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SIFMA: SEC 15c2-12 Estimates Full of Gross Inaccuracies.

WASHINGTON - The Securities and Exchange Commission's revised estimates of the burden of complying with its main disclosure rule are still full of "gross inaccuracies," the Securities Industry and Financial Markets Association told the commission.

SIFMA managing director, associate general counsel and co-head of municipal securities Leslie Norwood made the dealer group's position clear in a five-page letter sent to the SEC on March 27. The letter was a response to an updated set of SEC estimates about how much time it takes market participants to comply with the commission's Rule 15c2-12.

The rule requires dealers, before they underwrite munis, to review issuers' official statements and reasonably determine that the issuer has contracted to disclose annual financial and operating information, as well as material event notices, on the Municipal Securities Rulemaking Board's EMMA website.

In November, the SEC sought comment on its estimated burdens for complying with the rule and received widespread industry criticism. Market participants said the commission drastically underestimated the time and effort required to comply with the rule. The commission asked for the comments as required by the Paperwork Reduction Act of 1995, which states that federal agencies must publish a notice describing, among other things, the information it collects, the current estimate of the number of respondents providing the information, the annual burden imposed on each respondent, and the total burden for all respondents.

In its original request for comment, the SEC estimated that 20,000 issuers, 250 dealers, and the MSRB spend more than 115,000 hours per year complying with 15c2-12. The commission has since raised that estimate to 621,758 hours. The SEC now estimates that an issuer requires two hours to prepare and submit material event notices to EMMA, up from 45 minutes in the first estimate.

"These estimates continue to seriously and materially underestimate the time burden of the rule on broker dealers," Norwood said of the commission's latest numbers, which peg the dealer compliance burden as 10 hours per year per firm to determine that an issuer has entered into a continuing disclosure agreement. In a competitive offering, she wrote, SIFMA estimates firms spend on average 6 man-hours on each offering they bid.

"First, the deemed-final preliminary official statement, or offering document, must be reviewed for completeness against publicly available financials and industry news," Norwood wrote. "The offering document also needs to be reviewed to make sure that the security for the bonds is adequately and correctly described and that there is no outstanding litigation that would tend to impair the bonds' validity or the ability of the issuer or obligor to make the interest and principal payments."

Norwood said the SEC may be sending a troubling "mixed message" to the industry by running an enforcement program that is targeted to hammering home the point that more review of issuer disclosures is needed while simultaneously underestimating the work needed to do those reviews.

SIFMA suggested that automated collection techniques could help reduce the burden. Since all muni rating agencies now report their ratings live to EMMA, issuers should no longer have to file rating changes as material events notices, Norwood wrote. Bond lawyers meeting at a National Association of Bond Lawyers conference earlier this year had discussed that possibility, but were split on whether the SEC would take that step.

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