

# **Bond Case Briefs**

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## **Clock Ticking on Advisors' Compliance With SEC Pay-to-Play Rules.**

Now that FINRA, MSRB have filed pay-to-play rules with SEC, compliance with third-party solicitor provision at hand

Now that the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board have filed their proposed pay-to-play rules with the Securities and Exchange Commission, the clock will start ticking on when advisors must start complying with the third-party solicitor provision of the SEC's "pay-to-play" rule, says Karen Barr, president and CEO of the Investment Adviser Association.

While advisors have been required to comply with most provisions of the SEC's pay-to-play rule since 2011, the SEC delayed the compliance date of the third-party solicitor aspect of the rule so that FINRA and the MSRB would have time to adopt a pay-to-play rule for broker-dealers and municipal advisors, Barr told ThinkAdvisor Thursday.

Earlier in 2015, the SEC staff "stated publicly that [the SEC] would not enforce these provisions until the later effective date of either FINRA- or MSRB-adopted pay-to-play rules," which must be approved by the SEC. Both FINRA and MSRB filed their proposed rules on Dec. 16.

Barr notes that IAA had concerns with how FINRA's original proposal would have affected solicitors affiliated with investment advisors, but IAA is "pleased that FINRA eliminated the problematic provision" in its final rule that was sent to the SEC.

The SEC released "much-needed clarity" provided in mid-June [frequently asked questions](#) (FAQ) regarding compliance with new provisions in its pay-to-play rule.

FINRA's proposed rule change would amend FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish "pay-to-play" and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisors.

The MSRB's proposal seeks to safeguard the municipal securities market against pay-to-play practices, and the appearance of those practices, when state and local governments hire outside financial professionals.

The proposed regulations would extend the MSRB's well-established municipal securities dealer pay-to-play rule to all municipal advisors, including those acting as third-party solicitors, ushering in the first time that MSRB rule provisions are specifically tailored to the activities of those that solicit business from municipal entities on behalf of third-party municipal securities dealers, municipal advisors and investment advisors.

"For more than 20 years, the MSRB's pay-to-play rule for dealers has served as a model for other

regulations to address public corruption, or the appearance of corruption,” said MSRB Executive Director Lynnette Kelly, in a statement. “Applying this proven model to municipal advisors will ensure that all regulated municipal finance professionals are held to the same high standards of integrity.”

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors, “whose advice to state and local governments can impact municipal finance deals in the billions of dollars,” MSRB says.

The proposed amendments to MSRB Rule G-37 would curb the giving of political contributions to state and local officials in exchange for the award of municipal advisory business and provide greater transparency regarding municipal advisors’ political contributions. Consistent with the existing rule for dealers, the rule would generally prohibit municipal advisors from engaging in municipal advisory business with municipal entities for two years if certain political contributions have been made to officials of those entities who can influence the award of business.

Also like the existing rule for dealers, municipal advisors would be required to disclose their political contributions to municipal entity officials and bond ballot campaigns for posting on the MSRB’s public Electronic Municipal Market Access website.

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