that constitute ‘entertainment expenses’ versus expenses that constitute ‘normal and necessary meals’ and ‘normal travel costs,’” Bond Dealers of America chief executive officer Mike Nicholas wrote the MSRB in a comment letter.

Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association, warned the MSRB that it might be overreaching in restricting dealers from using bond proceeds to reimburse them for expenses if the issuer wants such reimbursements. The MSRB cannot directly regulate issuers.

“If a municipal securities issuer would like to spend their bond proceeds in a manner that is not otherwise prohibited by state or local law, in theory we see no reason for the MSRB to prohibit such an expenditure,” Norwood wrote. “SIFMA’s members are concerned that this will become another area where regulators will hold dealers responsible indirectly for state and local issuer behavior that they cannot regulate directly.”

Both dealer groups said that recordkeeping requirements should be the same for both dealer and non-dealer MA firms. Under the proposed rules, dealers would need to preserve records for at least six years while non-dealer MAs would only have to do so for five years.

Public Financial Management, a large muni advisor firm, said the draft changes to G-20 continue to appear to leave a regulatory gap by not including elected and perhaps even appointed officials as people to whom the gift restrictions would apply. The rule refers to the “employer” of the person receiving the gifts, but PFM counsel Joseph Connolly wrote that elected officials are not often understood as “employees” in the traditional sense.

“If the board has made a deliberate choice to exempt gifts to elected officials — at the same time as it maintains an extensive structure to limit election-related contributions — the board has not explained the decision to create that disparity.”

The MSRB held a webinar on the proposal last month and has set up a web resource to provide education and news to MAs, many of whom are unused to be regulated by any agency. The Securities and Exchange Commission will need to approve the proposal before it can become effective.

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