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SEC Proposes Exemption From Broker Registration for Certain Municipal Advisors.

The U.S. Securities and Exchange Commission seeks comment on proposed exemption from broker registration for certain activities by municipal advisors.

The U.S. Securities and Exchange Commission (“SEC”) is seeking comments on a proposed exemptive order granting a conditional exemption from broker registration requirements for certain activities of municipal advisors.

The SEC adopted municipal advisor registration rules in 2013 as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created “municipal advisors” as a new class of regulated persons. The SEC defined “municipal advisor” and “municipal advisory activities” in the Exchange Act rules, and the Municipal Securities Rulemaking Board developed a regulatory framework applicable to municipal advisors engaged in such activity.

Despite the parameters and framework provided, the industry has continued to express confusion about the limits of municipal advisor activity. In particular, questions continue to focus on whether certain activity could cause a municipal advisor to be acting as a broker and thus be subject to registration as such.

On October 2, 2019, the SEC published a request for comment on a proposed exemptive order. It would allow registered municipal advisors acting on behalf of a municipal entity or obligated person client (collectively, a “Municipal Issuer”) to solicit certain institutional investors (“Qualified Providers”) in connection with the direct placement of an entire issuance of municipal securities with a single Qualified Provider without being required to register as a broker. A registered municipal advisor relying on the proposed exemption would be required to:

- make written disclosures to the Qualified Provider stating that the municipal advisor represents only the interests of the Municipal Issuer and not the Qualified Provider and obtain written acknowledgment of receipt of the disclosures from the Qualified Provider; and
- obtain a written representation from the Qualified Provider indicating it is capable of independently evaluating the investment risks of the transaction.

The proposed exemption would apply solely with respect to the limited activities and the requirements noted above. According to the SEC, a municipal advisor complying with the conditions of the exemption could solicit Qualified Providers on behalf of Municipal Issuer clients and receive transaction-based compensation related to the direct placement of the municipal securities without being required to register as a broker.

The proposal contains a number of pointed questions and asks commenters to explain their reasoning for each comment provided. Comments are due 60 days following the SEC’s publication of the proposed exemption in the federal register.

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Jones Day

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