

Municipal Advisors: Impacts of the New Rules

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Overview

- Who is a Municipal Advisor?
- Rules Adopted in Past Year
 - ▶ Standards of Practice – G-42
 - ▶ Gifts and Gratuities – G-20
 - ▶ Political Contributions – G-37
- Continuing Disclosure
- Going Forward– Some Practical Impacts

Municipal Advisor (MA) Rule Definitions

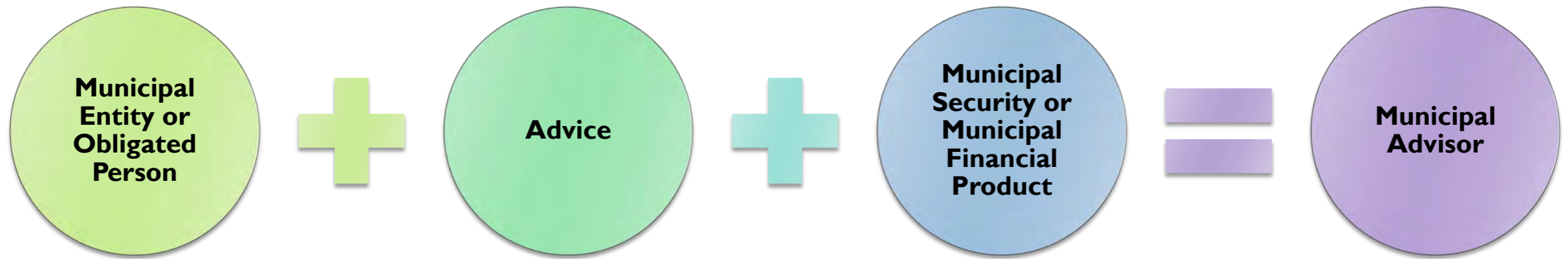
- A **Municipal Advisor** is anyone who provides **advice** to a **municipal entity** or **obligated person** regarding:
 - ▶ The terms, structure, timing or related activities involving issuance of a **municipal security**; or
 - ▶ Investment of municipal security proceeds in **municipal financial products**

Municipal securities include special revenue bonds and transferrable developer notes
- SEC defines **advice** as a recommendation or the call to action
 - ▶ Whether person makes a “particularized recommendation”
 - ▶ Whether the content, context and manner of presentation would reasonably cause someone to take action OR refrain from taking action
 - ▶ How individually tailored the information is to a specific OR targeted group of municipal entities or obligated persons

Exclusions & Exemptions From MA Definition

- Public Officials
 - Registered Investment Advisors
 - Registered Commodity Trading Advisors
 - Banks
 - Accountants
 - Engineers
 - Attorneys
 - Underwriters
 - Swap Dealers
 - RFP Responses
- ▶ Only to the extent the professional is operating within the scope of the exclusion/exemption.
 - ▶ **If MA advice is provided, must register;** or work in conjunction with municipality's IRMA (Independent Registered Municipal Advisor)
 - ▶ Underwriters now need to be engaged, be responding to an RFP, or be reviewed by an IRMA in order to give initial ideas that might be otherwise be considered advice

Definitions Recap



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In short, if a consultant or advisor says “and I think ya oughta (or ought not)...” they should be registered or they should ask to involve your IRMA.

Duties of Municipal Advisors -- Rule G-42

- Standards of Conduct
 - ▶ Duty of Care
 - ▶ Fiduciary Duty to Municipal Entity Client
- Disclosure of Conflicts
- Documentation of Relationship
- Reasonable Diligence and Reasonable Basis for Recommendations (or Review of Recommendations of Others)
 - ▶ Risks
 - ▶ Alternatives
 - ▶ Suitability
- Compensation Based on Activities Actually Performed

Gift and Pay-to-Play Rules -- G-20 and G-37

■ **G-20: Gifts and Gratuities**

- ▶ \$100 per person per year
- ▶ Exclusion for certain gifts
 - Occasion meals or tickets
 - Sponsored events
 - Commemorative
 - Promotional items
 - Weddings
 - Funerals
 - Other personal gifts
- ▶ Exclusion of travel costs related to issuance
- ▶ Illinois restrictions generally tighter

