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**Common Misconceptions About the Municipal Advisor Rule
December 17, 2013**

1. The SEC Municipal Advisor Rule applies only to traditional “financial advisors”.

False. The term Municipal Advisor refers to any person who provides advice to a municipal entity or obligated person regarding the issuance of municipal securities (e.g., advice regarding the structure, timing and terms) or municipal financial products (e.g., the investment of bond proceeds) (“Municipal Advisory Services”). Any person who provides this type of advice will be considered a Municipal Advisor, thereby having a fiduciary duty to their municipal entity clients regardless of their or their employer’s particular title, or their primary area of business, unless one of the various exceptions (as discussed more fully below) applies.

2. Issuers are now required to use a Municipal Advisor.

False. Issuers are not required to use a Municipal Advisor. As in the past, issuers are free to receive information and ideas from other parties, in particular, broker-dealers, in connection with their financial transactions. As discussed above, such parties must fall within one of the available exceptions in order to avoid regulation as a Municipal Advisor. However, it is important for issuers to recognize that these other professionals, including broker-dealers serving as underwriters, do not possess fiduciary duties. It is also important to note that the Government Finance Officers Association’s (“GFOA’s”) Best Practices strongly recommend that issuers hire a Municipal Advisor for their securities transactions, unless they have sufficient in-house capabilities (see *GFOA’s Selecting a Financial Advisor, Selecting and Managing the Method of Sale of State and Local Government Bonds*).

3. The definition of “Advice” is so broad that issuers will only be able to talk to Municipal Advisors about municipal finance matters.

False. Although the Securities and Exchange Commission (“SEC”) has stated that it will construe the term “Advice” broadly, any person may provide “general information” to an issuer without being subjected to regulation as a Municipal Advisor. Thus, professionals who do not wish to be deemed Municipal Advisors still have the ability to discuss matters with issuers as long as they do not provide “particularized recommendations” to any such issuer. The SEC has noted that individuals and entities can, for example, provide the following kinds of information without being deemed a Municipal Advisor:

- Information of a factual nature without subjective assumptions, opinions, or views.
- Information that is not particularized to a specific municipal entity or type of municipal entity.
- Information that is widely disseminated for use by the public, clients, or market participants other than municipal entities or obligated persons.
- General information in the nature of educational materials.

4. As an issuer that has historically used a particular underwriter or banker, it sounds like I will not be able to talk to my Underwriter.

False. Again, issuers can still talk with broker-dealers (i.e., underwriters) or bankers. There will, however, likely be a minor shift in terms of the manner in which those conversations occur, in that, the way in which issuers and broker-dealers and/or other professionals communicate will become more formalized than in the past. For instance, a broker-dealer will not be able to recommend a new type of financing to the issuer until the issuer has engaged the broker-dealer as its underwriter. Alternatively, such recommendations may have to be made as part of the broker-dealer's response to an issuer's Request for Proposals ("RFP") or Request for Qualifications ("RFQ") related to a particular financing. In addition, issuers who have hired a Municipal Advisor on a transaction and want to receive certain types of advice from broker-dealers or other professionals will need to represent to such professions, in writing, that they have a Municipal Advisor in order for such professional to rely on the Independent Registered Municipal Advisor exemption ("IRMA Exemption") to provide advice.

5. Broker-dealers won't be able to provide advice to issuers.

False. Issuers will be able to receive advice from broker-dealers in a variety of ways, including the following:

- Through the use of RFP/RFQs.
- By engaging the broker-dealer to provide underwriting services (the "Underwriter Exemption").
- By relying on the IRMA Exemption.

However, if a broker-dealer provides advice outside of the context of one of the foregoing, or other available exception, the broker-dealer will be deemed a Municipal Advisor and subject to regulation as such.

6. I understand the IRMA Exemption is difficult to use.

False. The IRMA Exemption is an exemption available to any person to provide the same advice as a Municipal Advisor so long as the issuer has engaged an Independent Registered Municipal Advisor ("IRMA") for the specific debt issuance for which advice is to be provided. For the IRMA Exemption to apply, the Municipal Advisor must be appropriately registered, and "independent." To be "independent," the Municipal Advisor must not be associated with, and within the past 2 years was not associated with, the person relying on the exemption. Persons utilizing this exemption will be required to receive certain representations from the issuer regarding its engagement of an IRMA, and will be required to provide certain disclosures to the issuer and the IRMA.

7. Discussions regarding the implementation of a securities issuance with the various professionals involved in the financing will be stifled.

False. If the issuer has engaged an IRMA, then the IRMA Exemption will likely be utilized, and these discussions will continue as they have in the past. Regardless of the existence of an IRMA or the use of the IRMA Exemption, generally, once these kinds of discussions begin to take place, the broker-dealer will have already been engaged as the underwriter so that the issuer will be able to rely upon



the Underwriter Exemption. Thus, there will likely be little difference from the issuers' perspective in terms of the discussions they are able to have with various professionals.

