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Municipal Advisors Concerned About IRMA Exemption.

NEW YORK — Municipal advisors remain concerned about one of the key exemptions to the Securities and Exchange Commission's municipal advisor registration rule, even though they said communications between issuers and underwriters remain robust nearly eight months after the final rule took effect.

Municipal advisors expressed concern about the independent registered municipal advisor, or IRMA, exemption in remarks at The Bond Buyer's National Outlook 2015 conference Wednesday.

The IRMA exemption allows an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn't have ties to an underwriting firm, and says that it will rely on that MA's advice. Underwriters who give bond advice to state or local governments without an exemption from the rule, such as the IRMA exemption, otherwise assume a fiduciary duty to put the municipality's interests before their own and are precluded from underwriting any bonds in that same transaction.

"There's still a lot of feeling our way through it," said Noreen White, co-president at Acacia Financial Group, Inc. While there have been some growing pains, White said, she has seen no evidence of a major concern expressed by issuers and underwriters when the rule was unveiled in fall 2013, when there was fear that the regulation would effectively end the practice of investment bankers offering ideas to issuers.

"I haven't seen any of the dreaded impeded conversations," White said. "We still see as many proposals coming across the transom as we ever did."

Steven Peyser, president at Public Resources Advisory Group, said the IRMA exemption should be tweaked to allow for more of what he called a beneficial "cross fertilization" between muni advisors and underwriters. The SEC rule says that an IRMA is only independent if it has been separate from the underwriter seeking to use the exemption at both the entity and employee levels for two years. The MA cannot have been controlled by the underwriter and MA employees involved in the transaction cannot have worked for the underwriter. Peyser said the SEC should either eliminate the two-year cool-off period for individuals or should grant another exemption for sophisticated issuers – a suggestion that has garnered support from industry groups and large issuers in the past.

Peyser added, however, that he also has seen no restrictions on market conversations since the rule's final effectiveness July 1 of last year, so long as the IRMA exemption is used.

"Communications between issuers and underwriters have remained virtually the same," he said.

White said she has another important concern about the potential for abuse of the IRMA exemption through the use of so-called "paper IRMAs" that are listed on a transaction but are not really very involved. SEC muni office officials have said repeatedly that an IRMA has to be meaningfully engaged in the work at hand to qualify as an IRMA and provide the exemption. White said she expects there could be SEC action on that front eventually, perhaps as soon as the Municipal

Securities Rulemaking Board has finished writing its own MA rules. White said she would be wary of the potential for trouble in such a situation and told the conference that issuers need to show any serious proposals they get from investment bankers to their IRMA.

"I'm not going up the river for anybody with a pair of silver bracelets," she said.

Federal regulators at the conference discussed expectations for the coming year. Rebecca Olsen, chief counsel at the SEC's muni office, told the group that 2015 could indeed be another "year of the municipal advisor."

"There's a lot of work left to do," she said.

MSRB chair Kym Arnone provided an update on MSRB rulemaking, and spoke about the board's reaction to a Feb. 13 speech by SEC commissioner Luis Aguilar. In that public statement, released by Aguilar's office, the commissioner expressed dissatisfaction with transparency in the muni market and called on the regulators to move swiftly to implement the recommendations included in the SEC's 2012 Report on the Municipal Securities Market. Arnone said Aguilar's sentiments are in line with the MSRB's goals and with those previously stated by SEC chair Mary Jo White. She said the MSRB welcomes Aguilar's interest in the muni market.

THE BOND BUYER

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FEB 18, 2015 12:51pm ET

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