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SIFMA Leader Blasts SEC's MA Rule and MCDC Initiative.

MINNEAPOLIS — The leader of a dealer group criticized recent Securities and Exchange Commission efforts to further regulate the muni market, telling issuer officials on Tuesday that a new rule and initiative could undermine productive relationships between municipalities and underwriters.

Kenneth Bentsen, chief executive officer of the Securities Industry and Financial Markets Association, made the remarks in a speech at the Government Finance Officers Association's annual meeting here. His comments were a full-throated critique of the SEC's municipal advisor registration rule and its Municipalities Continuing Disclosure Cooperation initiative, both of which he warned are misguided efforts that will penalize issuers.

SIFMA has long held that the MA rule, which becomes effective July 1, was included in the Dodd-Frank Act to bring previously unregulated non-dealer financial advisors under the supervision of regulators. Not all market participants agree with SIFMA's interpretation of what lawmakers intended to achieve, but Bentsen told GFOA members that the rule completely misses the mark and will actually impose new costs on issuers through one of its provisions. The MA rule restricts potential underwriters from giving bond advice to municipalities with a few exceptions, such as when the issuer has retained and certified that it will rely on the advice of its own MA. The rule does not require issuers to have an MA, but GFOA best practices recommend it.

"In short, the SEC turned the statute on its head, contrary to intent, and created a new regulatory regime for underwriters, restricting their ability to advise state and local government issuers, while indirectly imposing an unfunded mandate on governments by prescribing the hiring of a financial advisor as one way to garner advice and information from underwriters," Bentsen told GFOA members. "So whereas Congress intended to regulate otherwise unregulated financial advisors, the SEC chose to create a redundant and inefficient new regulatory regime for underwriters, and restrict access to information for state and local government issuers, unless they hire a financial advisor. That makes no sense."

GFOA members questioned SEC muni chief John Cross earlier in the week about the possibility of an exemption for underwriters dealing with "sophisticated issuers," but Cross said such a change to the rule would require action by the SEC's commissioners.

Bentsen, a former Texas Congressman who sat on the House Financial Services Committee and its predecessor committee from 1995 to 2003, also skewered the MCDC program, a controversial SEC initiative that offers reduced penalties to issuers and underwriters that voluntarily report any instances in which they offered bonds without disclosing material information or otherwise failing to meet their continuing disclosure agreements. GFOA debt committee members worried that the MCDC could expose unsophisticated issuers to huge risks if they are turned in by their own underwriters. The initiative expires Sept. 10.

"The SEC's motives under this initiative are misplaced," Bentsen said. "They are trying to penalize

state and local governments, through their underwriters, for past transgressions during a time when the continuing disclosure system was chronically broken.”

“Rather than engage in a retroactive game of gotcha,” he continued, “the MCDC should represent an opportunity for the SEC, state and local governments, and their underwriters to work together towards a workable solution that benefits the investor.”

Bentsen said SIFMA does not oppose all rules and appreciates the value of well-written regulations to promoting a fair and efficient market.

He also warned issuers to heed the most recent threats to the tax-exempt status of muni bonds. Dustin McDonald, director of GFOA’s federal liaison center, told issuer officials earlier this week that tax reform plans from both House Republicans and Senate Democrats attack the tax exemption, increasing the chance that the idea of capping the exemption will continue to linger even if neither plan is ever implemented. Bentsen said SIFMA, GFOA, and other market groups are prepared to continue resisting a move in that direction.

“While it is unlikely that Congress will take up the matter this year, we should not expect the issue to go away,” he said. “It is a threat we take seriously, especially if it were applied retroactively to outstanding bonds.”

The GFOA conference wraps up Wednesday, which features a panel on the MCDC that will include Peter Chan from the SEC’s Chicago regional office.

BY [KYLE GLAZIER](#)

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