

# MSRB to mull MA impact analysis, critical comments at meeting

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## MSRB

The MSRB will hold its quarterly board meeting in Washington D.C. on April 26 and 27 next week.

WASHINGTON – Municipal Securities Rulemaking Board members meeting here next week will discuss the framework for an analysis of the costs and burdens of rules affecting municipal advisors

as well as recent critical comments on a number of proposals.

At its quarterly meeting scheduled for April 26 and 27, the MSRB also will review its rules relating to primary offering practices and discuss current initiatives to add data and market tools to its EMMA system.

The MA rule impact analysis discussion comes as MAs have consistently expressed concerns about the burden of regulations MSRB has adopted under a Dodd Frank Act mandate to subject MAs to regulatory regime.

The board's planned discussions on its past proposals include three that market participants have either asked the MSRB to abandon or significantly change.

The MSRB's proposal to create a standalone minimum denomination rule has met with resistance from dealer groups, which have argued the changes it would put in place would hamper liquidity and harm the market.

The current minimum denomination provisions are contained in MSRB Rule G-15, which prohibits dealers from trading below the minimum denomination but includes exceptions meant to ensure liquidity for investors that may be stuck holding below-minimum amounts.

The proposed new standalone Rule G-49 would include the prohibition and the two current exceptions to the rule. It would also eliminate the current requirement in G-15 that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't its customer but rather the party from which the dealer purchased the securities. The proposal would add another "safeguard" to replace the liquidation statement. The safeguard would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer.

Bond Dealers of America asked the SEC to reject the proposal and the Securities Industry and Financial Markets Association asked that the new safeguard be removed before the rule is approved.

BDA chair Tom Dannenberg has said the minimum denomination proposal is an example of regulators missing the mark with an overly complex regulation that doesn't satisfy the rule's original goal of

protecting investors.

Comments from the market on the board's recent draft amendments to require CUSIP numbers for private placements will also be up for discussion at the meeting. While many of the market groups believe the MSRB's inclusion of placement agents under its Rule G-34 on obtaining CUSIPs would be a change, the MSRB has said it would be more of a clarification because it has always believed that G-34 applies to private placements.

Many of the groups urged the MSRB to provide an exemption from obtaining CUSIPs for participants involved in private placements for a single purchaser or a bank, its affiliates or subsidiaries if it moves forward with the amendments. Such an exemption would alleviate concerns that the changes would discourage banks from pursuing private placements and issuers from engaging placement agents and MAs because CUSIPs may signify the placement is a security and not a loan, they said.

Dealer groups praised another part of the draft amendments that would give non-dealer MAs acting in competitive deals the same responsibility to apply for CUSIPs that dealer-MAs have in competitive deals under the current rule. However, the National Association of Municipal Advisors worries that the requirement could bring non-dealer MAs closer to crossing the line into dealer activity.

The board will also review comments on a proposal to change the MSRB's advertising rule for dealers and apply comparable provisions to MAs for the first time.

NAMA, which suggested the MSRB withdraw its proposal, raised concerns that the proposal fails to adequately differentiate between the "products" that underwriters and investment advisors offer to retail customers and the "services" that MAs generally provide to their issuer clients. The group said that if the MSRB pursues the rule, it needs to properly bifurcate it to separately cover products and services.

In addition to calls for other changes, such as allowing requests for proposals and qualifications to be excluded from the definition of advertising, NAMA also wants the board to give guidance on how the rule would apply to MA websites and social media platforms.

SIFMA said it is pleased that the MSRB is proposing to level the regulatory playing field between dealers and MAs, but asked for better harmonization with existing Financial Industry Regulatory

Authority requirements. One such change would mean the MSRB would abandon its “one-size-fits-all” approach to the definition of advertising and instead use FINRA’s three categories for communication – institutional, retail, and correspondence.

The board is also expected to weigh whether it should publish guidance on the application of various existing MSRB rules to solicitor MAs that are not subject to MSRB Rule G-42 on core duties of MAs. That discussion is in response to solicitor MAs asking for such guidance.

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