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Dealer, Advisor Groups Ask for Revisions to MSRB Pay-t--Play Rule.

WASHINGTON – Dealer and advisor groups want revisions to a Municipal Securities Rulemaking Board proposal to extend pay-to-play prohibitions to non-dealer municipal advisors.

The MSRB filed its changes to MSRB Rule G-37 on political contributions, as well as MSRB Rules G-8 on books and records and G-9 on preservation of records, with the Securities and Exchange Commission on Dec. 16.

Rule G-37 already applies to dealers and prevents them from engaging in negotiated transactions with an issuer for two years if the dealer, one of its municipal finance professionals, or a political action committee controlled by the dealer or an MFP makes a significant contribution to an issuer official who can influence the award of muni bond business.

The rule includes a de minimis exception to the ban for individuals who give no more than $250 to any candidate for whom they can vote.

The proposed rule changes would extend both the prohibition and exception to non-dealer MAs, with certain differences depending on whether the MA is a third-party solicitor. The updates to the MSRB's two recordkeeping rules would include documentation requirements to assure compliance with the G-37 amendments.

Terri Heaton, president of the National Association of Municipal Advisors, said NAMA supports the MSRB's effort to extend the rule to MAs, but believes that the proposal will not lead to as a strong a rule as it could.

"We believe that rulemakings could be further strengthened to create a true barrier from allowing political donations to influence business being done in the municipal securities sector," Heaton wrote in her letter. She added NAMA would most like to see an outright ban on contributions to bond ballot initiatives instead of continuing to allow them to be made but with proper disclosure.

Heaton also said the rule needs to more clearly identify the responsibilities and disclosure requirements for dealers and MAs.

"Without such clarifications, municipal advisors may inadvertently omit information that should be disclosed," she said.

Bond Dealers of America chief executive officer Mike Nicholas agreed with Heaton, saying BDA supports the goal of the rule but would like to see revisions to eliminate "some unnecessary and duplicative regulatory filings for dealers" who may also act as MAs on other transactions.

"Despite our concerns with the proposal's lack of harmonization with contribution limits and record-keeping requirements applicable to other federal pay-to-play regimes, BDA supports the level playing field that applying MSRB pay-to-play rules to non-dealer municipal advisors will create,"

Nicholas said.

He recommended the SEC ask the MSRB to give guidance in the form of answers to frequently-asked-questions that allow dealer employees who act as both dealers and MAs to avoid keeping dual records and copies of disclosures for the same contributions.

Nicholas also said BDA would like to see the de minimis exception increased to $350 to harmonize the rule with existing de minimis contribution limits for investment advisors and swap dealers under Commodities Future Trading Commission and SEC investment advisor political contribution rules.

Leslie Norwood, associate general counsel and co-head of the municipal securities division for the Securities Industry and Financial Markets Association, said SIFMA "is looking forward to the SEC's approval of the changes" and echoed BDA's comments about the rule leveling the regulatory playing field.

Under the proposed rule changes, dealer and municipal advisory firms would be divided into two broad categories: dealer firms and their MFPs, and municipal advisor firms and their municipal advisor professionals. MAPs would be defined similarly to MFPs. MA firms would be subdivided into MA firms that act as third-party solicitors and those that do not. An MA third-party solicitor generally would be an MA that solicits, will solicit, or wants to be hired to solicit a municipal issuer or other entity for compensation, even if that MA also provides advice. Under the existing rule, a dealer can only be subject to a ban on muni business if a contribution is made to an official who can influence the selection of a dealer. Similarly, under the rule changes, a non-solicitor municipal advisor can only be subject to a ban on MA business if a contribution is made to an official who can influence the selection of an MA. A ban on MA business would include both a ban on advising the municipal entity on certain matters and soliciting the municipal entity on behalf of third-party dealers, MAs, and investment advisors.

But dealers who are also MAs could be subject to a "cross ban" on business, depending on the type of influence of the official they contribute to. A "cross ban" would treat a dealer-MA firm as a single economic unit. For example, if an MFP or MAP of the firm makes a contribution to an official who can influence the selection of dealers and MAs, the firm is subject to a temporary ban on both types of business. But if an MFP or MAP of the firm makes a contribution to an official who only has influence over the selection of underwriters, for example, the firm would be subject to a temporary ban on underwriting business.

For MA third-party solicitors, the ban on municipal advisory business would apply if the official receiving the contribution has influence over selecting MAs, dealers, or investment advisors. If a dealer hires an MA third-party solicitor, the dealer also may be subject to a temporary ban on negotiated municipal securities business if the solicitor contributed to an official who could influence the selection of dealers. Similarly, if an MA hires an MA third-party solicitor, the MA also may be subject to a ban on municipal advisory business if the solicitor contributed to an official who has influence over selecting MAs.

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