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Bond Dealers Make New Push to Change Disclosure Program.

WASHINGTON — The Bond Dealers of America is making another push for changes to the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative after the SEC rejected BDA's earlier requests to narrow the scope of the program and extend its deadline.

The BDA renewed its efforts in a four-page June 30 letter signed by chief executive officer Mike Nicholas and sent to SEC chairman Mary Jo White. The letter repeats an earlier BDA request that the program be extended to Dec. 15 from its current deadline of Sept. 10. The program allows issuers and underwriters to get lenient settlement terms if they voluntarily self-report their failures to ensure bond offering documents were not false or misleading about their compliance with their continuing disclosure obligations,

The letter also reiterates a proposal from the BDA's June 9 letter that issuers and underwriters only have to review bond documents on the Municipal Securities Rulemaking Board's EMMA website to determine their past compliance history, rather than going back into the much less user-friendly Nationally Recognized Municipal Securities Information Repository or NRMSIR system that existed prior to 2009. The letter includes a new request that the civil penalty cap of \$500,000 included in the MCDC should be lowered and tiered according to the firm's size. The penalty size is currently pegged to the size of the deal, not the firm, and maxes out at \$500,000 for the largest totals.

"The BDA wants our member firms to be able to take advantage of the amnesty program, but in doing so at the \$500,000 cap, we fear that it will cause them to face an unduly burdensome financial challenge and should therefore be tiered accordingly," Nicholas wrote. "We believe that the intent of the commission was to place a reasonable cap on an underwriter's exposure; however, the \$500,000 cap places a disproportionate burden on smaller firms with no associated tangible benefit connected to the initiative."

The total cost for a dealer who hires an outside vendor to come through the potentially decade-long list of deals searching for potentially misleading official statements could reach \$600,000, a penalty a cost that could be staggering for a smaller firm, according to the BDA letter.

A June 30 letter to BDA from LeeAnn Ghazil Gaunt, head of the municipal securities and public pensions unit at the SEC's Division of Enforcement declined to offer the BDA any relief on either the NRMSIR issue or the time limit. While the SEC struck a sympathetic tone about the increased challenges of searching the NRMSIR system compared to EMMA, the commission appears unwilling to go as far as BDA would like. The latest letter expands on the group's concerns.

"When dealers review the transactions in which they were involved, they are encountering numerous practical problems with the NRMSIR system that render any review with respect to filings under the NRMSIRs essentially impossible to conduct in a meaningful and reliable way," the BDA letter states.

These problems include systems that are no longer operational, and one that supplies unreliable

information.. Further, Nicholas argues, it is unreasonable for the SEC to make market participants wade through a system that everyone agreed was broken before it was replaced by EMMA.

“The whole point of the EMMA system was to fix what was broken with the NRMSIR system,” the BDA letter states.

The letter closes with a final appeal for a time extension, arguing that the short current deadline will limit the abilities of underwriters and issuers to huddle on their past deals and decide which ones might be eligible under the MCDC. SEC officials have signaled that a deadline extension is unlikely and said that the “modified prisoner’s dilemma” structure of the initiative that pits the interests of underwriters against those of issuers is an important aspect of the MCDC. The BDA also asks for a face-to-face meeting with White or her staff.

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