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SIFMA Says SEC Is On 'Wrong Path' With Advisor Exemptive Order.

The Securities and Exchange Commission is making a mistake by considering an exemption from broker-dealer registration for municipal advisors working on private placement deals, a top muni lobbyist said Thursday.

Securities Industry and Financial Markets Association President and CEO Kenneth E. Bentsen Jr. raised that warning among other topics of importance to the muni market during SIFMA's State of the Industry briefing at the group's New York office.

"We have strong concerns," Bentsen said. "We think that the SEC is going down the wrong path with that."

The proposed exemptive order, on which the SEC opened a comment period in early October, would allow registered municipal advisors to perform some roles in the private placement of bonds that dealer firms view as properly their role.

SIFMA has previously sent letters to the commission warning against the concept, and Bentsen said it is among SIFMA's regulatory priorities. Under the proposal, MAs could play a role facilitating private placements without being a registered dealer so long as it complies with certain conditions.

To qualify for an exemption, the MA would have to make written disclosures to an investor saying that it represents the interests of the issuer, not the investor. In return, the MA would have to get written acknowledgment of that disclosure from the investor.

The MA would also need to get written representation from the investor that it is capable of independently evaluating the investment risks of the transaction. The entire issuance would have to be placed with a single investor, and the MA would have to continue to comply with regulations governing municipal advisors.

Dealers have pointed out that muni advisors owe a fiduciary duty to their municipal entity clients, but do not have the regulatory duties to protect investors that dealers have. Dealers have raised concerns that privately placed bonds could make their way into the secondary market without ever having been subject to the due diligence that broker-dealers are required to perform.

The proposed exemption has received a generally favorable reception outside the broker-dealer community, and comment is due to the SEC Dec. 9.

Bentsen also discussed the search for the Municipal Securities Rulemaking Board's next president and CEO. The role has been filled on an interim basis by its CFO Nanette Lawson since longtime leader Lynnette Kelly stepped down at the start of October. The board announced last month that it had hired executive search firm Spencer Stuart to aid the search.

"I think it's very important," Bentsen said, declining to comment on the MSRB's process. "But it's an

important job," he added, noting that the post entails a range of responsibilities and the ability to interact with market participants. "You need to engage with the community that you regulate," Bentsen said.

"They're going to have their work cut out to fill that," he said.

Bentsen touched on the need to reinstate tax-exempt advance refundings, and said he was encouraged by the work done by House muni finance caucus co-chairs Steve Stivers, R-Ohio, and Dutch Ruppersberger, D-Md., to introduce a bill that would do so.

"We're eager to see the Senate take this up," Bentsen said.

By Kyle Glazier

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