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SEC Proposes Conditional Exemption for Certain Activities of Registered Municipal Advisors.

Section 15 (a)(1) of the Securities Exchange Act of 1934 (Exchange Act) generally prohibits a broker or dealer from effecting “any transactions in, or to induce or attempt to induce the purchase or sale of, any security” unless such broker or dealer is registered with the Securities and Exchange Commission (SEC).

However, as is often the case in U.S. securities laws, the requirements of Section 15(a)(1) are subject to exceptions. On Oct. 2, 2019, the SEC proposed an exemptive order under Section 15(a)(2) of the Exchange Act ([Release No. 34-87204](#)) that would permit a registered municipal advisor who is not also a registered broker-dealer to solicit a single Qualified Provider (as defined below) in connection with the direct placement of an entire issuance of municipal securities without registering as a broker-dealer.

The SEC proposes to define Qualified Provider as any of:

- i. a bank, savings and loan association, insurance company, or registered investment company;
- ii. an investment adviser registered with the Commission or with a state; or
- iii. another institution with total assets of at least \$50 million.

Thus, the proposed exemption would not be available in transactions involving retail investors, including public offerings of municipal securities.

Furthermore, as noted in the release, a registered municipal advisor wishing to rely on the proposed exemption would be subject to two conditions:

Condition 1: Make written disclosures to the Qualified Provider stating that the registered municipal advisor represents solely the interests of the municipal issuer and not the Qualified Provider, and obtain from the Qualified Provider written acknowledgment of receipt of those disclosures.

Condition 2: Obtain a written representation from the Qualified Provider that the Qualified Provider is capable of independently evaluating the investment risks of the transaction.

Overall, the proposed exemption summarized above would ease the burden for municipal advisors in that they would not have to separately register with the SEC as broker-dealers. In contrast, however, broker-dealers generally object to the proposed exemption. They contend that the relief is unfair because the broker-dealers would still have regulatory burdens that result from their compliance with registration requirements, while the municipal advisors relying on the exemption will not be subject to those same burdens. The Securities Industry and Financial Markets Association (SIFMA) and Bond Dealers of America have also commented that the proposed exemption would be harmful to the municipal market and investors. For example, Leslie Norwood, a managing director of SIFMA, claimed that the proposed exemption would release municipal advisors from “due diligence

obligations” that a registered broker-dealer is required to abide by. It remains to be seen whether the SEC will pull back or modify the proposal in any way at the end of the comment period, which closed on Dec. 9, 2019.

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