

The Municipal Advisor rule and what it means to issuers

In the wake of the 2008 financial crisis, U.S. lawmakers enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, which among other provisions imposed registration requirements and a fiduciary duty on municipal advisors. In conjunction with the provisions of Dodd-Frank, the SEC and MSRB have recently put forth new regulations, including the Municipal Advisor (“MA”) rule.

Effective July 1, 2014, the MA rule defines the term, “municipal advisor,” and requires **both** financial advisors and broker-dealers (i.e., those firms serving as underwriter, financial advisor or both) who provide municipal advisory services to register as municipal advisors. By requiring financial advisors to adhere to the same standards and behavior as broker-dealers have in the past, the MA rule provides oversight to all roles in a municipal advisory relationship.

What is a Municipal Advisor, according to the new rule?

A Municipal Advisor is a person or firm who advises municipalities on bond offerings. A Municipal Advisor must be registered with the SEC and will be subject to fiduciary duties and other regulations.

It’s important to note that any firm that provides advice to a municipal entity about a possible bond issuance would be regarded as a Municipal Advisor. Firms serving as Municipal Advisor are prohibited from serving as underwriter on that issuance. However, after it has been engaged, an underwriter can provide various services to a municipality on an offering within the scope of the underwriting, including advice as to the structure, ratings, bond insurance, terms, pricing and other matters with respect to the offering. An issuer is not required to engage a financial advisor on an offering, although some issuers may prefer to do so. (Note that this only pertains to **advice** and not **information**. Advice consists of a recommendation. Information can be provided at any time.)

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The following chart looks at how financial advisors, underwriters and issuers are affected by the new legislation

What's changed under the Municipal Advisor rule

BEFORE the Municipal Advisor rule	AFTER the Municipal Advisor rule
<ul style="list-style-type: none"> Self-identified "independent financial advisors" operated within a largely unregulated environment and were not licensed by any regulatory body. 	<ul style="list-style-type: none"> All municipal advisors must be registered with the SEC and subject to fiduciary and other standards of conduct.
<ul style="list-style-type: none"> Broker-dealers could provide information about the market or existing deals, such as market rates, government rates and issuance activity. 	<ul style="list-style-type: none"> Broker-dealers can continue to provide this sort of information without restriction.
<ul style="list-style-type: none"> Broker-dealers could provide requested and unsolicited advice on the issuer's specific needs, objectives or circumstances. 	<ul style="list-style-type: none"> Broker-dealers can NO LONGER provide advice to a municipal issuer on any deal they wish to underwrite UNLESS they meet certain exceptions highlighted below.

How can an issuer obtain advice regarding a municipal issuance?

Advisors and broker-dealers can still give advice – only now there are specific requirements on how it's provided:

- Broker-dealer firms are able to provide requested or unsolicited advice to municipal entities so long as ONE of the following conditions is met: (1) the municipal issuer engages the broker-dealer firm as underwriter for specific/future issuance(s), (2) the broker-dealer is responding to an RFP or mini-RFP or (3) an advisory engagement already exists with another financial advisor that is independent of the broker-dealer.
- Financial advisory firms are able to provide requested or unsolicited advice to municipal entities as they have in the past; however, they are now regulated and have to be registered with the SEC to do so.

Finally, it is important to recognize that, although these regulations affect how all advisers and underwriters serve municipal issuers, they *only* apply to advisers and underwriters. You are not required to engage a municipal advisor, and this rule need not affect how municipalities issue securities.

If you have questions on how the MA rule will affect your business, please contact Baird Public Finance at 800-792-2473 or one of our offices below.

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