Bond Case Briefs

Municipal Finance Law Since 1971

SEC Asked to Approve Extension of Gift Rule to Non-Dealer MAs.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve proposed rule changes that would address potential conflicts of interest by limiting the gifts and non-cash benefits that non-dealer municipal advisors can give to issuers and others in connection with their activities.

The board filed the proposed changes to its Rule G-20 on gifts, gratuities and non-cash compensation with the SEC on Wednesday. The rule already imposes these kinds of restrictions on dealer advisors. The amendments are part of a larger effort from the MSRB to develop a regulatory regime for municipal advisors as mandated by the Dodd-Frank Act.

The MSRB first proposed the rule changes last October and has now updated them based on feedback from market participants.

The modified rule would take effect six months after SEC approval.

“Amending the MSRB’s existing gifts rule would ensure common standards for dealers and municipal advisors that all operate in the municipal securities market,” said MSRB executive director Lynnette Kelly. “The principles of Rule G-20, together with the MSRB’s rules on fair dealing, help preserve the integrity of the municipal market.”

G-20 currently prohibits a dealer from giving any thing or service of value, including gratuities, that exceeds $100 per year to a person if the payments or services are related to municipal securities activities of the employer of the recipient.

Terri Heaton, president of the National Association of Municipal Advisors, had urged the MSRB set the limit for MAs at $250 per year and an anonymous commenter had suggested a $50 limit per year in comment letters sent last October, but the MSRB rejected both ideas. Heaton had raised concerns about MSRB statements that various Financial Industry Regulatory Authority rules were not codified into the proposed changes, but would still be applicable. She argued in her letter that since FINRA does not regulate non-dealer MAs, they would be at a disadvantage because they do not have easy access or direct knowledge of the rules.

The MSRB agreed with Heaton’s concerns and has codified the applicable FINRA rules into its amendments.

The board’s proposal also lists a number of exceptions to the $100 per year limit. The limit would not apply to “normal business dealings,” like gifts of meals or tickets to entertainment such as sporting and theatrical events if the regulated entity or associated persons host the event and the number of gifts is not “so frequent or so extensive as to raise any question of propriety,” the MSRB said. It would also not apply to “legitimate business functions” that the Internal Revenue Service would recognize as deductible business expenses or infrequent gifts like those for weddings or funerals.

Several commenters worried the exceptions may leave too many opportunities for abuse, but the MSRB said that specifying conditions, such as that gifts be infrequent to fall outside the limit, are sufficient to address these concerns.

The proposal also would prohibit MAs and dealer-advisors from receiving reimbursement of certain entertainment expenses related to a muni offering from the bond proceeds. The October version said "reasonable and necessary" expenses for meals hosted in connection with the offering would be exempted under the section. But after negative feedback from several groups about the wording of the exception, the MSRB changed the language to "ordinary and reasonable" expenses, citing a standard taken from tax law.

The entertainment provision harkens back to a FINRA case from April 2013 where Alabama-based Gardnyr Michael Capital, Inc. used bond proceeds to pay itself back for three trips to New York where employees spent thousands of dollars unrelated to the firm's business. FINRA fined the firm $20,000 for violations of fair dealing and supervision rules but noted there was no specific prohibition on the firm's actions.

The MSRB also filed revisions to its Rules G-8 on books and records, and G-9 on preservation of records, with the SEC to align the requirements for maintaining records documenting compliance with G-20 for MAs.

Jessica Giroux, senior counsel and senior vice president of federal regulatory policy for Bond Dealers of America, said she believes the changes will not be controversial and that BDA has previously said the amendments would "promote a level playing field in the marketplace."

David Cohen, managing director and associate general counsel with Securities Industry and Financial Markets Association, similarly said SIFMA is happy the MSRB is moving toward a "level regulatory playing field among dealer and non-dealer municipal advisors." But he added SIFMA is disappointed the MSRB did not follow some of the group's suggestions.

BDA, SIFMA, NAMA and the Investment Company Institute all filed comment letters on the MSRB's first version and each plans to file comment letters with the SEC.

THE BOND BUYER

BY JACK CASEY

SEP 3, 2015 3:37pm ET