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Commentary: Law Brings Muni Advisors under SEC-MSRB Umbrella.

As many state and local governments across the country begin their July 1 fiscal year, a new federal law going into effect is of particular interest to municipal governments that issue bonds. The new law defines the scope of activities of municipal advisory professionals and establishes new requirements for those that provide advice on matters of public finance.

Each of the various financial professionals that work with state and local governments plays a different role and may have relationships that could affect any recommendations they make. The definition of a municipal advisor, established by the Securities and Exchange Commission, together with an associated regulatory regime for municipal advisors, will provide needed oversight of these financial professionals. The Municipal Securities Rulemaking Board is charged with developing a regulatory framework that clarifies and establishes requirements for these roles, responsibilities and relationships of municipal advisors. These “three Rs” are fundamental to understanding why we are here.

First, a bit of history. Congress mandated the creation of a regulatory framework for municipal advisors with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The goal of this framework is to protect state and local governments from the potentially costly consequences of relying on the financial advice of unregulated professionals that may lack sufficient expertise and accountability. Dodd-Frank imposed a federal fiduciary duty on municipal advisors to put the interests of their state and local government clients first, and a comprehensive regulatory framework will establish basic standards for the roles, responsibilities and relationships of municipal advisors.

Dodd-Frank broadly defined the term “municipal advisor” and left it to the SEC to provide additional clarity and guidance on who ultimately is a municipal advisor and must comply with any existing or future regulatory requirements. The SEC provided that guidance in its final registration rule released in September 2013 and effective today.

With certain exceptions, financial professionals who provide advice about municipal financial products or the issuance of municipal securities for an issuer must register with both the SEC and the MSRB and must comply with a broad MSRB requirement to deal fairly with all persons. The MSRB is developing additional rules to govern the conduct and professional qualifications of municipal advisors. The MSRB seeks to ensure that all municipal market participants understand the role of a municipal advisor, an advisor’s responsibilities to its client and the relationships among the various participants in a transaction.

To date, the MSRB has focused on establishing core standards of conduct for municipal advisors, setting supervision and compliance obligations for municipal advisor firms, and creating a professional qualification exam to require municipal advisors to demonstrate a minimum level of competency. The MSRB also plans to revise its rules on pay-to-play practices. Current rules that prohibit pay-to-play by municipal securities dealers will be extended to include municipal advisors.

The MSRB invites extensive participation in the development of its regulatory framework and hosts a number of outreach events and webinars to ensure stakeholders understand developing rules and how to comment. As the municipal advisor regulatory structure continues to evolve, the July 1 effectiveness of the SEC's registration rule signifies a major step forward in bringing all municipal advisors under the regulatory oversight of the SEC and the MSRB. Follow the current status of municipal advisor rulemaking and access free educational resources on the MSRB's website (MSRB.org) in the "Resources for Municipal Advisors" section.

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