
From: Ed Crouch
Sent: Monday, February 14, 2011 12:41 PM
To: Comment Letters
Subject: Rule G-17 and Rule G-36 Commentary...

Greetings—

Thank you for the opportunity to provide commentary to the development of Rules G-17 and G-36. As these rules are drafted, finalized and interpreted, it should be clearly stated how these two similar (but distinct) rules interact with one another, and are separately or together applied, in the instance where a municipal advisor's client is an obligated person and the municipal entity is a conduit to a financing. More specifically, I am imagining a circumstance where a non-profit organization engages a municipal advisor to assist it in examining all possible financing scenarios that may be available to the organization including the use of conventional financing and tax-exempt bond financing. In this instance, the municipal advisor's client could become an obligated person, defined under that Act, but in the event that the financing that is ultimately consummated is in the form of a conventional loan, is there a question of whether client would ever be an obligated person if it would ultimately have no relationship to a municipal entity? Clearly defining this grey area is critical for municipal advisors to understand which regulatory construct applies at any given point in time.

Also, a potential conflict could materialize in instances where an obligated person could benefit from a transaction or structure that is not in the interest of the municipal entity. In circumstances where the municipal advisor's client is not the municipal entity but rather an obligated person (or as described above, an entity considering using municipal bonds but perhaps outside the definition of an obligated person at a certain point in time) the municipal advisor may believe that not using the municipal entity is in the client's best interest for a variety of interests. For instance if outstanding municipal bonds could be refinanced with a conventional loan, the municipal entity would receive less (or no) fees and therefore be financially impaired to the benefit of the obligated person. Again, the municipal advisor, its client and the municipal entity should be clearly informed as to the fiduciary and fair dealing duties of the municipal advisor under rules G-17 and G-36.

As I review these rules now, such delineation in these circumstances does not appear clear.

I hope this input is useful as the rules are developed. Please contact me if you would like to discuss this e-mail or need clarification.

Regards,
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