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Issuers Warned About Contracts, Unregistered MAs.

Panelists at a conference here on Monday warned issuer officials to be wary of dealer contracts that might violate municipal securities rules and to make sure they are using properly registered municipal advisors.

Speaking at a session on financial advisors at the annual Government Finance Officers Association's meeting, Eric Johansen, director at Public Financial Management, Inc. in Portland, Ore. and a former GFOA debt management committee chair, cautioned issuers about dealer contracts that appear to violate Municipal Securities Rulemaking Board Rule G-23.

The rule prohibits a firm from serving as a financial advisor and as an underwriter on the same bond transaction. It also says a financial advisory relationship exists if a firm gives advice "with respect to" an issuance of securities. Under the Dodd-Frank Act, municipal advisors are subject to a fiduciary duty to put their client's interest first, before their own.

In recent months, some dealers have agreed to provide financial advisory services to issuers, but their contracts say their work will not meet the regulatory definition of FA services, they do not have a fiduciary duty to the issuer, and if there is an opportunity to underwrite bonds, they may seek to do so.

Johansen told the group they should be aware of this if they get a contract from a dealer firm that "looks a little funny."

"They try to establish this notion of 'gee, we can do everything,'" Johansen said, adding, "It has the attention of the MSRB."

Johansen added that it might be important for issuers to receive more education in this area, especially if these kinds of contracts are widespread.

"If it is at all widespread, it may be appropriate for GFOA to issue guidance to its members," he said.

Patrick McCoy, director of finance at the Metropolitan Transportation Authority in New York, told local finance officials that they need to be aware of the rules governing municipal advisors so that their debt management does not suffer down the line.

Although the Securities and Exchange Commission has not yet released its definition of municipal advisor, those who will certainly be included have been required to register with both the SEC and the MSRB since 2010. In addition, they have had a fiduciary duty to issuer clients since then.

The SEC has not taken any enforcement actions against unregistered advisors yet, but McCoy told the issuers they should be checking to make sure that individuals or firms giving them financial advice are properly registered.

"It's a fair question," McCoy said, "because they should be."

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