

Comment on Notice 2014-01

from John Rodstrom, Oppenheimer & Co. Inc.

on Monday, March 10, 2014

Comment:

- The definition of “Advice” is very broad, and as such, a person or entity that proffers advice is deemed to be a Municipal Financial Advisor under Section 15B(e)(4)(A). A broker-dealer who seeks to be an Underwriter in our industry would be prohibited from soliciting a potential client with recommendations other than possibly a simple refunding recommendation. This limitation would have a “chilling” effect on our industry’s ability to seek new business. Under this broad interpretation, prospective underwriters would be severely restricted in their pitches to win new business – presentations would be solely based on the firm’s rankings, capital, experience, etc. I would propose that the definition exclude advice provided to a municipal issuer when not under an engagement. This way, governments would benefit from any idea submitted and could choose to evaluate it any way it deems appropriate. Why should government be restricted from receiving innovative structures and ideas that could save the public thousands, if not millions, of dollars?

- Municipal Financial Advisors’ compensation should not be determined on a per-bond basis. This type of compensation poses an inherent conflict because it directly incentivizes these advisors to recommend transactions, as opposed to advising against them. How can an advisor be impartial in its advice when it stands to not make any money if it recommends that a deal not be consummated? Also, an advisor would be incentivized to recommend a structure that produces a larger principal amount, since their fee would be directly tied to the issue size. Ironically, these incentives are identical to the ones characterizing underwriters, and underwriters have been forced to provide a specific disclosure pursuant to Rule G-17 stating that they are not acting in the client’s best interest because they are directly incentivized to do deals and to maximize their size. It’s completely inappropriate for a party with a fiduciary obligation to the municipality to be motivated by these same incentives