



## Special Alert

June 22, 2020

# Municipal Advisors Granted Relief under SEC's Temporary Conditional Exemption



On June 16, 2020, the Securities and Exchange Commission announced a Temporary Conditional Exemption for municipal advisors (MAs), which provides an exemption from certain broker registration requirements under Section 15 of the Securities Exchange Act of 1934. This order is in response to the disruption in the municipal securities markets resulting from the COVID-19 pandemic.

The order builds on the revised terms of the Municipal Liquidity Facility, which was established by the Federal Reserve Board in April 2020 to purchase debt from state and local governments dealing with budget shortfalls. Many municipal issuers, including smaller cities and towns, however, were ineligible for the program because they did not meet the population thresholds. Simultaneously, municipal issuers have struggled to access the primary market and have had to turn to alternative financing solutions such as loans and private placements.

Recognizing this problem, the exemption provided in the order allows registered MAs to solicit a defined set of banks, a wholly owned subsidiary of a bank that engages in commercial lending and financing, and credit unions in connection with direct placements of securities issued by their municipal clients. The solicitation activities permitted by the exemption provided in the order are in addition to the primary advisory services provided by MAs to their clients (including developing a financing plan, evaluating financing options, and negotiating deal terms).

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It is important to note that the exemption expires on Dec. 31, 2020 and has several requirements, addressed below:

- 1. The MA must obtain written representations from the qualified provider(s) that the provider:** fits within the exemption's definition of a qualified provider; is capable of independently evaluating the investment risks of the transaction; is not purchasing with a view to distributing the securities; and will not transfer any portion of the direct placement within one year of the issuance of the securities, unless to another qualified provider(s).
- 2. The MA must also make a written representation to, and obtain a written acknowledgement of receipt from, the qualified provider(s) that the MA:** represents only the interests of the municipal issuer and not the qualified provider; is soliciting the qualified provider in connection with the direct placement pursuant to the commission's Temporary Conditional Exemption; has not conducted due diligence on behalf of the qualified provider; has not, as of the written representation, engaged, nor has the municipal issuer engaged, a broker-dealer as a placement agent in connection with the direct placement; and acknowledges that the qualified provider may choose to engage the services of a broker-dealer to represent their interests.
- 3. Size Limit:** The total principal amount of the direct placement may not exceed \$20 million and must be issued in denominations of \$100,000 or more.
- 4. Transferability:** If the qualified provider(s) transfers any or all of the direct placement within a year of issuance, it may only transfer the securities to another qualified provider(s).
- 5. Notification:** MAs relying on the exemption must notify the SEC's Division of Trading and Markets of any direct placements within 30 calendar days after the sale of the securities. For a full list of details, see the attached link to the order.

For more information and details on the requirements of the Temporary Conditional Exemption, see the link below:

<https://www.sec.gov/rules/exorders/2020/34-89074.pdf>

## Questions? Contact the DCS Team

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