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House Committee Discusses SEC Temporary MA Order.

The House Financial Services Committee Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets held a hearing this afternoon titled “Capital Markets and Emergency Lending in the COVID-19 Era.” SEC Chairman Jay Clayton was the sole witness. The hearing focused on the US capital markets’ response to the virus crisis and steps the SEC has taken to mitigate the effects of the virus. The hearing also focused on a [number of capital markets bills](#) pending before the Subcommittee.

Subcommittee member French Hill (R-AR) asked Chairman Clayton about the Temporary Conditional Exemption the SEC issued last week related to the role of Municipal Advisors in bank placement transactions. The TCE permits MAs to solicit bank investors in certain private placement transactions without registering as a broker-dealer.

Rep. Hill asked Chairman Clayton why the SEC did not consider the TCE as a rule change rather than as an exemptive order. Chairman Clayton said the TCE is “**very narrow and temporary**”. He did not acknowledge that the SEC must conduct this type of change as a rulemaking under the Administrative Procedures Act. **He did say, however, that if the SEC seeks to make this TCE permanent, they would undertake that as a proposed rule change under the APA.**

Rep. Hill also highlighted that the municipal market has largely recovered from the disruption in March, that there is no “lack of [market] access” for most municipal issuers, and there is little justification for executing the TCE as an emergency, COVID-motivated action. He said that the SEC was “using the pandemic to rationalize its actions.”

Rep. Hill also referenced the requirement in the TCE for MAs using the TCE to report key transaction data information to the SEC. Rep. Hill asked Chairman Clayton of the SEC plans to make those data public. Clayton answered that he cannot commit today to releasing the data, but he committed to considering it.

In addition to today’s hearing, we have also been in continuing discussions with the MSRB on TCE-related issues. We expect the MSRB to issue guidance soon specifying that MSRB Rule G-23 does not inhibit dealer MAs from using the TCE in bank placement transactions.

We will continue to engage with the SEC and other regulators on the issues raised by the TCE. As always, if you have any questions, please call or write.

Bond Dealers of America

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