

THE BOND BUYER

Thursday, December 17, 2015 | as
of 4:54 PM ET

Securities Law

MSRB Sends SEC Proposal to Extend Anti-Pay-to-Play Rule to MAs

by [Jack Casey](#)

DEC 16, 2015 6:34pm ET

WASHINGTON – The Municipal Securities Rulemaking Board filed proposed rule changes with the Securities and Exchange Commission on Wednesday to extend its political contributions rule to non-dealer municipal advisors and MAs soliciting business for dealers, advisors or investment advisors.

The proposed rule changes will address "an area of potential corruption, or appearance of corruption, in connection with the awarding of municipal advisory business, which impedes a free and open market in municipal securities and may harm investors, issuers, municipal entities and obligated persons," the MSRB said in its release.

"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.

"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 filing is part of the MSRB's development of a Dodd-Frank Act-mandated regulatory framework for municipal advisors.

The changes are to be made to the board's Rule G-37, which is designed to

prevent pay to play practices, where dealers make political contributions to issuer officials in return for obtaining negotiated muni business from them.

Rule G-37 currently prevents a dealer from engaging in negotiated municipal business with an issuer for two years if the dealer, one of its municipal finance professionals, or a political action committee that is controlled by either the dealer or a professional associated with the dealer, makes a significant political contribution to an issuer official who can influence the award of muni bond business.

However, a muni finance professional can give a de minimis contribution of up to \$250 to any candidate for whom he or she can vote for without triggering the ban. There is no such exception for a firm.

The same de minimis exception would extend to MAs but not MA firms under the proposed rule changes.

The proposed rule divides dealer firms and municipal advisory firms into two broad categories: dealer firms and their municipal finance professionals, and municipal advisor firms and their municipal advisor professionals. It then subdivides MA firms into two sub-categories: firms that act as third-party solicitors and those that are not solicitors. Under the proposed rule changes, a municipal advisor third-party solicitor is generally a municipal advisor that solicits, will solicit, or wants to be hired to solicit a municipal entity for compensation, even if that municipal advisor also provides advice to municipal entities.

An MAP would be defined in a manner similarly to the current MFP designation for dealers.

Under the proposed rule changes, a dealer can only be subject to a ban on municipal securities business if a contribution is made to an official who can influence the selection of a dealer. Similarly, a non-solicitor municipal advisor can only be subject to a ban on municipal advisory business if a contribution is made to an official who can influence the selection of an MA. A ban on municipal advisory 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, municipal advisors and investment advisers.

However dealers that are also municipal advisors could be subject to a "cross ban" on business, consistent with the type of influence held by the official to whom the contribution was made. 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 ban on both types of business. However, if an MFP or MAP of the firm makes a contribution to an official who only has influence over one type of business, the firm would be subject to a ban on only that business.

The factors triggering a ban on business for municipal advisor third-party solicitors differ than those for non-solicitor MAs. For municipal advisor third-party solicitors, the ban on municipal advisory business would apply if the official getting the contribution has influence over selecting MAs, dealers, or investment advisors. If a dealer hires a municipal advisor third-party solicitor, the dealer also may be subject to a ban on municipal securities business if the solicitor contributed to an official who could influence the selection of dealers. Similarly, if a municipal advisor hires a municipal advisor third-party solicitor, the municipal advisor also may be subject to a ban on municipal advisory business if the solicitor contributed to an official who has influence over selecting MAs. Dealers hiring a third-party solicitor would also have to consider that they may be violating MSRB Rule G-38 on solicitation of municipal securities business by hiring an MA third-party solicitor. G-38 bars dealers from directly or indirectly paying outside consultants or persons to solicit muni business on their behalf.

The MSRB is also proposing changes to its Rules G-8 and G-9 on books and records and preservation of records. The rules currently require dealers to disclose to the MSRB on a quarterly basis information about contributions made to issuer officials, payments made to political parties of states or political subdivisions, contributions made to bond ballot campaigns, and muni transactions done with issuers. Those requirements would extend to MAs under the rule changes and would include another requirement that MA third-party solicitors list the names of the parties from whom they've solicited business as well as the nature of the business solicited.

Jessica Giroux, general counsel and managing director of federal regulatory policy with Bond Dealers of America, said BDA "is pleased that the MSRB is bringing formerly unregulated entities under the same umbrella as registered and regulated broker dealers with regard to pay to play restrictions." BDA will take a closer look at the proposal and will likely submit comments to the SEC, she added.

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