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SEC Official Corrects Municipal Advisor Misconceptions.

CHARLESTON, S.C. — Some municipal advisors have misconceptions about who can advise in the municipal market and who can be considered an independent registered municipal advisor, a Securities and Exchange Commission official told MAs meeting here.

Rebecca Olsen, deputy director of the SEC's office of municipal securities, made the remarks at the National Association of Municipal Advisors annual conference here on Thursday. She said that not only MAs, but also other individuals like registered investment advisors, can give advice on bonds. She also said that some MAs need to stop "telling everyone they are the IRMA" when they have not met the necessary requirements.

"While a municipal advisor may have agreed to serve in the role of an IRMA for [a] particular client, a market participant cannot rely on that municipal advisor in that capacity until all the requirements of the exemption have been satisfied," Olsen said.

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 agrees to rely on that MA's advice. An underwriter who gives bond advice to a state or local government without an exemption from the rule, such as the IRMA exemption, becomes an MA that has a fiduciary duty to put the municipality's interests before its own and is precluded from underwriting any bonds in that same transaction.

Olsen said the market participant relying on the IRMA exemption is the one who has to make sure all the requirements are satisfied, but that it is "something to keep in mind" for MAs moving forward.

MAs who falsely claim to be IRMAs are not violating any specific rules at this point, aside from Municipal Securities Rulemaking Board Rule G-17 on fair dealing if the behavior is egregious, but the SEC is "a bit concerned about the miscommunications and [is] encouraging people not to make them," she said.

There are also a number of MAs that are not permanently registered with the SEC Olsen said. The Bond Buyer's comparison of the SEC and Municipal Securities Rulemaking Board's lists of registered MAs shows approximately 80 firms or individuals still need to register with the SEC.

The deadline for registration was last year. "If a municipal market participant is engaging in municipal advisor activities and not registered on a permanent form, it would at this point be considered unregistered municipal advisory activity," Olsen said.

Later in the panel, Olsen updated the audience on a new SEC rating agency requirement that took effect in June. Paragraph "b" of the SEC's Rule 17g-8 on credit rating agencies stems from provisions laid out in the Dodd-Frank Act and requires rating agencies to have policies and procedures that are designed to take the probability that an issuer will default or fail to make timely payments into account when assigning ratings.

The rule responds to the long-time critique that muni ratings generally are not as high as corporate bond ratings, even though muni default rates are lower. Olsen said the rule change “appeared to have resulted in an upgrade for certain municipalities including general obligation bonds.”

Dave Sanchez, an attorney at Sidley Austin in California and a former SEC muni office lawyer who moderated the panel, said rating agencies seem unaware of the rule. He also cited a study that referred to the absence of adequate default rate considerations as potentially a $2 billion problem for issuers.

Olsen said the study likely relied on data from before the rule took effect and emphasized that the rule requires rating agencies to look at the probability of default comparably with other factors they could have previously considered.

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