8. Receiving advice from an underwriter, rather than a municipal advisor, will allow issuers to conduct a more efficient financing and will minimize issuer financing costs.

False. There have been numerous academic as well as government studies on this issue, none of which has shown that issuers receive a financial benefit from relying upon the advice of underwriters, rather than Municipal Advisors. In addition, studies have found that issuers who utilize the services of a Municipal Advisor are able to effectively minimize financing costs, that is, obtain lower interest rates and reduce their overall costs of issuance more so than their issuer counterparts who solely rely upon underwriters to provide them with financial advice.

9. Municipal Advisor firms are currently not regulated.

False. Since 2010, a federal fiduciary standard has applied to Municipal Advisors, which requires Municipal Advisors to act in the best interest of their municipal entity clients. Also since 2010, Municipal Advisors have been required to adhere to Municipal Securities Rulemaking Board ("MSRB") Rule G-17, which requires Municipal Advisors to deal fairly with all persons, the same regulatory standard that broker-dealers have to adhere to. In addition, the MSRB is in the process of developing a regulatory regime that will complement current federal law by, among other things, developing further Municipal Advisor regulations. Municipal Advisors will also be required to pass certifying exams to ensure that Municipal Advisors possess the requisite level of competence and expertise to provide Municipal Advisory Services, and will likely need to meet annual continuing education requirements to maintain their standing as Municipal Advisors.

10. The Rules will make it difficult for an issuer to determine refunding opportunities.

False. Issuers who believe their outstanding securities may be candidates for refinancing can contact a Municipal Advisor who can advise accordingly and within the context of their fiduciary duty. Many Municipal Advisors, including NAIPFA member firms, have the knowledge, experience and technological abilities to run refunding analyses. These Municipal Advisor firms, as they have done historically, will also alert their issuer clients of refunding opportunities as they arise. Further, issuers can contact broker-dealers utilizing one of the available exemptions to receive such advice.

11. Engineers, CPAs and Attorneys cannot provide Municipal Advisory Services.

True. Generally, engineers, CPAs and attorneys will not be able to provide Municipal Advisory Services unless they are registered as Municipal Advisors. However, they will be able to provide the same advice that they have traditionally provided within the purview of their respective professions, and be subject to regulation as Municipal Advisors only if they act as Municipal Advisors. In other words, if such individuals provide advice to a municipal entity regarding municipal financial products or the issuance of municipal securities they will be required to register as Municipal Advisors. Notably, the IRMA Exemption is available to these professionals as well.



12. The role of a Municipal Advisor will stop once the debt is issued.

False. In connection with an issuance of municipal securities, a Municipal Advisor's fiduciary responsibilities arise whenever Municipal Advisor Services are provided and will continue for the life of the issuance. Conversely, the SEC has determined that the role of the underwriter or banker generally ends when the debt is issued.

13. Issuers will not be able to receive advice from broker-dealers related to investments of funds which are not bond proceeds.

False. Although professionals who provide advice relating to the investment of bond proceeds will generally be deemed Municipal Advisors, the SEC has made clear that persons will not be considered Municipal Advisors with respect to non-bond proceeds related investments. In addition, issuers who want advice on how to invest monies that are not bond proceeds may obtain written confirmation from the party who is to provide the investment advice relative to the nature of the funds to be invested. Thereafter, assuming that such funds are not bond proceeds or escrowed for the payment of securities, the person providing investment advice may provide such advice without being deemed a Municipal Advisor.

14. Municipal Advisors should wait until the SEC Municipal Advisor Rule becomes effective on January 13, 2014 before establishing compliance related policies and procedures.

False. Upon becoming effective, any person that meets the definition of a Municipal Advisor will have to comply with all SEC rules applicable to Municipal Advisors, including the requirement that they maintain certain Books & Records. In addition, Municipal Advisors are required to have policies in place on the Effective Date if utilizing electronic data storage systems. Therefore, Municipal Advisors should begin developing appropriate policies and procedures in order to be in compliance on January 13, 2014.

15. All investment advisers need to register as Municipal Advisors.

False. There is an exemption for investment advisers. However, the exemption is limited only to those investment advisers that are registered with the SEC. Therefore, all non-SEC registered investment advisers are required to register as Municipal Advisors if they provide advice to municipal issuers regarding the investment of bond proceeds or the issuance of municipal securities.

16. The SEC's new rules give additional guidance on the distinction between Private Placements and Bank Loans.

False. The determination of whether a transaction is a Private Placement or Bank Loan is still based upon the relevant factors, which include, among other things, the form of an individual's compensation, whether the individual is engaged in the negotiation of terms, and whether the issuer had a prior relationship with the purchaser of securities.

