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SIFMA: Dealers Not Given Enough Time on MA Rule.

WASHINGTON — The Securities Industry and Financial Markets Association is very concerned about the imminent effective date of the new municipal advisor rule, warning both that federal regulators have not given banks enough time to comply and that the rule remains unclear absent additional guidance.

SIFMA members were handed too large of a compliance burden when the Securities and Exchange Commission approved its new MA rule in September, Leslie Norwood, managing director, associate general counsel and co-head of the muni group along with Michael Decker, who is also a managing director, both said in an interview.

The SEC specified that the rule become effective 60 days after its publication in the Federal Register, an action that was delayed by a government shutdown but eventually took place in November. The rule now becomes effective Jan. 13.

Decker said that larger firms may have hundreds of bankers who need to be trained in the new compliance regime, which imposes a fiduciary duty on, and requires the registration of, individuals and firms who provide municipalities with particularized advice about issuing bonds, muni derivatives, or muni escrow funds.

SIFMA members also will have a lot of work to do in investigating the funds they manage to determine whether they contain bond proceeds and whether those funds therefore are subject to the new regime, Norwood said. This could involve interviewing state and local officials and other time-consuming processes, she explained.

"It is not as simple as just checking," she said.

The MA rule, which codifies language included in the Dodd-Frank Act, came under fire from the underwriting community almost immediately after its release and unanimous approval. SIFMA and other dealer groups remain concerned that the rule as written will prevent some necessary communication between underwriters and issuers, a claim non-dealer financial advisors have dismissed.

Norwood said SIFMA is awaiting further guidance from the SEC, especially regarding the scope of the underwriter exemption. The rule allows underwriters to offer certain kinds of advice once they are engaged to underwrite a specific muni offering.

The SEC has said it would release more guidance, and market participants expected it would come before the rule's effective date, but so far none has materialized.

Some lawmakers have spoken up in support of SIFMA's position, including House Financial Services Committee member Rep. Steve Stivers, R-Ohio. Stivers penned a letter to the SEC last month urging the commission to "make it clear that a dealer providing particularized ideas, analysis, information, proposals or other communications that might otherwise be deemed 'advice' under the rule not be precluded from underwriting a bond transaction that might arise from that communication" as long as the dealer complied with applicable Municipal Securities Rulemaking Board rules.

"It has definitely gotten the attention of the Hill," Decker said.

SIFMA maintains that the MA provision in Dodd-Frank was only meant to bring non-dealer financial advisors under regulation, not to restrict the activities of dealers and other entities already governed by MSRB rules.

"Congress never intended that," Decker said.

The issue has flared up recently as some issuers have refused to consider advisory services from dealer-affiliated FAs. Both Los Angeles and the Greater Texoma Utility Authority in Texas have recently solicited business exclusively from non-dealer FAs. Norwood said dealer-FAs would be a more logical choice for issuers, since they are currently governed by more rules designed to protect issuers and investors. The MSRB is working on rules that will apply to all MAs, but non-dealer advisors are currently are governed by the fiduciary duty and the board's Rule G-17 on fair dealing.

BY KYLE GLAZIER

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