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## **Small Issuers Uninformed About MA Rules; Dealers Picking up Slack.**

WASHINGTON — Many smaller issuers remain uninformed about what the impending municipal advisor regulatory regime will mean for them, with broker-dealers picking up the slack and providing them with information, according to market participants.

The Securities and Exchange Commission's MA registration rule takes full effect July 1. The Municipal Securities Rulemaking Board is also in the process of creating rules for MAs, including those on standards for conduct, professional qualifications, supervision and fees. The rules are required by the Dodd-Frank Act, which mandated that MAs register with the SEC, become subject to federal regulatory oversight, and be bound by a fiduciary duty to put their issuer clients' best interests first.

Issuers are not regulated by the SEC's or MSRB's rules, but the regulations will affect how they interact with the dealers who have largely driven conversations about the registration rule.

"Although the municipal advisor rule directly applies to those firms that meet the regulatory definition of advisor, the rule has significant implications for issuers as well, and all market participants should make an effort to stay abreast of regulatory changes," said Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association. SIFMA recently released model documents designed to allow underwriters to make sales pitches to issuers by utilizing any of three major exemptions that would allow a potential underwriter to provide them with advice without being considered an MA. The three are: becoming engaged as an underwriter; responding to an issuer's request for proposals, or confirming that the issuer has its own MA not associated with the underwriter.

"SIFMA and our members have been working with issuers to understand the breadth of the rule," Norwood said.

Ben Watkins, Florida's bond finance director and head of the debt committee at the Government Finance Officers Association, said the level of knowledge about the rule among some issuers is very low.

"There's a huge contingent in the market that doesn't have a clue," he said.

Watkins strongly disagrees with the way the SEC wrote the rule, and said it could have been a much more streamlined piece of regulation. Watkins said SEC muni chief John Cross, head of the SEC's Office of Municipal Securities, is "hamstrung" in terms of what he's able to do in terms of making the rule simpler for market participants, and that the SEC's "frequently asked questions" guidance earlier this year was only marginally helpful.

"They're not actively engaged in educating," Watkins said of the SEC. "In terms of outreach, there basically hasn't been any."

Cross said the mission of educating issuers is an important one that his office is not neglecting.

"It is very important to increase the awareness of municipalities about how the final municipal advisor registration rules will affect their interactions with regulated municipal advisors," he said. "A core purpose of this regime is to enhance protections to municipalities through a fiduciary duty on municipal advisors to look out for the best interests of their municipal entity clients. I will be speaking to the [Government Finance Officers Association's] upcoming annual conference in May about this topic and also looking for other opportunities to provide outreach to municipalities about these important new final municipal advisor rules."

Laura Lockwood-McCall, director of the debt management division in the Oregon State Treasury said that the MSRB's chief education officer Ritta McLaughlin recently spoke to a conference of Oregon issuers about the rule, but that many small issuers still lack knowledge and will likely learn more about the new regime from dealers.

"I think that this new requirement will impact a lot of smaller issuers, particularly school districts in our state, in that they may not currently have a financial advisor on contract," Lockwood-McCall said. "I'm not sure they will realize there's a problem with the new rule, however, as they are infrequent issuers to begin with. The underwriting community will in some ways be the educator, as I can envision them asking issuers if they have an [financial advisor], and then pointing out that they need to have one on board in order for them to work with the district on a transaction."

Mark Kim, chief financial officer at the District of Columbia Water and Sewer Authority, said he and other issuers got hit with a flurry of communications from investment bankers earlier this year. Because the SEC has made clear that a firm cannot be an MA on, and underwrite the bonds for, the same transaction, Kim said, dealers have been very eager to be the ones letting issuers know about the available exemptions and how to utilize them.

"The banks certainly gave their own interested spin on the MA regs," Kim said.

DC Water retains its own MA, which it pays hourly whenever the authority wants it to look over a proposal from a dealer firm, Kim said. He said he receives pitches from would-be underwriters on a nearly daily basis, but often chooses not to forward those on to the MA because some he considers bad ideas and would prefer not to spend DC Water funds to further scrutinize them. Kim said he likes being able to be his own idea gatekeeper and likes being able to receive ideas from dealer firms without restriction thanks to the exemption available from the independent MA. Although the bankers and advisor firms have definitely been the leading sources of information for issuers in Kim's view, the MSRB has also attempted some interaction and the SEC has made staff available at some issuer community events.

"I think the MSRB is trying very hard to get out in front of this," Kim said. "I think the SEC has been trying to be accommodative."

Glen Pederson, director of finance for Benson, Minn., said his MA began filling him in a few years ago but that he doubts most cities with only a few thousand in population are as well-informed.

"I happen to live in a smaller city and the experience there was much different," he said. "They actually use or used a firm that would help them issue the bonds and then would also consider purchasing them. This was happening as recently as last year. I encouraged them to seek a different firm to act strictly as a financial advisor and they are in the process of taking proposals. So my take would be the cities of my size, 3,500 and up, are probably aware. But those smaller units are probably at the mercy of the [dealer] firm they are working with."

Other issuers are also still working on evaluating what the rule will mean for them. The American Association of State Highway and Transportation Officials is aware of the regulation, said its deputy director of management and program finance Joung Lee, and is taking stock of its potential effects.

The MSRB will likely take the educational lead among regulators, some sources said. Since Dodd-Frank, the self-regulator is tasked with protecting issuers and has a majority-public board.

“The MSRB views education as a central component of a comprehensive regulatory framework for municipal advisors,” said MSRB executive director Lynnette Kelly. “We are reaching out not only to the municipal advisory community, but also to issuers that engage the services of municipal advisors. As part of our expanded outreach campaign to state and local governments, the MSRB is speaking to issuer audiences around the country about the regulatory framework for municipal advisors. The MSRB also conducts free public webinars to educate all interested stakeholders about our draft rules to establish standards of conduct and professional qualifications for municipal advisors.”

BY [KYLE GLAZIER](#)

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