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SIFMA Files Suit Seeking to Vacate SEC's Temporary Conditional Exemption for Municipal Advisors.

Washington, D.C., August 14, 2020 – SIFMA today filed a suit seeking to vacate the Securities and Exchange Commission's Order Granting a Temporary Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors (TCE). The TCE permits registered municipal advisors to solicit banks, their wholly-owned subsidiaries that are engaged in commercial lending and financing activities, and credit unions in connection with direct placements of securities issued by their municipal issuer clients, without registering as broker-dealers.

The Commission described the TCE as a measure needed to provide relief to small issuers in light of the Covid-19 pandemic. Generally speaking, SIFMA applauds the SEC's and other regulators' ongoing efforts to proactively respond to pandemic-related interference with normal market operations. In this case, however, the purported need for the TCE is not supported by existing market data and creates a host of negative consequences for not only other market competitors but also issuers and investors alike.

"The TCE creates an uneven playing field that exclusively benefits municipal advisors at the expense of more regulated broker-dealers, and ultimately we believe at the expense of issuers and market transparency," said Kenneth E. Bentsen, Jr., president and CEO of SIFMA. "The SEC in effect suspended SEC regulatory requirements for one type of business entity, at the expense of another. Further, we believe the SEC failed to follow the proper procedure by taking such sweeping action absent a formal rulemaking with notice and comment, along with a genuine cost benefit analysis."

The SEC has suggested for some time that it would consider taking this type of action and SIFMA has repeatedly argued that the Commission must go through a formal rulemaking process involving notice and comment and rigorous cost benefit analysis, where SIFMA believes the proposal would fail. Instead, the Commission chose to assert its exemptive powers to cure a perceived emergency in the small-issue municipal market, which is not supported by existing market data. The Commission's claim is not supported by the facts, and even if it were, such circumstances would not justify eliminating substantive issuer and investor protections.

The Commission's action has a detrimental impact on investors and the municipal market by eliminating investor protections and critical reporting requirements. In addition, there is no evidence the TCE creates cost savings for municipal issuers by lowering fees or by creating additional market liquidity. The only parties benefiting from the TCE are municipal advisors who are now incentivized to advise clients to engage in transactions that fit within the parameters of the TCE. As a result, the investor protections and stringent reporting requirements under MSRB rules and Exchange Act Rule 15c2-12 that apply when a broker-dealer is involved do not apply to municipal advisors under the TCE. The resulting lack of transparency could have broad and detrimental effects on issuers, investors and the municipal markets.

The SEC did not adequately justify why it is "consistent with the public interest and protection of investors” for municipal advisors to engage in broker-dealer activity pursuant to the terms of the TCE without the protections afforded to investors when a registered broker-dealer is engaged.

“Through the TCE, the SEC allows municipal advisors to engage in broker-dealer activity without the attendant legal and regulatory requirements that apply when a broker-dealer is engaged. Broker-dealer transaction reporting requirements provide critical market data and transparency to the municipal securities market. These reporting requirements, along with other significant compliance obligations, are completely lacking when a municipal advisor acts pursuant to the TCE. There is also a risk of harm to issuers, as the TCE undermines the duty owed them by advisors, and the SEC has not provided any empirical evidence that issuers would benefit from the TCE as compared to the public market or direct placements solicited by broker-dealers,” said Mr. Bentsen.