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SIFMA Commentary: Regulation of MAs: Bring it On.

On July 1, 2014, the SEC's rule implementing Section 975 of Dodd-Frank, governing the conduct of all municipal advisors, finally became effective. This is almost four years after President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Congress could not possibly have envisioned that it would take seven years from the passage of Dodd-Frank to implement basic regulation over independent municipal advisors bringing fundamental protections to municipal issuers and investors. But that is the current time frame.

Yet some of the baseline rules that all other currently regulated parties are subject to are as long as two to three years away from being fully applied to the previously unregulated non-dealer advisors. These rules include such important standards as: professional qualifications and licensing; disclosure of employment and disciplinary history; limitations on and reporting of political contributions and bond ballot contributions; limitations on gifts and business entertainment; written baseline and supervisory policies and procedures; and role disclosure and conflict of interest disclosure.

In light of the MSRB's dual mission to protect both municipal entities and investors, SIFMA urges the MSRB to interpret MSRB Rule G-17, effective immediately, to apply these specific baseline provisions to municipal advisors.

Moreover, we urge the MSRB to move quickly to adopt a testing regime applicable to non-dealer municipal advisors that is the same as the qualification requirements (the Series 52) currently applicable to dealer municipal securities representatives as defined in MSRB Rule G-3: those individuals whose activities include underwriting, trading or sales of municipal securities; financial advisory or consultant services for issuers in connection with the issuance of municipal securities; research or investment advice with respect to the issuance of municipal securities; and any other activity which involve communications with public investors in municipal securities. The Series 52 qualification examination is a basic competency test on municipal securities and has long covered topics applicable to providing advice to municipal issuers; there is no reason that there needs to be a different test for municipal advisors.

SIFMA and its members supported Section 975 as a means of protecting municipal issuers from unregulated municipal advisors. And while we have strong reservations to some of the provisions promulgated by the SEC in the final rule, we nonetheless believe there are a number of long overdue other important provisions that need to be implemented now. Many SIFMA member firms serve as municipal advisors and were already regulated, and we were in favor of this effort to level the regulatory playing field among dealer municipal advisors and non-dealer/independent municipal advisors.

Issuers, without a doubt, have a vested interest in the regulation of companies providing advice to them. Many municipalities have seen success through partnerships with banks and broker dealers. Each and every day, local financial institutions connect state and local governments with our capital markets to issue debt and secure funding for key projects. Municipal bonds have financed four

million miles of roads, half a million bridges, 16,000 airports and 900,000 miles of water pipes. This year alone, state and local governments across the country have accessed over $88 billion in funding through the municipal bond markets.

For over 35 years, MSRB Rule G-17 has served as a minimum standard of fair conduct for dealers. It also contains what has been interpreted to be an antifraud prohibition: requiring regulated parties to “deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.”

Rule G-17 was expanded in 2011 to specifically apply the MSRB’s core fair dealing rule to municipal advisors in the same manner that it applied to dealers. The MSRB argued at the time to the SEC that “[t]he proposed rule change is necessary for the robust protection of investors against fraud”. The National Association of Independent Public Finance Advisors (NAIPFA) found these amendments to Rule G-17 to be “appropriate and consistent” with Dodd-Frank.

Seven years is far too long to wait for the establishment of a level regulatory playing field. In the absence of immediate regulatory action by the MSRB, SIFMA urges NAIPFA to adopt these principles as best practices for its members: disclosure of employment and disciplinary history; limitations on and reporting of political contributions and bond ballot contributions; limitations on gifts and business entertainment; written base line and supervisory policies and procedures; and role disclosure and conflict of interest disclosure. SIFMA also urges the MSRB to move quickly to adopt a testing regime applicable to non-dealer municipal advisors that is the same as the test currently applicable to dealer representatives, the Series 52. There is no reason that there needs to be a different test for municipal advisors.

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