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SEC Approves New Complaint Process for MAs; Update for Dealers

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WASHINGTON – The Securities and Exchange Commission has approved Municipal Securities Rulemaking Board changes to complaint processes for dealers and municipal advisors, saying they are consistent with the MSRB's authority and are not overly burdensome for market participants.

The changes to MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records will take effect on Oct. 13, according to the MSRB. The self-regulator had originally proposed setting an effective date of six months after approval but decided on nine months after dealers raised concerns.

The changes amend the current complaint process for dealer customers and then extend that process to municipal advisor (MA) clients.

"These positive changes will improve the ability of investors and state and local governments to understand what to do if they have a complaint about their municipal finance professional," said MSRB executive director Lynnette Kelly. "They also align the MSRB's customer complaint requirements more closely with those of other regulators and provide greater regulatory consistency for dealers and municipal advisors."

However, the changes did not come without some criticism from market participants. Groups and firms, including the National Association of Municipal Advisors, Bond Dealers of America, and non-dealer advisory firm The PFM Group, complained about the MSRB's decision to directly file the changes with the SEC before obtaining public comments. NAMA also characterized the extension of dealer rules to MAs in this case as "trying to fit a square peg into a round hole" because of the differences in the relationships between dealers and their customers and MAs and their clients.

The commenters also said the changes lacked some necessary detail and would be difficult to comply with if more guidance wasn't provided. In response, the MSRB made several technical changes in an amendment that will, among other things, clarify the definition of "municipal advisory client" for solicitor and non-solicitor MAs as well as the definition of "complaint."

The SEC, in its approval order, found that despite some of the concerns, the changes were reasonably designed to achieve the MSRB's goals and did not impose an undue burden on competition that would conflict with the Securities Exchange Act of 1934. The commission also

concluded that the rule "does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate" to the public interest.

"Although the proposed rule change would affect all municipal advisors, including small municipal advisors, the proposed rule change is a necessary and appropriate regulatory burden in order to protect municipal entities and obligated persons," the SEC wrote in its order.

The changes to Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint, eliminates the need to send a brochure and instead requires other disclosures for dealer customers and MA clients. Dealers and MAs are required to give notification of: their registration with the MSRB and the SEC; the MSRB's website address; and the brochure available on the MSRB's website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers will be required to notify customers with that information annually and MAs will have to share the information promptly, but no less than once a calendar year over the course of the MA relationship. The MSRB defined "promptly" as "promptly, after the establishment of a municipal advisory relationship."

While the rule does not require the notifications to come in any specific documents, the MSRB said MAs can include them along with the conflicts of interest and disciplinary disclosures required under MSRB Rule G-42 on core duties of municipal advisors.

The changes to Rule G-8 require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log will have to include: the identities of the dealer customer or MA client; the date the complaint was received; the date of the activity that gave rise to the complaint; and the person whom the customer or client names in the complaint. The log would also have to include a description of the complaint and the action, if any, the dealer or MA has taken in response.

The codes will be based on FINRA's codes but will be tailored to municipal securities and municipal advisory activities, according to the MSRB. The board will coordinate with FINRA about the codes and will make them available by posting them on its website.

The changes to Rule G-9 will require both dealers and MAs to retain their complaint records for six years. MAs would have otherwise only had to keep records for five years. MAs had urged the MSRB to keep the MA requirement at five years, but the MSRB defended its proposed amendments by saying the changes would level the playing field and help regulators with their inspections and surveillance of MAs.



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