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Municipal Security Provisions of Dodd–Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, President Obama signed into law the financial reform legislation known as the Dodd–Frank Wall Street Reform and Consumer Protection Act (the “Act”). Portions of the Act will impact the municipal securities market, including the following:

- MSRB oversight of municipal advisors;
- Expanded MSRB rulemaking authority; and
- Creation of Office of Municipal Securities in the SEC.

MSRB Oversight of Municipal Advisors

The Act gives the Municipal Securities Rulemaking Board (MSRB) oversight authority over municipal advisors. In addition, municipal advisors are required to register before providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or soliciting a municipal entity or obligated person.

A municipal advisor is any person that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing and terms of such financial products or (ii) issues or undertakes a solicitation of a municipal entity. Municipal advisors include financial advisors, guaranteed investment contract brokers, placement agents and swap advisors, but do not include underwriters.

Under the Act municipal advisors are deemed to have a fiduciary duty to any municipal entity for whom such advisor acts as a municipal advisor.

Expanded MSRB Rulemaking Authority

The Act grants rulemaking authority to the MSRB over municipal advisors with respect to the following:

- Prescribing means reasonably designed to prevent acts, practices and courses of business not consistent with a municipal advisor's fiduciary duty to its clients; and
- Providing continuing education requirements for municipal advisors.

Under the Act the MSRB may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate for the protection of investors, municipal entities, obligated persons and the public interest.

Change in MSRB Board

The Act changes the structure of the board of the MSRB to provide a majority of independent board members. Under the Act, in the 15 member board, eight members must be independent of any municipal securities broker, municipal securities dealer or municipal advisor. The members of the Board will serve for a term of three years.

SEC Office of Municipal Securities

The Act creates the Office of Municipal Securities within the Securities and Exchange Commission. The Office of Municipal Securities will administer the rules of the SEC with respect to the practices of municipal securities brokers and dealers, advisors, investors and issuers and coordinate with the MSRB for rulemaking and enforcement actions. The Office of Municipal Securities will be headed by a director who will report to the Chairman of the SEC and will be staffed sufficiently to carry out the requirements of the Act.

Government Accounting Standards Board

The Act authorizes the SEC to require national securities associations to establish a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (GASB). However, the Act clarifies that this provision of the Act should not be construed to (i) provide the SEC or any national securities association oversight of the budget or technical agenda of GASB or (ii) affect the setting of generally accepted accounting principles of GASB.

Studies Commissioned by the Act

The Act requires the Government Accountability Office (GAO) to study the following with respect to municipal securities:

- Disclosure required to be made by issuers of municipal securities, including (i) a comparison of the amount, frequency and quality of disclosures that issuers of municipal securities are required to provide with the disclosure that issuers of corporate securities are required to provide and (ii) recommendations relating to disclosure requirements for municipal securities issuers, including the advisability of the repeal or retention of the Tower Amendment.

- Municipal securities markets, including (i) recommendations for how to improve the transparency, efficiency, fairness and liquidity of trading in the municipal securities markets and (ii) potential uses of derivatives in the municipal securities markets.
- The role and importance of GASB in municipal securities markets and the manner and the level at which GASB has been funded.



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What I Find Rewarding: Working together with clients and the other members of our deal teams toward our common goals and the successful conclusion of our transactions and, often times, being able to see the physical results of our efforts in the capital projects that we finance.

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