

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase letters on an orange rectangular background. The background of the slide is a blue bokeh effect with light spots.

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Municipal Advisor Rules – General

- Adopted September 18, 2013
 - Required by the Dodd-Frank Act
 - Replaces a temporary rule effective October 1, 2010.
- Requires SEC registration on EDGAR of firm currently registered under the temporary rule beginning July 1, 2014.
- New municipal advisors entering the business after September 30, 2014 must file an application and be registered before doing any municipal advisory business.
- If you are a municipal adviser, you must register with the SEC and MSRB.
- You also will be subject to a new MSRB fiduciary duty rule.

Municipal Advisor Rules – Scope

- The new municipal adviser rules are very broad and can potentially apply to registered investment advisers and other firms (including actuary firms) that do not consider themselves municipal advisers.
- Rules apply to firms that provide advice regarding issuance of municipal securities, unless they qualify for an exemption.
- Rules also apply to persons that advise municipalities and obligated persons in regard to their derivatives products (such as swaps), guaranteed investment contracts and investment strategies.
- Rules also apply to third-party solicitors for municipal advisers who receive direct or indirect compensation.
- The term “municipal entity” includes state entities, municipalities and public subdivisions, as well as their general and special funds, 529 Savings Plans and pension plans.
- “Municipal entity” can also include a mutual fund or insurance company established by a municipal entity.

Municipal Advisor Rules – Covered “Advice”

- The rules only apply if an adviser is providing advice with respect to “municipal financial products” or the issuance of municipal securities.
- “Municipal financial products” generally means swaps and other derivatives entered into by municipalities.
- Advice with respect to issuance of municipal securities can involve just about any advice provided in the entire process of issuance of municipal securities and investment of the proceeds.
- In addition, covered activities are not limited to just purchase and sale decisions. A firm will be covered if it advises a municipal entity with respect to any aspect of issuance or sale of municipal securities, including development of a plan, evaluating financing options, selection of underwriters and other professionals, coordination of the rating process, disclosure materials and advice regarding financing terms.

Municipal Advisor Rules – Exemptions

- Employees, officers, board members and other officials acting within their capacity as employees or officials.
- Banks that provide advice on typical bank services and products.
- Investment advisers that provide typical investment advisory services.
- Registered Commodities Trading Advisers.
- Underwriters that provide advice relating to the issuance of municipal securities.
- Attorneys, engineers, accountants and actuaries that provide typical professional advice.

Municipal Advisor Rules – Bank Exemption

- Exemption applies if advice is limited to certain identified products and services:
 - CDs
 - Loans
 - Deposit accounts
 - Bond indenture trustee services
- Does not apply to advice relating to:
 - Issuance of municipal securities
 - Municipal derivatives and other municipal financial products
 - Investment advisory services provided by banks

Municipal Advisor Rules – Advisor Exemption

- Exemption applies if advice is limited to investment of proceeds of municipal securities or escrow accounts.
- Does not apply to advice relating to the structure, timing or terms of municipal securities issues.
- Does not apply to advice relating to municipal derivatives.
- Question whether an adviser that manages the separate account of a municipality that includes swaps is covered.

Municipal Advisor Rules – Underwriter Exemption

- Exemption covers brokers, dealers and municipal securities dealers that provide advice regarding the structure, timing and terms of a municipal securities issue.
- The exemption begins when a firm is hired by a municipality and ends when the underwriting is completed.
- Does not apply to advice relating to the investment of proceeds of a municipal securities or municipal derivatives.

Municipal Advisor Rules – January FAQ

- A municipal entity need not have a formal RFP process for the exemption to apply to persons responding to an RFP.
- General information is exempt if, under all of the facts and circumstances, “it does not involve a recommendation that constitutes advice.”
- A broker-dealer providing advice in its capacity as a remarketing agent to a municipal entity would be a municipal advisor.
- Before the start of an engagement, a municipal adviser must provide the client with a document disclosing “all material conflicts of interest.”
- Investment advisory services regarding municipal derivatives in a portfolio (versus those used by a municipal entity or obligated person) would not trigger registration.

Municipal Advisor Rules – Current Issues

- Are pension obligation bonds the proceeds of a municipal offering that would trigger registration and regulation?
 - There are at least 1,900 issuances designed to help fund municipal plans.
 - Could impact collective funds in which pension plans invest.
 - Could theoretically be treated as municipal offering proceeds forever.
 - Should not be municipal offering proceeds when funds are used for their designated purpose.
- May (or may not) be addressed in an FAQ.

Municipal Advisor Rules – Current Issues

- Scope of Fiduciary Duty Rule.
 - Will the rule cover ordinary banking services?
 - Principal transactions
 - Loans
 - Will the rule cover transactions by affiliates that are not fiduciaries?

Municipal Advisor Rules – Compliance

- Have you made a list of clients that are municipalities or affiliates?
- Have you done an assessment of services provided to municipality clients?
- Do you provide advice to municipality clients that does not involve securities?
- Do your policies limit the types of advice provided to municipality clients?
- Do you advise municipality clients regarding third-party service providers?
- Do you act as a solicitor for third parties?
- Do you manage a separate account of a municipality that invests in swaps?

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