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## **Groups Raise Concern about Recordkeeping in MSRB Draft Rule.**

Comments on the Municipal Securities Rulemaking Board's second request for comment on its draft solicitor muni advisor rule highlight concerns over recordkeeping expectations, harmonization with the Securities and Exchange Commission's "Pay-to Play" rule and whether oral or written disclosures are the most effective for municipal advisors.

The board received comments from The Securities Industry and Financial Markets Association, The National Association of Municipal Advisors and The Third Party Marketers Association. The rule would codify interpretive guidance from 2017 on MSRB Rule G-17 and align obligations under MSRB Rule G-42, the duties of non-solicitor MAs. The board had previously floated a draft of the rule about a year ago.

Susan Gaffney, executive director of NAMA, initially called the efforts to improve draft Rule G-46 a step forward but expressed "extreme concern" over the books and records discussion detailed in the board's second proposal.

In its second RFC, the MSRB proposed including recordkeeping expectations in the text of the rule itself, rather than including it in MSRB Rule G-8 on books and records. The board would then take a similar approach with respect to future MSRB rules or rule amendments with the goal of including books and records obligations to each MSRB rule in the text of each rule itself.

"Finding a proposed change that impacts the entirety of MSRB recordkeeping rules within a rule about solicitors, and without specifically highlighting the larger implications of such a change, is very surprising," the NAMA letter said. "As a matter of principle, proposed broad changes to MSRB rulemaking should not be tucked away in unrelated proposed rulemaking."

NAMA doesn't necessarily disagree that a new rule would be out of place, but wants to emphasize that MSRB rulemaking should be clear and avoid "confusion between inter-and intra- agency rulemakings," the NAMA letter said.

NAMA also supports the MSRB's efforts to have disclosures provided in writing instead of given orally, an issue that the Third Party Marketers Association's letter also discussed.

NAMA emphasized the need to not burden small firms with additional requirements, a cause the group stressed to the MSRB many times in recent years.

SIFMA's comment letter applauded the MSRB's efforts in this area but outlined a number of areas where there could be confusion.

"We do, however, still have certain concerns with the (1) lack of solicitation prohibition for solicitor municipal advisors, (2) inconsistency with the SEC's Pay-to-Play Rule (as defined herein), (3) lack of safe harbor for inadvertent solicitation, and (4) recordkeeping requirements," the SIFMA letter said.

The SIFMA letter went on to recommend that Rule G-46 should include a broad solicitation prohibition for solicitor municipal advisors; that the updated rule should include a narrow solicitation prohibition for solicitor municipal advisors if the board doesn't adopt a broad one; alignment with the SEC's Pay-to-Play Rule in addition to a uniform approach for dealers and solicitor municipal advisors.

SIFMA's concerns went deeper to express a lack of safe harbors for inadvertent solicitation, which the group detailed in its original response to the G-46 RFC, concerns around recordkeeping requirements, and a streamlining of future MSRB rules and rule amendments.

"The MSRB stated that it is proposing to take a similar approach with respect to future MSRB rules or rule amendments," the SIFMA letter said. "The MSRB stated that the eventual goal would be to include recordkeeping requirements applicable to each rule in the text of each rule itself instead of Rule G-8."

"We think the overall approach for future MSRB rules and rule amendments is a substantial change to the structure of the MSRB Rulebook and should be open for public comment," the SIFMA letter said.

The Third Party Marketers Association took issue with the "prohibition added to prevent a solicitor municipal advisor from receiving 'excessive compensation' will be problematic," their letter said.

"Although we believe the rationale behind the prohibition to prevent a solicitor municipal advisor from receiving 'excessive compensation' is sound, the determination of what is considered 'excessive compensation' is left open to interpretation," the Third Party Marketers Association letter said. "For non-solicitor municipal advisors and underwriters, the marketplace in which these firms operate is much more robust than the one that exists for solicitor municipal advisors."

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