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SIFMA Makes Late Push to Limit SEC's Muni Advisor Order.

The Securities Industry and Financial Markets Association is making its own last push to limit or kill a Securities and Exchange Commission order that would grant non-dealer municipal advisors more latitude to facilitate private placements for their issuer clients.

SIFMA made its case in a letter to the commission dated Jan. 31 and provided to The Bond Buyer on Monday. It follows close behind a similar Bond Dealers of America letter, as dealers seek to restrict or potentially even completely kill the SEC's proposal to allow non-dealer MAs to facilitate at least some private placements of municipal bonds. Dealers view such activity as properly performed by a registered broker-dealer acting as a placement agent, while MAs view it as consistent with their fiduciary duty under federal law.

"We believe the law is pretty clear on this issue," Leslie Norwood, SIFMA's head of municipals, said in an interview.

To qualify for an exemption from dealer registration under the SEC proposal, the MA would have to make written disclosures to an investor saying that it represents the interests of the issuer, not the investor. In return, the MA would have to get written acknowledgment of that disclosure from the investor.

The SEC opened a comment period on the proposal in October 2019. To qualify for an exemption from dealer registration under that proposal, the MA would also need to get written representation from the investor that they are capable of independently evaluating the investment risks of the transaction. Also the entire issuance would have to be placed with a single investor and the MA would have to continue to comply with regulations governing municipal advisors.

SIFMA's nine-page letter is consistent with SIFMA's previous comments, arguing that allowing muni advisors with a fiduciary duty to issuers but no duty to investors to sell securities on behalf of their clients would negatively impact market transparency and put investors at risk.

"If approved in its current form, the proposed exemptive order would allow municipal advisors to place municipal securities with a broad audience of purchasers, including state-registered investment advisers," SIFMA told the SEC. "As discussed above, these placements could be made without the municipal advisors making even minimal disclosures or engaging in basic due diligence regarding the municipal securities being sold. A municipal advisor's fiduciary duty to its issuer client would not undo or somehow cure these lapses in municipal securities market transparency and information disclosure."

Norwood said she believes the SEC is looking for ways to narrow the proposal, and while SIFMA believes the order is not appropriate it provided several suggestions along those lines in an effort to be productive in its discussions with the commission.

The suggestions, made in an appendix, include among other things a requirement that the bonds be investment-grade or are on parity with outstanding bonds of the issuer that are investment grade.

They would need to be subject to continuing disclosure requirements and be sold in one tranche to one investor.

SIFMA also wants the offerings to be capped at \$1 million, made only to certain “qualified providers” such as a bank, and for the municipal advisor to have to receive a statement from the buyer that the investor intends to hold the bonds until maturity or redemption.

SIFMA further believes that all applicable Municipal Securities Rulemaking Board rules be appropriately amended prior to the effective date of any exemptive order. Such an undertaking would almost certainly take years.

By Kyle Glazier

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