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Observers: SEC Delay on MA Conduct Rule May Foreshadow Changes.

WASHINGTON — The Securities and Exchange Commission has asked for an extension to decide whether to approve the Municipal Securities Rulemaking Board's proposed Rule G-42 on the core duties of municipal advisors.

The request for more time, published late last week, is the second extension the SEC has sought. Some observers say that means the SEC may have some concerns about the proposal and that the commission and the MSRB may be negotiating some changes.

The proposed core conduct rule has already gone through three comment periods – two with the MSRB and one with the SEC, the latter of which generated 15 comment letters. Most of those commenting raised concerns. The SEC plans to solicit more comments on the proposed rule in the 30 days after its order to extend its consideration of it is published in the Federal Register. It will have an additional 90 days from Aug. 6 to determine whether to approve the MA proposal.

The MSRB has not yet responded to the 15 comments made to the SEC, but said in a release Friday that it plans to reply soon through a letter that will be made available on its website. The delay in filing a response letter is another indication changes may be coming on the proposal, observers said.

The proposed rule delineates how MAs would comply with the fiduciary duty they owe municipal issuer clients – a duty to put clients' interests first that was mandated by the Dodd-Frank Act. MAs would have less stringent "duty of care" requirements in dealing with all other clients. Under the duty of care requirements, MAs would have to: exercise "due care" in their work; be qualified to provide advisor services; conduct a "reasonable inquiry" into the background of a client's request; and show they've done a reasonable investigation to ensure their advice is appropriate.

Dealer groups and issuers have been concerned about several portions of the rule, including one that would prevent an MA from acting as a principal in transactions with issuer clients that are directly related to transactions on which the MA is providing advice. Both dealers and issuers have argued for a narrower ban, with the Securities Industry and Financial Markets Association saying in its May letter that the ban should not apply to business affiliates of a firm that had no knowledge of an MA relationship between a municipal client and the MA.

Groups also asked for several clarifications on language in the proposal, including what constitutes reasonable diligence in confirming advice is suitable for MA clients.

The MSRB's planned letter in response to the comments the SEC received in late May could lead several of the groups who commented before to do so again, representatives of several of those groups said.

The Bond Buyer

by Jack Casey

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