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SEC's Olsen: Too Soon for MA Rule Changes

by Kyle Glazier
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PHILADELPHIA - A leading official in the Securities and Exchange Commission's Office of Municipal Securities said Monday that municipal advisor rules are too new to add a sophisticated issuer exemption, even though a number of market participants have asked for it.

Rebecca Olsen, deputy director of the OMS, made those comments during a panel discussion at the Government Finance Officers Association's conference here. Olsen, who was promoted to her current position last month after previously serving as the office's chief counsel, told issuer officials at the conference that the rule has been effective less than a year and that the Municipal Securities Rulemaking Board is still working to complete the MA regulatory framework.

Some issuers and dealers have been saying for months that the MA rule should include an exemption for dealers working with "sophisticated municipal issuers," meaning that they would be at least partially exempt from the requirements of the regulatory framework. The idea is similar to exemptions in other MSRB rules that allow dealers to have lesser responsibilities when dealing with sophisticated investors, which are typically institutional investors.

"I think we should wait and see how they are working before we consider adding something like that," Olsen said, referring to whole group of MA rules

Olsen said that the extreme diversity among issuers would make defining "sophistication" difficult, and also noted that such an amendment to the rule would require action by the commission, not just the staff. Sophisticated issuers are already making use of the available exemptions in the rule if they want to get advice from dealers, Olsen said, especially the Independent Registered Municipal Advisor, or IRMA exemption. That feature allows investment bankers to give muni-related advice to municipalities without registering as MAs as long as the issuer has its own MA that is independent of the dealer, and has said it will rely on that advisor.

Peggy McCarthy, finance director for the city of Tukwila, Wash., also participated on the panel and shared her city's experiences from the perspective of a smaller, less frequent issuer. Tukwila used municipal advisory services on some recent bond issuances, including its first-ever competitive sale, she said.

"After using a municipal advisor, it's clear there is value, even if it can't be easily quantified," McCarthy said. She strongly encouraged issuers to use an MA, saying that her experience was "very, very favorable."

Jonas Biery, debt manager for the city of Portland, Ore., shared the experience of a larger issuer.

Biery said Portland put a notice online that it had retained an IRMA, and received acknowledgement of that from a number of underwriting firms.

Biery said issuers are probably spending more money now because they are leaning heavily on MAs, but said he considers it a "cost of doing business." More problematic, he said, is the likelihood that the number of MAs in the market might be reduced because of compliance struggles, which could reduce the options available to issuers shopping for advisors.

MSRB general counsel for regulatory affairs Michael Post also participated on the panel, and provided conference attendees with an update on the MSRB's regulatory framework.

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