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SEC Concerned About MA Registration and Misuse of IRMA Designation.

PORTLAND, ORE. – The Securities and Exchange Commission is concerned that municipal advisors are not registering properly and that some may be attempting to manipulate the MA registration rule as a marketing tool.

Jessica Kane, deputy director of the SEC's Office of Municipal Securities, told members of the National Association of Municipal Advisors that the muni office is concerned about MAs who are failing to register in a timely fashion. October is the final month of the rolling registration deadlines that took effect with the final rule in July. Kane said her office is aware of notable numbers of MAs who have not swapped their temporary registrations for permanent ones as required by the rule.

NAMA is the former National Association of Independent Public Finance Advisors (NAIPFA).

A mass email went out to everyone listed as a contact on temporary registration Form MA-T late last month as a reminder, but some MAs attending NAMA's conference here said they have had extensive problems trying to register because of technical difficulties with the SEC's EDGAR computer system. Kane said she had heard anecdotally that some MAs were confused about their registration requirements, such as when their deadline was, what form to use, or other aspects.

One advisor asked Kane if there was a chance the registration deadline could be extended beyond this month. The SEC lawyer declined to commit to that, but encouraged all MAs who missed their deadlines to register as soon as possible.

Kane also heard from several of the MAs in attendance that some firms might be using the registration rule's independent registered municipal advisor, or IRMA, exemption as a way to solicit easy business. Investment bankers who want to give bond-related advice to state and local governments generally want to avoid having to register as an MA because doing so saddles them with a fiduciary duty to the client and bars them from underwriting a resulting deal. The IRMA exemption allows them to give that advice without registering if the issuer retains them and says it will rely on them as its own MA.

Leo Karwejna, managing director and chief compliance officer at Public Financial Management, said he has heard of MAs offering to act as IRMAs for a relatively low fee. His firm has been approached by issuers seeking a similar arrangement, he said, but PFM has declined to work with potential clients if discussions about the scope of services led PFM to believe it would be acting as a nominal "shield" to protect a non-MA from registering rather than serving as a true fiduciary as the MA rule requires.

"I have concerns hearing these comments," Kane said. She said an IRMA must be "meaningfully engaged," to satisfy the requirements of the exemption, regardless of the amount of compensation involved.

"If the IRMA is not meaningfully engaged, then the exemption is not working as designed," she said.

The SEC has issued two rounds of guidance on the MA rule following its release a year ago, targeting areas where market participants said they were unclear about the requirements. Kane said the muni office currently has no concrete plans to issue more guidance, although other lawyers in the muni office have said previously that another round is not out of the question.

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