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Dealers Double Down on Opposition to Muni Advisors Running Private Placements.

Broker-dealers want the Securities and Exchange Commission to know exactly where they stand when it comes to municipal advisors and private placements of municipal debt, again asking the SEC not to grant regulatory relief sought by a major MA firm.

The Bond Dealers of America sent a letter to the Securities and Commission on Monday, its second on this subject in three months, asking for municipal advisor and broker-dealer roles to be kept separate. Both BDA and the Securities Industry and Financial Markets Association have written to the SEC to oppose an earlier letter sent by leading MA firm PFM.

After meeting with the SEC after sending its first letter and talking with its members, BDA CEO Mike Nicholas said the group wanted to consolidate its major points so "that the SEC knows very clearly what the industry view is."

The SEC is preparing "very soon to move on this issue," BDA said.

This all follows a PFM letter in October 2018 where the large non-dealer municipal advisor asked the SEC for written guidance confirming that the firm wouldn't need to register as a broker-dealer when engaging in certain activities when advising on private placements of municipal bonds. Municipal advisors have said that they do not want to act as unregistered placement agents, but want to feel secure they aren't breaking the law when they engage in certain negotiations with potential buyers or coordinate certain aspects of a transaction.

Muni advisors generally view this activity as consistent with their fiduciary duties, but dealers oppose it and view those roles as properly the place of a registered dealer firm. While dealers are not fiduciaries of an issuer, they are subject to certain regulations MAs are not, such as a requirement to perform due diligence before a transaction in order to protect investors.

"The BDA is concerned that the requested relief is inconsistent with the SEC and its staff's long held views regarding the need for broker-dealer registration and the purposes of that regulatory regime," Nicholas said.

Nicholas said that if guidance were issued to allow non broker-dealers to participate in private placement activity, it would essentially eliminate the participation of dealers in such transactions.

"If municipal advisors can receive transaction-based compensation for engaging in private placement broker-dealer activities, there would be little reason for dealers to engage in this activity within a municipal securities dealer entity," Nicholas wrote.

In the letter, BDA further emphasized investor protection issues that it believes could be at stake. Broker-dealers serving as placement agents have a due diligence obligation to protect investors, and BDA argued that the requested relief would erode away investor protections.

“Presumably rules are in place for a reason,” Nicholas told The Bond Buyer. “This is a very, very regulated industry, presumably for a reason, and so we feel like investor protection is a big part of this issue.”

The National Association of Municipal Advisors wrote a letter to the SEC in July, pressing them to provide permission to participate in certain deals without risking enforcement action.

“NAMA’s letter commented on the need for MAs to be able to perform their MA duties and represent their clients without having that labeled as broker-dealer activity,” said Susan Gaffney, NAMA executive director. “We are not asking for MAs to be able to perform broker-dealer activity without being registered.”

By Sarah Wynn

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