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SEC Examining Non-Dealer Muni Advisors.

The Securities and Exchange Commission is examining non-dealer municipal advisors' compliance with registration requirements, a federal fiduciary duty standard, and the Municipal Securities Rulemaking Board's fair-dealing rule, people familiar with the matter said Thursday.

The SEC's office of compliance inspections and examinations, which is conducting the examinations, may be looking at the involvement of some muni advisors in bond ballot campaigns that could violate the fiduciary duty standard and fair-dealing rule, the sources said.

SEC officials have turned up and examined a wide range of the documents and business activities of some firms, said a source familiar with the examinations.

One financial advisor who did not want to be identified said he would not be surprised by the exams.

"We've had some questionable practices out here in California," he said. "It wouldn't surprise me if the commission came calling."

In a story published last year, The Bond Buyer reported some advisors were helping California school districts by serving as consultants to bond ballot campaigns, and then as financial advisors on the bond deals approved by voters. These firms were often paid by not only the school district, but also by the political action committee formed to pass the bond measure, which received contributions from underwriters.

The practice was viewed as a form of play-to-play because the financial advisor received money that came partly from the underwriter and then helped the issuer select the underwriter to do a negotiated deal. It also created a conflict of interest for the financial advisor.

"It's a very fine line when an advisor either contributes money or in-kind services to a bond ballot campaign if in fact the advisor is going to benefit as a result of the bonds approved by that campaign," said Tim Schaefer, the principal owner of Magis Advisors, a financial advisory firm in California. Schaefer said he told the MSRB the same thing in a comment letter.

In March, Treasurer Bill Lockyer sent letters to Attorney General Kamala Harris asking her to give an opinion on the roles of underwriters, financial advisers and bond counsels in school bond elections.

Nathan Howard, an attorney at Kodner, Watkins & Kloecker LC, who works with municipal advisors, also said he's not surprised by the exams. Howard pointed out that, since the Dodd-Frank Act was enacted in July 2010, muni advisors have been required to register with the SEC, an agency that has not historically had oversight over non-dealer firms. The firms must register with the MSRB as well.

"The Dodd-Frank Act gave the SEC regulatory oversight authority over non-dealer FA firms and therefore it is not surprising that these reviews are occurring," Howard said. "Although this is purely speculative, it is likely that a collateral purpose of these reviews is to provide the SEC with insight into how non-dealer FA firms operate and conduct business within the municipal securities market

since these firms were unregulated at the federal level prior to the passage of Dodd-Frank.”

Although the SEC has not finalized its definition of municipal advisor and the MSRB, as a result, has not yet written rules regulating them, muni advisors still have a federal fiduciary duty to put their clients’ interests ahead of their own under Dodd-Frank. Also they must also comply with the board’s Rule G-17 on fair dealing, which says dealers and municipal advisors “shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice.”

SEC officials could not be reached for comment. Several members of the National Association of Independent Public Finance Advisors said they were unaware of the SEC exams. Officials at Emeryville, Calif.-based Caldwell, Flores Winters Inc., a financial advisor and bond-ballot campaign consultant featured in The Bond Buyer story, could not be reached for comment.

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