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BDA Urges SEC to Reject the PFM and NAMA Requests to Avoid Broker-Dealer Regulation

After much consultation with the BDA Municipal Division and Legal and Compliance Committee leadership, along with BDA outside counsel-Nixon Peabody and Davis Polk, the BDA has submitted a letter to the SEC strongly opposing the recent requests for guidance regarding private placement activity by non-dealer municipal advisors.

The BDA learned late last week that the SEC is preparing very soon to move on this issue and is inclined to issue exemptive relief in some capacity. With this new development, the BDA has drafted a letter building off the information received during the member call in late July, and continued contact by staff and outside resources with the SEC.

The BDA is meeting with the SEC this week to further address our concerns. Meetings include the leadership at Trading and Markets, including chief counsel, and the Office of Municipal Securities. Later in the week, the BDA has a confirmed meeting with SEC Commissioner Robert Jackson, and likely others.

The letter, [which can be viewed here](#), focuses on historical precedent, competitive disadvantages and the erosion of investor protections provided by the broker-dealer regulatory regime.

Prior BDA Actions

In late June, the BDA submitted a letter in response to the PFM and NAMA requests for guidance regarding private placement activity by municipal advisors. The letter submitted addresses directly the problems that would arise from the request for interpretative guidance if granted, including rolling back decades of settled law on what constitutes broker-dealer activity.

The BDA has met with the SEC and MSRB, including during the quarterly Fixed Income Working Group fly-in earlier this summer, to discuss our positions and gauge the regulators next steps.

The letter can be viewed [here](#).

Background

PFM, the municipal advisory firm, sent a letter to the SEC last fall asking that the firm “not be required to register as a broker dealer” when conducting certain placement agent activity. They requested guidance exempting them from BD registration, which they argued “is essential for PFM and other MAs to fulfill their statutory mandate to protect [municipal entity] issuers, and to provide clarity and transparency regarding the role of the MA in municipal financing transactions.”

Shortly after learning about the letter, BDA staff met with the SEC and the conversation with SEC staff focused on concerns we have with the request, including that it would negate the substantial regulatory protections under BD regulations in place to protect investors. The BDA also argued that the guidance PFM is asking for would create an unbalanced competitive environment between

dealer and non-dealer MAs, and we emphasized that the act of finding investors, even for a direct placement, is inherently BD activity.

Bond Dealers of America

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If you have any questions, please contact Brett Bolton at bbolton@bdamerica.org

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