

Comment on Notice 2014-04

from Jonathan Roberts, Roberts Consulting, LLC

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Comment:

For sole proprietors (speaking from the position in which I sit) - what written policy on supervision can you have? There is one thing documenting within your deal files the evidence that rules and laws are being adhered to, but it is quite another matter to have to draft a full procedure manual on how one would conduct self-supervision.

And I might add - how is it necessary for me to assign the responsibility for the management of monitoring this supervision to myself? And just what am I to do in any self-imposed self-evaluations? Spend the time to documenting that too? Why are my deal files not enough?

How the MSRB concludes that this supervision manual is requisite for a one man show - and to then state that it is not overly burdensome and should not create a competitive disadvantage is just a farce. The undue burden is absurd. Who but a larger organization can spread these costs and time and attorney's fees to produce such a manual - and still be able to source and do a deal to turn a profit? I see this as a stab at trying to eliminate the little guy.

As a societal matter - is it that we want to encourage a bunch of pack rats running around not getting the proper legal advice and pretending they are adhering to the rules and regulations by creating these manuals? - or do we want real adherence to the rules that make sense in the protection the public's interests? Why can I not just devote my attention to those issues and put those items in my real client deal files that shows consideration and demonstrates that I am adhering to the rules and regulations?

And I am sorry - it is not the isolating of each rule that needs to be addressed when the MSRB considers the "burdens of its rule making." The MSRB needs to consider the rules in the context of the whole. In separation I would agree - none of these rules are too much burden BY THEMSELVES. But from the totality of all rules perspective - I must say many a sole proprietor is going to struggle.

Just by way of example (and there are many examples I could add on and on): What factor does this supervisory manual burden contribute when it is added to the rule that one must disclose the requirement of not having insurance. For a sole proprietor, could that result in a competitive disadvantage to larger Municipal Advisory firms? Or for that matter could it be a competitive disadvantage compared to some unregulated mortgage broker/advisors that are not dealing in municipal securities? (Mortgage brokers are what I consider to be one of my prime sources of competition - I do zero work with states, municipalities, school districts, etc. - its all for-profit developer based and or 501(c)3 based financing - primarily of real estate and capital assets). If a unregulated mortgage broker does not need to disclose this - what is my disclosure going to do to help me?

I looked into that insurance thing immediately upon the starting of my own business. I mean, who might not want to be insured as to the risks of the business in which they operate? Right? But as a one man show - who is it that is seeking to be insured? Answer: My company/myself. And against what actions am I seeking to be insured? Answer: Those brought upon me for acts of my own negligence. From a sole proprietor perspective, there is no supervision that can overcome that.

So what does the MSRB think? Could you reasonably imagine that this type of insurance would be readily available? And even if it were - does the MSRB reasonably suspect such insurance would come at an affordable price? I submit to you that only large firms with cross supervision procedures and standards of oversight would ever be eligible for such insurance - in this regard this supervisory manual would not do a thing for me but may continue to advantage my larger competitors (and to digress: yet the MSRB wanted to know if insurance should be required????!!).

I want to ask the MSRB this question - If per Dodd-Frank legislation the problem was that "they" were too big to fail - is this piling on of regulations a means to force the outcome that all others might be too small to succeed?

I just can't seem to understand the MSRB's perspective that the burden of supervision - the writing of manuals and the like - is not an unnecessary burden to sole proprietor operations. Again, why can't sole proprietor operations be supervised as to the adherence to the rules and regulations simply by review of the deal files that they keep? (Though I am further sympathetic to the two three and four man show too, I will let those other small shops fend for themselves.)

Respectfully Submitted,

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