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NAIPFA Issues MA Rule Guide; GFOA to Offer Training.

A group of non-dealer advisors on Wednesday released a guide for issuers and municipal advisors, saying it is designed to clear up misconceptions about the Securities and Exchange Commission's municipal advisor rules.

The National Association of Independent Public Finance Advisors posted the four-page guide on its website.

At the same time, the Government Finance Officers Association announced it plans to provide an Internet training course, called "SEC Municipal Advisor Rule: Understanding the Future of the Issuer — Financial Advisor and Underwriter Interaction," for issuers and public finance professionals on Jan. 15.

The "instructor" for the GFOA course will be John Cross, director of the SEC's Office of Municipal Securities.

The MA rules, which take effect on Jan 13, require MAs to register with the SEC and to comply with Municipal Securities Rulemaking Board rules. An MA is defined as a firm or person who provides particularized advice about muni bonds to an issuer or other municipal entity. MAs have a fiduciary duty to put their clients' interests first, before their own.

Explaining the guide, NAIPFA president Jeanine Rodgers Caruso, said: "It is our goal as municipal advisors to protect the interests of issuers, which includes making sure that issuers understand the new regulatory environment, what they can and cannot do, and what their professionals can and cannot do."

Caruso said that while the SEC rules "may be not perfect, they are not overly burdensome and will achieve the SEC's goal of protecting issuers."

The NAIPFA guide provides answers to 16 questions or assumptions made about the rules.

Broker-dealers have complained that the rules will constrain them from providing the kind of advice that they have been giving issuers for years.

NAIPFA disagrees, saying in the guide that a dealer can provide certain advice to an issuer without being considered an MA including, information that is: of a factual nature without subjective assumptions, opinions, or views; not particularized to a specific or type of municipal entity; widely disseminated for use by the public, clients, or market participants other than municipal entities or obligated persons; or educational.

"Issuers can still talk with broker-dealers (i.e. underwriters) or bankers," NAIPFA said in the guide. "There will, however, likely be a minor shift in terms of the manner in which those conversations occur."

The communication "will become more formalized than in the past," the guide said.

For example, a broker-dealer could recommend a type of financing to an issuer without being considered an MA if it meets one of three exemptions: the recommendation is in response to a request to a request for proposals or qualifications, the issuer has engaged the broker-dealer as an underwriter, or the issuer has hired an independent registered municipal advisor and makes the dealer aware of that in writing.

The term independence means the MA must not be, currently or within the past two years, associated with the dealer or underwriter relying on the exemption.

Dealer-financial advisors have complained that they are on an un-level playing field with MAs because MAs are not subject to the same rules that they are, including rules against hiring outside consultants or engaging in pay-to-play practices.

In its guide, NAIPFA says that since 2010 MAs have had a fiduciary duty to put clients' interests first and have had to comply with the MSRB's Rule G-17 on fair dealing. The MSRB is developing rules and rule changes for MAs, but that process could take months or even years.

The guide says that, unlike with an underwriter or banker, the role of an MA does not end once debt is issued. Its fiduciary duties extend whenever services are provided and continue for the life of an issue, NAIPFA says.

View the NAIPFA MA Rule Guide at:

<http://naipfa.com/wp-content/uploads/2013/12/MA-Misconceptions-Final.pdf>

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