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SIFMA to SEC: No Exemptions for Non-Dealer MAs.

WASHINGTON – Non-dealer municipal advisors should not be allowed to act as placement agents for municipal bonds, the Securities Industry and Financial Markets Association told Securities and Exchange Commission chair Mary Jo White in a recent letter.

Leslie Norwood, SIFMA managing director, associate general counsel, and co-head of municipal securities, penned the letter directly challenging the position of the National Association of Municipal Advisors. NAMA president Terri Heaton wrote White a letter late last year asking the SEC to consider granting non-dealer MAs a waiver from broker-dealer registration when they serve as middlemen between institutional investors and municipal issuer clients, comparing the idea to the MA registration exemptions available to dealers.

The Municipal Securities Rulemaking Board warned in 2011 that MAs that introduce potential investors to issuers or negotiate with potential investors in exchange for transaction-based compensation may be subject to federal securities laws and MSRB rules that apply to dealers.

Bond Dealers of America chief executive officer Mike Nicholas, who had earlier urged the SEC to crack down on MAs acting as unregistered broker-dealers, challenged the NAMA position almost immediately. The more recent SIFMA letter, dated March 12, acknowledges NAMA's argument that MAs are now regulated by an SEC rule that requires them to put the interests of their clients ahead of their own, but said that MA regulation and dealer regulation are not directly comparable.

"NAMA's request proceeds from a mistaken premise that the two schemes of regulation have similar purposes or effects, and reflects a flawed view of the function that broker-dealer registration and regulation serves in our system of regulation," Norwood wrote. "While broker-dealers have extensive duties under commission and self-regulatory organization rules and common law to their issuer clients, the overarching purpose of broker-dealer regulation is to protect investors."

Conversely, MA regulation is focused on issuer protection, Norwood continued. Acting as a broker between issuers and investors involves inherent conflicts of interest that dealer regulations are structured to address with rules governing communications, fair pricing, disclosure, suitability, personnel qualifications, and more. Those investor protections do not exist in the MA regulatory regime, Norwood pointed out.

"Where municipal advisors engage in activities that constitute acting as a broker, the investors with whom they deal should be entitled to the same protections they receive when dealing with a registered broker—protections not provided by municipal advisor regulation," Norwood wrote.

Norwood further argued that granting NAMA's request could potentially allow non-dealers to skirt MSRB Rule G-23, which prohibits an MA from switching roles and acting as a placement agent. SIFMA also opposes a second NAMA request that MAs be exempt from investment adviser registration, pointing out that the MA rule was not crafted with an eye to investment advisory services.

The MSRB is still working on completing its MA regulations, and its draft rule governing the core duties of MAs is not finalized.

THE BOND BUYER

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MAR 20, 2015 1:00pm ET

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