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MSRB Provides Overview Of Municipal Market Derivatives Regulatory Framework.

The MSRB published an issue brief outlining the regulatory framework for swaps that may be commonly used by municipal securities issuers. Publication of the brief was partly a response to the Tax Cuts and Jobs Act of 2017, which eliminated tax-exempt advance refunding bonds as a means to refinance outstanding municipal bonds and has prompted municipal issuers to consider swaps as an alternative.

In the brief, the MSRB reviewed Dodd-Frank Title VII and material CFTC regulations, highlighting the heightened conduct requirements for swap dealers transacting with "special entities," including municipalities. Specifically, the MSRB described the requirements that establish that a special entity have a "qualified independent representative" or "QIR" and duties (subject to safe harbors) to act in the "best interest" of a special entity when making recommendations. The MSRB detailed regulatory requirements for municipal advisors which will generally apply to QIRs, including exemptions for swap dealers.

The MSRB further highlighted Dodd-Frank requirements that directly or indirectly apply to municipal entities, including documentation requirements. The MSRB stated that it considers ISDA documentation guidance as a tool to reduce the administrative burden of these documentation requirements, noting that they are voluntary and that a municipal end user can choose to negotiate alternative bespoke agreements provided that the resulting terms comply with applicable regulations.

The MSRB's publication provides a useful orientation for municipalities that may be looking to use swaps for the first time.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.