



## **Proposed SEC Exemptive Order Provides Limited Municipal Advisor Relief**

*Hinckley Allen Public Finance*

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Last month, the Securities and Exchange Commission (SEC) issued a proposed exemptive order (Release No. 34-87204) that would permit a registered municipal advisor, acting on behalf of a municipal issuer or obligated person, to solicit certain institutional investors (qualified providers) in connection with the direct placement of an issuance of municipal securities with a single qualified provider, without being required to register as a broker-dealer.

A municipal advisor is a person who provides advice as a fiduciary to, or on behalf of, a municipal issuer or an obligated person with respect to municipal financial products or the issuance of municipal securities. The SEC adopted municipal advisor registration rules in 2013, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. A person who engages in such activity is required to register with the SEC as a municipal advisor and to comply with the rules of the Municipal Securities Rulemaking Board.

Since the enactment of Dodd-Frank, municipal advisors and broker-dealers have been at odds as to whether certain activities of a municipal advisor, such as placement of a debt security directly with a bank investor, could cause a municipal advisor to be characterized as a broker-dealer, and thus subject to separate and additional registration requirements.

The SEC's proposed exemptive order attempts to resolve this particular, long-standing issue. If adopted, the order would allow registered municipal advisors, acting on behalf of a municipal issuer or an obligated person, to solicit qualified providers in connection with the direct placement of an entire issuance of municipal securities with a single qualified provider, without registering as broker-dealers. To take advantage of the proposed exemption, a registered municipal advisor would be required to:

1. Provide written disclosures to the qualified provider, stating that the municipal advisor solely represents the interests of the municipal issuer or obligated person and not the qualified provider, and obtain written acknowledgment of receipt of the disclosures from the qualified provider; and
2. Obtain a written representation from the qualified provider that it is capable of independently evaluating the investment risks of the transaction.

The proposed exemption would apply only to a registered municipal advisor's activities in connection with the "direct placement" by a municipal issuer of an entire issuance of municipal securities with a single qualified provider, which the SEC proposes to define as:

"(i) a bank, savings and loan association, insurance company, or registered investment company; or (ii) an investment adviser registered with the Commission or with a state; or (iii) any other institution with total assets of at least \$50 million."

The proposed exemption would not be available in transactions involving retail investors, including public offerings of municipal securities. It also apparently would not be available if the issuance of debt is sold to two or more qualified providers. Municipal advisors have expressed the view that the exemption, if adopted, would make it easier for them to carry out their fiduciary responsibilities to their clients. Broker-dealers, however, have objected that the exemption would disfavor them because they have substantial additional registration requirements compared to those applicable to municipal advisors.

Comments on the proposed exemptive order are due December 9, 2019. Comments can be furnished [via the Internet](#), by [email](#) or in writing (Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090), as described in the Release. The proposed exemptive order is silent as to whether it can be relied upon prior to adoption.

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Please contact [Kris Moussette](#) or any other member of Hinckley Allen's [Public Finance Group](#) if you would like more information, or if you have any other public finance matter you would like to discuss.

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