

## **Municipal Advisor Rule** **Effective July 1, 2014**



The Municipal Advisor Rule states that when a firm offers what is construed as “advice” (a recommendation related to a transaction) that firm shall be construed as a municipal advisor.

In order to avoid registering with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board, underwriters must either refrain from offering any suggestion that could be construed as advice or obtain one of the exemptions outlined below.

- **RFP Exemption** – the underwriter is responding to a request for proposals.
- **Underwriting Exemption** – the underwriter has been hired on a specific transaction. However, the Underwriting Exemption only applies so long as the recommendations fall within the boundaries of providing advice with respect to the structure, timing, and terms related to the issuance of municipal securities. Simply serving as a member of an underwriter pool does not permit the firm to rely upon the Underwriting Exemption.
- **Independent Registered Municipal Advisor (IRMA) Exemption** – the municipal entity or obligated person has engaged an independent municipal advisor. Satisfying the IRMA Exemption requires that several conditions be met.
  - I. The municipal advisor must be registered and independent, meaning the municipal advisor shall not have anyone working on the financial advisory team for a client who has been associated with the soliciting underwriter in the past two years.
  - II. The municipal entity or obligated person must represent in writing that it is being represented by a municipal advisor, will rely on the advice of that municipal advisor, and must define the scope of advice they are receiving from that municipal advisor. “Rely” means seek and consider advice.
  - III. The underwriter must confirm receipt of the municipal entity or obligated person’s representations for the IRMA Exemption and must disclose to the municipal entity or obligated person, with a copy to the IRMA, that the underwriter is not a municipal advisor and does not have a fiduciary duty to the municipal entity or obligated person.

As the IRMA Exemption allows the least amount of restriction to the underwriter in terms of providing advice to the municipal entity or obligated person, it is most likely to be the first exemption sought by the underwriter when seeking to avoid being registered as a municipal advisor.

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\*This summary of the Municipal Advisor Rule (the “MA Rule”) is provided as an overview for our clients’ information and convenience only. It is not intended to be a comprehensive analysis of the MA Rule, nor is anything contained herein to be construed as financial or legal advice. The information has been prepared based on the regulatory guidance available at this time. FirstSouthwest does not undertake to update this information based on future guidance or changes to the MA Rule. ©2014 First Southwest Company. All rights reserved. Member of FINRA/SIPC.