

New SEC Rules for Municipal Advisors Take Effect July 1, 2014

Description

By [Eugene G. Bernardo II](#) and [Alexandra W. Pezzello](#)

Under rules adopted by the Securities and Exchange Commission (the “SEC”) last September that go into effect July 1, 2014, municipal advisors must now register with the SEC. The rules are the result of provisions in the Dodd-Frank Act and are intended to provide additional protections to municipal securities issuers. In addition to the registration requirement, the rules provide that municipal advisors have a fiduciary duty to their municipal entity clients, which differ from broker-dealers or underwriters.

While the overall impact of the new rules is not yet clear in the municipal finance community, participants need to determine whether their activities fall within the definition of a municipal advisor or whether they instead fall within one of the stated exemptions from the definition. Under the rules, broker-dealers, underwriters or banks that provide “advice” to municipal entities may be considered municipal advisors. The determination as to whether “advice” is being given is described by the SEC as being based on “all of the relevant facts and circumstances”, including consideration as to: (i) whether the advice consists of a “recommendation” to the municipal entity; (ii) whether it is particularized in a way that meets a specific need of the municipal entity (as distinguished from providing general information); and (iii) whether it relates to municipal financial products or the issuance of municipal securities.

For example, under the new rules broker-dealers can no longer provide a conduit borrower or issuer specific advice to redeem or refund an outstanding bond issue without falling within the scope of providing “advice”.

While the definition of municipal advisor is broad, the rules provide numerous exemptions from the definition. Certain public officials and employees, underwriters, attorneys, engineers, banks advising municipal entities in certain areas, accountants, or registered swap dealers, may qualify for exemption if such individuals meet certain stated requirements. The rules further provide exemptions specifically relating to information provided in response to certain requests for proposals or requests for qualifications, as well as those giving advice to a municipal entity which has an independent registered municipal advisor. SEC staff has issued useful guidance on many of the exemptions in its responses to frequently asked questions, which are available [here](#).

For additional information on the new municipal advisor rules and how they may impact your interactions with others in the municipal bond community, please feel free to contact any of the members of the Public Finance Group.

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