MUNICIPAL ADVISOR REGULATION & MSRB ROLE

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MUNICIPAL ADVISOR REGULATION

MUNICIPAL ADVISORS

- **Regulated under Dodd Frank Act**
- **Broad Concept**

MUNICIPAL ADVISORS

- **Statutory Fiduciary Duty (Already Applies)**
- **MSRB Rule G-17 Applies (Already Applies)**
  - ❖ **Fair Dealing**
  - ❖ **Antifraud**
- **Much Regulation To Come**
  (Professional Standards, Qualifications Testing, Continuing Education)

MA REGULATION

Definition—Person
(Not Municipal Entity or Employee)—

- **Provides Advice To/On Behalf of Municipal Entity/ Obligated Person as to "Municipal Financial Products" or Issuance of Municipal Securities; or**

- **Undertakes Solicitation of Municipal Entity for Others (e.g., to pension funds)**

MA REGULATION

Municipal Financial Products—

- Swaps
- Investments

MA REGULATION

Statute Includes—

- **Financial Advisors**
- **Guaranteed Investment Contract Brokers**
- **Third-Party Marketers**
- **Placement Agents**
- **Solicitors**
- **Finders**
- **Swap Advisors Engaging In Regulated Activities (municipal entities must have advisors)**

MA REGULATION

Practical Inclusions—

- **Bond Financial Advisors**
- **Some Swap Advisors**
- **Some Investment Advisors**
- **Feasibility Consultants**
- **Appraisers & Other Experts**
- **“Solicitors”**
- **Unexpected Parties**

MA REGULATION

Does not include—

- **Dealer Serving As Underwriter**
- **Registered Investment Adviser**
- **Commodity Trading Advisor**
- **Attorneys Providing Traditional Legal Services**
- **Engineers Providing Engineering Advice**

HISTORY

- SEC Proposed Regulatory Definition in December 2010
- Made Errors—Included Appointed Officials
- Bank Tellers
- Much Protest—1,000 Letters of Comment

MA REGULATION

- No Final Definition After Three Years
- HR 2827 (Rep. Dold) Passed House Financial Services Committee Unanimously, Then Full House in 2012
- Goal to “Clarify” Definition, Pressure SEC

MA REGULATION

- SEC Says Now Priority Item
- New Director of Office of Municipal Securities
- Office Now Reports to Chairman

MA REGULATION

- Expect Appointed Officials To Be Excluded
- Expect Less Coverage

MA REGULATION

- **Should Provide Significant Protections for Municipal Issuers**
- **Fiduciary Duty (Does Not Protect Obligated Persons)**

MA REGULATION

- **Many MSRB Rules To Come After SEC Definition**
- **Potential for Significant Change in Practices Over Time**

MSRB & ISSUER PROTECTION

MSRB & ISSUER PROTECTION

- MSRB Restructured
- Majority of "Public Members"
- Added Mission to Protect Issuers
- "Issuer Tools" & Guidance on EMMA
- Some Rules Directed to Issuer Protection

MSRB & ISSUER PROTECTION

- Goal to Inform Issuers
- Provide Issuers "Voluntary" Disclosure Options

MSRB & ISSUER PROTECTION

- Working to Provide Greater Price Transparency for Issuers & Investors
- Retail Sales In Accordance with Issuer Directions to Underwriters

MSRB & ISSUER PROTECTION

- **Disclosure by Underwriters to Issuers**
  - **Adverse Roles, Duties to Investors**
  - **Duty to Deal Fairly, Buy at Fair Price**
  - **Not Fiduciaries**
  - **Not Obligated to Advise in Best Interests**
  - **Complex Transactions, Risks**

Much Activity in Progress

Stay Tuned

THE END