

Comment on Notice 2014-15

from Anonymous Attorney, RIA-MA

on Wednesday, October 01, 2014

Comment:

I am an attorney who represents a Registered Investment Adviser (RIA) that is also a Municipal Advisor (MA; together "RIA-MA"). As an RIA, as noted on pages 9 and 23 of Notice 2014-15, RIA-MA is already subject to stringent political contribution compliance and recordkeeping requirements under 17 C.F.R. §§ 206(4)-2 and 206(4)-5.

However, we are concerned that although the proposal purports to not apply to RIAs (see Page 9, n. 18: "Rule G-37 does not apply to investment advisers") it appears that the proposed rule would impose substantial additional administrative burdens on RIAs that are also MAs. Indeed, during a recent webinar, MSRB staff indicated that this provision is intended to apply to RIAs that are also MAs.

This stance is borne out in the text of the proposed rule: proposed G-37(e)(i) indicates, in stark contrast to the statement in footnote 18, that "Each ... municipal advisor must send to the Board ... Form G-37" at least quarterly. This means that RIAs who are also MAs would be required to go well beyond current political contribution recordkeeping requirements--which are already more than sufficient for the SEC's congressionally-mandated law enforcement responsibilities--to demonstrate requirements that the MSRB has elsewhere stated in writing should not apply.

The SEC can already easily obtain all the information it requires to ensure that RIAs are operating lawfully with respect to governmental entity customers: RIAs are required to maintain current political contribution records at all times. Because the SEC has enforcement authority for MSRB rules, with respect to RIAs, this rule, if implemented, would increase the SEC's workload when reviewing political contribution information: The SEC would need to review two sets of records to determine 1) substantive compliance with congressional mandates (where sufficient information already exists in current RIA records), and 2) also to review the sufficiency of the extensive additional, yet perhaps outdated, quarterly documentation that the MSRB is proposing to require to demonstrate essentially identical behavior.

Thus, for RIAs that are also MAs, the reporting requirements of this proposed rule would not only impose on RIAs an undue and unnecessary burden, but they would also divert scarce SEC enforcement resources to reviewing additional information where more focused and relevant information could be obtained at any time from already existing records.

If, as stated in the proposal, the MSRB sees a "need" for the amendments to help ensure that RIAs that are also MAs are not at a "competitive disadvantage" to MAs that are not also RIAs (see page 23), the current proposal clearly fails: It would place RIAs at a further competitive disadvantage by requiring them to maintain two sets of political contribution records, whereas MA-only MAs would only be required to maintain one set of records.

Thus, to achieve parity for RIA-MAs and exclusive MAs, we further recommend that the MSRB explicitly state in Rule G-37 that none of its provisions apply to RIAs that are also MAs except for a single new one that we propose here: Allow an RIA to submit a notification to the MSRB that the RIA is exempt from Rule G-37 because it is already subject to stringent activity restrictions and reporting requirements on political contributions.