■ **G-37: Political Contributions**

- ▶ Two-year business prohibition for donations (direct or PAC) to official of municipal entity with:
 - Dealer selection influence
 - Municipal advisor selection influence
 - Investment advisor selection influence
- ▶ Nexus/risk or appearance of quid pro quo
- ▶ \$250 exception per election if one can vote for official

Disclosure

■ Issuance

- ▶ POS/OS – Underwriters counsel or disclosure counsel
- ▶ More documentation for transferrable notes
- ▶ Economic status of community and district
- ▶ Detailed projections
- ▶ Specific project support and expertise
- ▶ Financial information and disclosures if GO or alternate revenue bond

<http://gfoa.org/understanding-your-continuing-disclosure-responsibilities-0>

■ Continuing Disclosure Required

- ▶ Financial info and op data of municipal entity and/or project
- ▶ Audits of local government or obligated parties
- ▶ Material events
 - Delinquencies
 - Unscheduled draws on reserves
 - Adverse tax opinions
 - Bankruptcies
 - Etc.
- ▶ Applies to special revenue bonds and can apply to notes if determined to be security

Going Forward – Some Practical Impacts

- Economic development, special facility, and other unusual transactions impacted
- Is a “security” contemplated?
 - ▶ GO bond with indirect expectation of TIF or revenue support
 - ▶ Alternate revenue bond
 - ▶ Special revenue bond
 - ▶ Transferrable TIF, BD, SA or SSA note
 - ▶ Special Assessment, Business District, or Special Service Area bonds
- Reasonable basis (G-42) implies need for more support for project, such as:
 - ▶ Leases
 - ▶ Corporate financial capacity
 - ▶ Market study and financial feasibility

Project/Deal Teams Expand

- Term sheet and RDA team
 - ▶ Development advisor/real estate analyst to assess gap and financial structure
 - ▶ MA with experience in instruments being considered
 - ▶ General MA
 - ▶ Special counsel
 - ▶ Bond counsel
- Developer will have parallel team
- Issuance team – additional players
 - ▶ Formal bond feasibility consultant
 - ▶ Underwriter/broker dealer
 - ▶ Underwriters counsel
 - ▶ Disclosure counsel

Due Diligence/Reasonable Basis

- Developer/sponsor background and qualifications
- Market-based projects
 - ▶ Market study – conducted by independent, third party
 - Supply and demand
 - ▶ Financial feasibility – reviewed by third party
 - ▶ Financial structure
 - Gap
 - Suitability of private financial structure
 - Integration of public financial structure with private
- Corporate and lease-based projects
 - ▶ Documentation
 - ▶ Financial capacity of company or lessee

“Bond” Feasibility

- Formal study in support of issuance of special revenue, alternate revenue, or transferrable notes
- Inclusion in Preliminary Official Statement/Official Statement (POS/OS)
- Independent for benefit of purchaser of note – reliance by purchaser
- Preparer may be TIF consultant, real estate consultant, or others who may or may not be registered as MA
- If registered, not functioning as MA (cannot have Fiduciary Duty to issuer)
- Typical content
 - ▶ Economic and market conditions of locale and TIF area
 - ▶ Specific support for project (market, leases, etc.)
 - ▶ Revenue projections and assumptions/basis
 - ▶ Sensitivity tests/coverage
 - ▶ Risk factors and conditions

Conclusion

- What was an FA is now an MA and must be registered with the SEC and MSRB
- If your advisor/consultant says “and I think ya oughta (or ought not)...” they need to be registered or you need to call IRMA
- Owe fiduciary responsibility to municipality
- Reasonable basis, reasonable diligence, understanding of suitability
- Limited gifts and ban on political contributions
- Economic development, public-private, special facility and other unusual transactions may require enlarged teams and greater effort (and time) to bring to fruition and market

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