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Temporary Exemption From Broker Registration for Municipal Advisors: Jones Day

The U.S. Securities and Exchange Commission (“SEC”) has granted a temporary exemption from broker registration for certain activities by municipal advisors.

On June 16, 2020, the SEC issued a [temporary conditional exemption](#) to allow registered municipal advisors to solicit banks, their wholly owned subsidiaries engaged in commercial lending and financing, and credit unions (“Qualified Providers”) with respect to direct placements of securities issued by municipal issuer clients, and to receive transaction-based compensation without having to register as a broker under the Securities Exchange Act of 1934. The temporary exemption is effective until the end of the year.

The temporary exemption is meant to assist smaller municipal issuers that may be having difficulties meeting unexpected financing needs as a result of the COVID-19 pandemic by allowing municipal advisors to help these issuers obtain financing through direct placements. The temporary exemption does not apply with respect to public offerings of municipal securities or for sales to retail investors. Under the temporary exemption, a direct placement may not exceed \$20 million and must be issued in denominations of at least \$100,000 to limit the potential of resales to retail investors.

To protect investors, the SEC conditioned the temporary exemption on the municipal advisor:

- Obtaining a written representation from the Qualified Provider that it (i) meets the definition of “Qualified Provider”; (ii) is capable of independently evaluating the risks of the transaction; (iii) is not purchasing with a view to further distribution; and (iv) will not transfer any part of the direct placement for one year except to another Qualified Provider;
- Providing a written representation to the Qualified Provider indicating it (i) only represents the interests of the municipal issuer and not the Qualified Provider; (ii) is soliciting the Qualified Provider pursuant to the temporary exemption; (iii) has not performed due diligence on behalf of the Qualified Provider; (iv) has not (nor has the municipal issuer) engaged a broker-dealer as a placement agent for the direct placement; and (v) acknowledges that the Qualified Provider may choose to engage a broker-dealer; and
- Notifying the SEC staff when relying on the exemption.

The SEC [previously proposed](#) a broader exemption from broker registration for municipal advisors engaging in certain placement activities, which received significant opposition from industry members. While the SEC stated in its current order that it is not moving forward with that broader exemption at this time, it indicated that it may take its experience under this temporary conditional exemption into account in considering the broader proposal.

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