

Bond Case Briefs

Municipal Finance Law Since 1971

FINRA's Stance on MA Oversight, Exams.

WASHINGTON — The Financial Industry Regulatory Agency's director of fixed income recently tried to dispel some myths about the agency's oversight of municipal advisors and detailed its plans for examinations.

Cindy Friedlander told those attending or listening to a Securities Industry and Financial Markets Association seminar on the muni advisor regulatory scheme on Friday that, contrary to what some people think, FINRA has no plans to begin enforcement of the Securities and Exchange Commission's final MA registration rule before July 1, when it becomes effective. FINRA cannot enforce a rule until it takes effect, she said.

"We will be talking to firms about whether they should register under the temporary rule and the final rule," she said. MAs were supposed to begin registering with the SEC and Municipal Securities Rulemaking Board in 2010 under an SEC temporary rule. But the temporary rule was significantly amended before being approved as a final rule in September.

Friedlander also said that FINRA has no plans to give firms a grace period on enforcement. Muni market participants were already given a six-month delay with the July 1 effective date of the SEC's final rule, she said.

Friedlander said it is not true that FINRA will enforce compliance with the rule for firms that are not FINRA members. FINRA does not have jurisdiction over non-member firms, she said.

Beginning July 1, Friedlander said, FINRA plans to look at whether firms are complying with four requirements for MAs: registration under SEC and MSRB rules; recordkeeping under the SEC's final rule; the fiduciary duty imposed by the Dodd-Frank Act; and the fair-dealing obligations under the MSRB's Rule G-17.

Friedlander said she is concerned about some underwriters that have long-term close relationships with issuer clients. They need to realize that some of their traditional activities will now qualify them as MAs.

She said the SEC has already been conducting some exams and that the regulators have monthly meetings about what they are finding "so that we can proceed together in lockstep."

"The goal is not 'gotcha,'" she said, but rather to check activities and get information about what should be included in risk-based exams.

Friedlander said she thinks MA rules "will be a challenge" for small firms.

Larry Sandor, the MSRB's deputy general counsel, said firms have been required since Dec. 31, 2010 to be registered as MAs and that they also have been required to comply with fiduciary duty and fair-dealing obligations as well as the federal anti-fraud securities laws, and statutes in some states.

The MSRB has a new consolidated Rule A-12 on registration and all MAs must re-register under that rule by Aug. 10.

The board has proposed changes to its Rule G-3 on classifications that would classify MAs as registered representatives who provide services and MA principals who are supervisors. MAs would have to take a general exam and there would be no grandfathering of current financial advisors, Sandor said. If an MA representative fails the MSRB exam, he or she would be able to retake it within 30 days, and if they fail that, they could retake it again in 30 days, he said.

The MSRB is still deciding about developing an exam for principals, Sandor said. The MSRB plans to send out surveys to muni market participants seeking information about what should be included on the exam for MA representatives, he said, adding he hopes there will be 100% response to the survey.

The MSRB has requested comments on its proposed qualifications rule changes, setting a May 16 deadline.

BY [LYNN HUME](#)

MAY 13, 2014 12:37pm ET