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[SIFMA, NAMA: Pending MSRB Fee Changes Will Be Unfair, Burdensome.]

WASHINGTON — The Municipal Securities Rulemaking Board's pending fee changes will be unfair and excessively burdensome, dealer and advisor groups told the Securities and Exchange Commission.

They complained about the pending fees, some of which are scheduled to take effect beginning Oct. 1, in comment letters sent to the SEC.

The proposed changes show "the MSRB has failed to address" the "disparity between dealer and non-dealer MA fees," even after the self-regulator had said over 90 percent of the MSRB's revenue comes from dealers, said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association. SIFMA is asking the SEC to temporarily suspend the rule changes and institute proceedings to disapprove them.

Terri Heaton, president of the National Association of Municipal Advisors, asked the MSRB and SEC to reevaluate the MSRB's true needs and currently available funds, because the changes "will impact small advisors on a larger scale." Small MAs will have to absorb the fee increases "on a greater proportional basis" and face an "undue burden," which would be a violation of the Dodd-Frank Act, she said.

The MSRB proposed changing its Rule A-12 on initial and annual registration fees to raise its initial fee to $1,000 from $100 and the annual fee to $1,000 from $500, starting on Oct. 1. Heaton suggested the MSRB phase in both fee increases over the next two fiscal years.

Beginning on Jan. 1, the self-regulator plans to change its Rule A-13 on underwriting and transactions fees by reducing the underwriting fee to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000, starting on Jan. 1. It also will make a previously temporary technology fee of $1.00 per transaction for each interdealer and customer sale report to the board permanent and available for use with operating expenses.

Decker, who said muni dealers "have shouldered the cost of the MSRB for 40 years," suggested the MSRB implement activity-based fees on MAs that would mimic the current underwriting transaction fee for dealers. MA regulation is a "significant reason" for increased demands on MSRB resources and "it is time for the MSRB's cost to be fairly shared," he said.

NAMA proposed the MSRB provide information about how its MA rulemaking is affecting the board's cost of operations. Without that "important piece of the puzzle," it is harder to understand the MSRB's need for fee increases, Heaton said. She also said it seems the MSRB's operating reserves "are quite healthy and appear to be in excess of what would be prudent or necessary for an entity that can impose fee increases on an immediately effective basis."

Decker raised a similar concern about the MSRB's decision to make its technology fee permanent. He said that when the fee first went into effect in 2010, the MSRB clearly said it would only be temporary and specifically used for technology-related capital expenses. But now that the MSRB is expanding its use and making it permanent, the board is damaging its credibility and the market's respect of the MSRB, he said.

The SIFMA comment letter also used the technology fee to challenge the MSRB's claim that the fee changes would be "effectively revenue neutral." Decker said that would only be the case if it was assumed the technology fee would be permanent, which is not what the market believed. The MSRB would draw an additional $8 million a year by keeping the fee, he said, adding that the MSRB is in a good financial position as proven by a $3.6 million transaction fee rebate to dealers in 2014.

The MSRB said it proposed the changes in fees after "continuous and ongoing efforts" to "reasonably distribute" them among all market participants based on level of involvement. It said the annual fee has not changed since 2009 and covers fewer total expenses recently. The initial fee has not been changed since it was first adopted in 1975 and the drop in the underwriter transaction fee was meant to more evenly distribute costs because the MSRB saw less than a dozen dealers accounting for about 52% of the payments.

THE BOND BUYER

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