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## **ASA Fact Sheet: The SEC's Muni Advisor Regulatory Rollback**

### **I. What is the SEC's Temporary Conditional Exemption for Municipal Advisors ("the Order")?**

On June 16, the SEC issued a deregulatory [Order](#) allowing municipal advisors (MAs) to arrange certain "private placements" of municipal bonds without registering as broker-dealers, ignoring Congressional intent and exposing Americans to fraud. In a "private placement" the underlying loan/security is not offered to the public marketplace, but rather sold to preselected individuals or institutions. **Soliciting buyers on behalf of an issuer and placing the security with them is an essential function of broker-dealer activity by statutory definition and SEC rule.** The SEC claims this exemption may result in more timely and efficient access to bank financing alternatives by issuers during COVID-19.

The ASA strongly disagrees with this pretext because a request for exemptive relief on similar terms was submitted by an MA long before the pandemic began. MAs want to secure favorable treatment outside of the normal regulatory process, plain and simple.

### **II. How does a municipal bond get to market? How has the SEC's order changed this process?**

Prior to this Order, MAs could not perform broker-dealer activities without being registered as a broker-dealer, and they were required to use a broker-dealer to act as a placement agent. The only instance where a MA may legally complete a transaction without a placement agent is when they do not solicit bidders or negotiate on the issuer's behalf when representing an issuer. This only happens if the MA is approached by a bank or directed to a bank by the client. If an MA solicits bids from anyone it is performing broker-dealer activities. The exemptive order allows MAs to act as broker-dealers and solicit buyers until December 30, 2020 without registering as a broker-dealer.

### **III. Why is the ASA opposed to the order?**

The Order undermines the broker-dealer regulatory framework, weakens investor protection, subjectively favors one group of market participants over others, evades the public input requirements of the Administrative Procedures Act, and ignores Congressional intent under the Exchange Act.

**By issuing the Order, the SEC has created an exemption from Exchange Act registration requirements without authorization by Congress.** In the past, the SEC has consistently taken the position that specific activities – including the receipt of transaction-based compensation, identifying purchasers of securities, and soliciting securities transactions -- are functions of a broker-dealer, and therefore **require** registration under the Exchange Act. While the SEC has previously issued narrow exemptions, they never permitted individuals or entities to receive transaction-based compensation. This Order departs from longstanding policy by explicitly allowing MAs to receive transaction-based compensation.

The Order includes no empirical evidence showing a market failure exists because of the COVID-19 pandemic to grant an exemption for MAs, and it makes no mention of the possible risks to municipalities or investors from having unregistered entities sell securities in the municipal market. The SEC also failed to conduct any type of economic analysis related to the Order's impact on the municipal market, which has been well served by broker-dealers for years.

**ASA believes the SEC must immediately rescind the Order and focus its resources on process-driven actions that can be taken to promote capital formation and help our economy recover from the COVID-19 pandemic.**



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## Questions for Congress to consider:

- What assurances does the public have that the securities created by a non-broker dealer will not trade after the exemptive period ends or possibly even prior to it ending?
- Who will be responsible for accuracy of the information and diligence about the security when information about it is made publicly available?
- What agency will be responsible for monitoring and enforcing the timeline and the disclosures for the 5 years? Who will be the enforcement agency?
- Who will enforce the \$100k minimum denominations?
- Why is it assumed this order protects retail investors?
- Advisors do not have the capital to pay any fines - so how will defrauded investors be made whole?
- Who signs the tax certificate for the tax-exempt coupon validation?
- How will the sales practices and marketing material be monitored and overseen to assure that the security isn't being misrepresented?
- Are the Federal bank regulators aware that these 'phantom securities' will be purchased by banks?
- Who will price the security for evaluation purposes given it is being created by a 'phantom broker' with no due-diligence obligations, a conflict of interest between buyer and seller, no sales practice rules, no ability to sign the tax certificate and fairness opinion and no future liability or obligations to the secondary securities market given they are not a regulated broker dealer and have no minimum capital requirements, no series 7 securities license, no series 9/10 for sales practices and oversight and no series 24 for fairness opinion and underwriting standards?
- What liability does a pricing service that agrees to price this kind of phantom security have?

*The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.*



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