

October 5, 2011

SEC and MSRB Withdraw Municipal Advisor Proposals

The SEC¹ and the Municipal Securities Rulemaking Board (MSRB) have withdrawn several proposals relating to municipal advisors.² The withdrawals followed objections raised by industry groups concerning the futility of commenting on proposals without understanding which parties would be subject to them. The MSRB stated that its intention is to resubmit the proposals upon the adoption by the SEC of a final definition of “municipal advisor.” Despite these actions, SEC Commissioner Walters advised a conference of market participants that the final municipal advisory registration scheme is “very much on the front burner” and that market participants who want to prepare for the final rule should study the MSRB’s recent municipal advisor rule filings, including the proposals that recently were withdrawn.³

The withdrawn proposals include:

- Rule A-11 (municipal advisor assessments)
- Rule G-36 (fiduciary duties of municipal advisors)
- Rule G-42 (“pay to play” restrictions)
- Rule G-44 (supervision of municipal advisory activities)
- Amendment to Rule G-8 (books and records)
- Amendment to Rule G-9 (recordkeeping)
- Amendment to Rule G-20 (gifts and gratuities)
- Amendment to Rule G-37 (political contributions and prohibitions on municipal securities business)
- Proposed Interpretive Notice for Rule G-17 (conduct of municipal advisors)
- Proposed Interpretive Notice for Rule G-36 (application to municipal advisors)
- Amendment to the Interpretive Notice for Rule G-37 (removing references to financial advisory services)
- Form A-11-Interim (municipal advisor interim assessment)
- Proposed Form G-37/G-42 and Form G-37x/G-42x (detailing contributions and other municipal advisor information)
- Clarification that certain interpretations relating to FINRA Rule 3220 and NASD Rule 3060 (each relating to gifts) would apply to municipal advisors

¹ See Securities Exchange Act Release No. 65394 (September 30, 2011), 76 FR 60952; Securities Exchange Act Release No. 65395 (September 30, 2011), 76 FR 60954; Securities Exchange Act Release No. 65396 (September 30, 2011), 76 FR 60959; Securities Exchange Act Release No. 65397 (September 30, 2011), 76 FR 60955; and Securities Exchange Act Release No. 65398 (September 30, 2011), 76 FR 60958.

² See [MSRB Notice 2011-51](#) (September 12, 2011).

³ “SEC Muni Report Advances,” *The Bond Buyer*, September 28, 2011, page 1, at page 20.

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The withdrawn proposals have no effect on:

- SEC Rule 15B(c)(1): Fiduciary Duty to Municipal Entities
- SEC and MSRB Registration Requirements
- MSRB Rule A-7: Assessments
- MSRB Rule A-8: Rulemaking Procedures
- MSRB Rule A-12: Initial Fee
- MSRB Rule A-14: Annual Fee
- MSRB Rule D-11: Associated Persons
- MSRB Rule D-13: Municipal Advisory Activities
- MSRB Rule D-14: Appropriate Regulatory Agency
- MSRB Rule G-5: Disciplinary Actions; Remedial Notices
- MSRB Rule G-17: Conduct of Municipal Securities and Municipal Advisory Activities
- MSRB Rule G-40: Electronic Mail Contacts

The withdrawn proposals also have no effect on proposed MSRB Rules G-21 (relating to advertising) and G-46 (relating to written engagements and certain disclosures). These proposed Rules remain open for comment.

Background (Proposed Rules)

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) required the SEC to establish a permanent registration regime for municipal advisors and imposed certain recordkeeping requirements and fiduciary duties upon certain municipal advisors. The SEC issued proposed rules⁴, which were the subject of [a prior Katten Client Advisory](#) and included a proposed definition of “municipal advisor,” and established a temporary registration system and certain recordkeeping requirements for municipal advisors. Comments on the Proposed Rules were due on February 22, 2011, but the SEC continues to receive comments.

⁴ The Proposed Rules were published in the Federal Register, Volume 76, No. 4 (January 6, 2011) as Release No. 34-63576, available [here](#).

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