

Bond Case Briefs

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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.