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Congressman Asks SEC for MA Rule Clarification.

WASHINGTON — The Securities and Exchange Commission should provide guidance to broker-dealers assuring them that they will not be restricted from giving advice to issuers in their roles as underwriters, a congressman told SEC chairman Mary Jo White in a recent letter.

Rep. Ander Crenshaw, R-Fla., who chairs the House Appropriations Committee's subcommittee on financial services and general government, wrote to White to express concern that the SEC's recently-released municipal advisor registration rule will prevent dealers seeking to act as underwriters from giving advice to issuers about bonds for fear of being prevented from underwriting them later.

The MA rule, mandated by the Dodd-Frank Act, imposes a federal fiduciary duty on any entities that provide particularized advice about muni bonds to an issuing authority or conduit borrower, a duty to put the issuer's interests first, which dealer firms have long held to be incompatible with the role of an underwriter.

The rule takes effect Jan. 13.

"I encourage you to clarify that dealers who declare their roles as bond underwriters when initiating communication with an issuer in compliance with Municipal Securities Rulemaking Board rules, will not be prohibited from underwriting bonds as a result of providing specific recommendations to bond issuers," Crenshaw wrote.

MSRB Rule G-23 on the activities of financial advisors prohibits firms from serving as financial advisor and underwriter on the same bond issue, but some market participants contend it is unclear if registered MAs under the new regulatory regime would be prohibited from doing the same thing.

The issue has emerged as a central concern for dealer groups, non-dealer advisors, and the National Association of Bond Lawyers, though SEC officials have said the MA rule and G-23 are not the same thing.

The SEC's MA registration rule allows a dealer firm engaged as underwriter on a bond issuance to provide certain advice about that specific security. The rule also allows an underwriter to provide advice if an issuer has retained and is relying on the advice of its own MA. Many market participants are eagerly awaiting guidance from the SEC before the rule's effective date.

"A successful negotiated bond issuance relies on communication among the issuer, the underwriter, and other members of the financing team from the earliest stages," Crenshaw wrote. "Issuers depend on underwriters to provide ideas, analysis, information and proposals that can minimize financing costs for state and local taxpayers. I appreciate your attention to this matter and I look forward to seeing the commission's interpretive guidance on the MA rule."

BY KYLE GLAZIER

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