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SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to amend its Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

The dealer group made its request for changes to the SEC rule in a letter sent to SEC chair Mary Jo White from SIFMA president and chief executive officer Ken Bentsen.

The letter highlights recent requests from market groups to modify the rule to include bank loan disclosure as well as a white paper from SIFMA in April pressing for modernization of Rule 15c2-12.

“Given the recent discussions at the MSRB, the SEC’s own efforts in this area, and the industry’s keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12,” Bentsen wrote.

The Municipal Securities Rulemaking Board has consistently urged issuers to voluntarily disclose their bank loans. But after concluding the disclosures are still lacking in this area, the board released a concept proposal in March asking market participants about a possible rule that would require municipal advisors to disclose information regarding their municipal clients’ bank loans and private placements.

While some investor groups applauded the idea, many market groups said it would be harmful and ineffective. Almost every group that responded recommended that the SEC instead boost bank loan disclosure by requiring it under 15c2-12.

“SIFMA’s dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is … made transparent to the market,” Bentsen told White. “We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.”

SIFMA’s white paper, released on April 12, recommended a number of updates to 15c2-12.

It suggested that when municipal advisors help prepare official statements, they share with underwriters the due diligence responsibilities for reviewing those documents to ensure the information is not false or misleading.

Leslie Norwood, SIFMA associate general counsel, co-head of munis, and author of the white paper, said that while the paper calls for muni advisors to take on some continuing disclosure responsibilities, it is not trying to shift dealer’s duties onto them.

SIFMA also suggested that the commission eliminate the requirement that issuers file event notices for rating changes since those are now posted on the MSRB’s EMMA system.

Additionally, the group also asked for the SEC to affirm the position it took in its initial proposing release for 15c2-12 that, given the structure of a competitive deal, “the task of assuring the accuracy and completeness of the disclosure [in competitive deals] is in the hands of the issuer.”

SIFMA wanted the SEC to eliminate current complex language in 15c2-12 that dictates when a participating underwriter is expected to send customers copies of the final OS. Instead, the rule should require underwriters to provide final official statements to customers from when they are posted on EMMA until the offerings close, it said.

Rule 15c2-12 should also require issuers to set an actual date as the due date for their disclosures of annual financial and operating information, the group said in the white paper. Currently, issuers typically say the information will be disclosed within so many days after the close of the fiscal years, leaving underwriters to “burn brain cells” and count days, Norwood said at the time the paper was circulated.

Another recommendation is for the provision of 15c2-12 that exempts from disclosure requirements primary offerings with institutional investors to be expanded to explicitly include primary offerings with sophisticated municipal market professionals, qualified institutional buyers, and accredited investors.

An SMMP designation usually applies to banks, savings and loan associations, registered investment advisors, and any person or entity with total assets of at least $50 million. QIBS are defined by the SEC and must own and invest, on a discretionary basis, at least $100 million in securities or, if they are broker-dealers, must meet a threshold of $10 million. Accredited investors can be any individual who consistently earns $200,000 per year, has a net worth exceeding $1 million, or has a leadership role with the issuer of the security being offered.

The Bond Buyer

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June 10, 2016