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BDA Continues Aggressive Advocacy on Non-Dealer MA Request of SEC.

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 opposing the recent requests for guidance regarding private placement activity by non-dealer municipal advisors, while providing framework on potential relief at the request of Commissioner Robert Jackson.

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

Following mid-September meetings with leadership at the SEC Office of Trading and Markets, including chief counsel, and the Office of Municipal Securities and Commissioner Robert Jackson, the BDA was tasked with finding a narrow framework for exemptive relief.

While BDA remains opposed to the SEC issuing any form of the requested relief, we believe that, if relief were to be granted, it should be in the form of a narrowly tailored exemptive order that makes clear that engaging in the activity constitutes acting as a broker-dealer but, under the limited circumstances, the SEC would exempt municipal advisors from broker-dealer registration requirements.

The BDA is planning follow a follow up meeting with Commissioner Jackson to discuss the proposal, as well meetings with other Commissioners and staff in the coming weeks.

Prior Actions

Following multiple rounds of meetings with SEC staff, the BDA has sent two prior letters in response to the **PFM** and **NAMA** requests for guidance regarding private placement activity by non-dealer municipal advisors. The September 9th 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.

The first letter submitted by the BDA on June 28th addressed 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 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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