

Pay-to-Play Spotlight: SEC Delays Effective Date of Third- Party Solicitor Rule; MSRB Withdraws Proposed Rule G-42

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Earlier this summer, the Securities and Exchange Commission (SEC) adopted several important amendments concerning the third-party solicitor provisions of Rule 206(4)-5, the SEC pay-to-play rule.

One of the more important changes for compliance purposes was the SEC's decision to delay the effective date for the third-party solicitor provision from September 13, 2011 to June 13, 2012.

In addition, the SEC clarified that "municipal advisors" registered with the Municipal Securities Rulemaking Board (MSRB) would be "regulated entities" that may serve as compensated third- party solicitors or placement agents on behalf of investment advisers in connection with the solicitation of government clients. Investment advisers registered with the SEC and broker-dealers registered with the Financial Industry Regulatory Authority (FINRA) also would be "regulated entities."

Under the original SEC pay-to-play rule, investment advisers were prohibited from paying third-party solicitors or placement agents for soliciting a government client on behalf of the investment adviser unless the third-party solicitor or placement agent was a "regulated entity" and subject to pay-to-play rules at least as stringent as the SEC pay-to-play rule. FINRA, which regulates broker-dealers, has not yet adopted its own pay-to-play rule.

Given that the SEC pay-to-play rule amendments expanded the definition of "regulated entities" and that FINRA has not yet adopted its own pay-to-play rule, the SEC pushed back the effective date for

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the third-party solicitor provision to allow the MSRB time to adopt a pay-to-play rule for municipal advisors and make other conforming amendments, and also to allow FINRA additional time to adopt its own pay-to-play rules.

The changes to SEC Rule 206(4)-5 were part of a larger series of amendments and may be found online at <http://www.sec.gov/rules/final/2011/ia-3221fr.pdf>.

MSRB Withdraws Proposed Rule G-42 - Pay-to-Play Rule for Municipal Advisors

In early September 2011, the MSRB withdrew its proposed Rule G-42. This rule, filed in August, would have imposed pay-to-play restrictions on municipal advisors and was modeled after Rule G-37.

The Dodd-Frank Wall Street Reform and Consumer Protection Act extended the MSRB's authority to regulate municipal advisors. Utilizing those powers, the MSRB's proposed rule would have prohibited municipal advisors who have made certain contributions to state or local government officials with direct or indirect hiring authority over the government's municipal advisors from receiving compensation from such government entities for two years. The MSRB had asked that the SEC adopt proposed Rule G-42 effective six months after the SEC adopts a final definition of "municipal adviser," or at a later date as determined by the SEC. Because this definition has not been finalized, the MRSB decided to withdraw its proposed rule.

The MSRB's existing Rule G-37 imposes very similar pay-to-play rules on brokers, dealers, municipal securities dealers and municipal finance professionals. In the same filing as its proposed rule, the MSRB also had made amendments to Rule G-37 to conform with the SEC pay-to-play rule.