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Solicitor Municipal Advisors On Watch With New MSRB Rule G-46 In Place.

After years of soliciting market feedback, new Municipal Securities Rulemaking Board Rule G-46 on the duties of solicitor municipal advisors is in effect as of March 1, setting the stage for closer scrutiny from both municipal advisors and the Securities and Exchange Commission.

Solicitor municipal advisors are a much smaller crowd than traditional municipal advisors and only solicit for pension funds, though some MAs do both kinds of work. For those that do, new policies and procedures will need to be put into place.

“While the rule is especially important for those professionals that solicit for pension funds, it could potentially impact MAs and other regulated entities,” said Susan Gaffney, executive director of the National Association of Municipal Advisors. “If MA firms are engaging in solicitor MA activity, as outlined in the rule, it will be important for firms to develop necessary policies and procedures to comply with the Rule’s standard of conduct and recordkeeping requirements.”

Specifically, the rule defines solicitor MA activity as an entity in direct or indirect communication with a municipal entity or obligated person, for direct or indirect compensation, on behalf of an MA or investment advisor that is a third party and not controlled by the MA firm, for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor, and if the engagement does not include excluded communications, as defined in Rule G-46.

It could also include recommending another MA or investment advisor for compensation, directly or indirectly and encompassing quid pro quo arrangements or unrequested gifts to a municipal entity involved in an issuance, NAMA said in a compliance release.

If applicable, solicitor MA activity would also have to include disclosures to solicitor clients, documentation of the solicitor relationship, representations to solicited entities, disclosures to solicited entities, timing and manner of disclosures and certain prohibitions.

MAs and solicitor MAs came under the MSRB’s purview following the passing of Dodd-Frank more than a decade ago, but this is the first time specific solicitor MA standards of conduct will also be scrutinized by the SEC. In its 2024 exam priorities, the SEC made a particular point of drawing attention to the new rule.

“Examinations of solicitor municipal advisors during the second half of fiscal year 2024 will focus on compliance with new MSRB Rule G-46,” the SEC said. That will be part of its efforts to look at MAs as a whole and whether they’ve fulfilled their fiduciary duty to clients, “particularly when providing advice regarding the pricing, method of sale and structure of municipal securities,” the Commission added. “Examiners will review whether municipal advisors are complying with their obligations to document municipal advisory relationships and disclose conflicts of interest and requirements related to registration, professional qualification, continuing education, recordkeeping and supervision.”

On the Form MA, or the application for municipal advisor registration, solicitor MAs is just another box that may have been checked if a registering MA wasn't exactly clear on the definitions. NAMA suggests going back to review those materials, now that there are new and clear definitions.

"We've also been telling our members if you're not a solicitor, uncheck the box because we've heard from exams that they will be looking at the population of solicitor MAs that are self identified on Form MA and focus exam efforts on that in this year," Gaffney said.

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