OVERVIEW OF VARIOUS MUNICIPAL FINANCE INDUSTRY CONSULTANTS and THEIR EXPERT WORK PRODUCTS

Presented by

Gilbert Southwell III, Vice President/Senior Municipal Analyst, Wells Capital Management
Katie Koster, Managing Director, Public Finance Investment Banking, Piper Jaffray
Definition of Expert Work Products

- What Are Expert Work Products
  - Products used in disclosure documents to support proposed work project
  - Can be found in Official Statements
  - Not updated as part of Continuing Disclosure
Expert Work Products Means

- Feasibility studies and reports
- Economic and financial projections, forecasts and analysis
- Real estate appraisals and other asset valuations
- Other third party reports used by municipal market participants
- Used to illustrate the feasibility of start-up or expansion projects associated with bonds
Utilized by Industry Sectors

- Land-based securities
- Multi-family housing
- Toll roads
- Water, sewer, electric, and other types of municipal utilities
- Airports and maritime ports
- Private activity projects
- Healthcare, continuing care, and assisted living projects
- Charter or independent schools
- Convention centers and related hotels
- Stadiums
- Project Finance
Who Are Special Consultants?

- Assessment
- Accountants and auditors
- Appraisers
- Business valuation consultants
- Feasibility consultants
- Other Consultants (e.g., Lawyers)
In California, land-secured financing is a common approach in constructing infrastructure needs for schools, roads, freeways, sewer projects and other public facilities.

<table>
<thead>
<tr>
<th>Land Secured</th>
<th>Product</th>
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<tbody>
<tr>
<td>Market / Demand Consultants</td>
<td>Price Point Study</td>
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<td>Market Absorption Study</td>
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<tr>
<td>Appraiser</td>
<td>Asset Valuation / Appraisal</td>
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<td>Special Tax Consultant</td>
<td>Special Tax Revenue Projections</td>
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<tr>
<td>Assessment Engineer</td>
<td>Assessment Revenue Projections</td>
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<tr>
<th>Tax Increment</th>
<th>Product</th>
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<tr>
<td>Fiscal Consultant</td>
<td>Tax Increment Revenue Projections</td>
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## Iowa Fertilizer Expert Reports

<table>
<thead>
<tr>
<th>Expert</th>
<th>Consultant</th>
<th>Risk Covered</th>
<th>Report in OS</th>
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</table>
| Fertilizer Market Consultant  | Integer Research| • Fertilizer prices  
• Natural gas prices                                                             | Yes          |
| Independent Engineer          | Nexant          | • Technology  
• Permits  
• Construction  
• Performance  
• Cost of operation and maintenance                                              | Yes          |
| Model Auditor                 | Ernst & Young   | • Mathematical accuracy of financial model  
• “Tick and tie” assumptions to financial model                                  | No           |
| Independent Insurance Advisor | AON             | • Adequacy of insurance                                                       | No           |
QUESTIONS
SESSION TWO

EVALUATING EWPS: RISK ASSESSMENTS

Facilitator: Gill Southwell III, Vice President /Senior Municipal Analyst, Wells Capital Management

Jim Miller, Senior Economist, San Diego Association of Governments
Lisa Greer Quateman, Principal, Polsinelli
Heidi Schrader, Manager, Eastern Municipal Water District
1) Third Party Expert Reports/Are Commonplace in Municipal Deals to Assess Financial, Technological and Market Success and Challenges of a Project


4) AICPA Has Standards to Generate Examination Opinions Only on Financial Projections – But No Other Economic, Technological and Market Aspects of a Transaction.

5) NMFA Has a Whitepaper on Expert Work Products (2011). See Exhibit C.
Securities Law Issues With Expert Reports; Due Diligence Responsibilities & Liabilities

1) Under Section 11(a)(4) of the Securities Act, if export report not prepared by an “Expert” (appraiser, Engineer, or CPA), the Issuer and Underwriter may have a “Duty” of “Independent Investigation” that the Expert Report does not contain a Material Fact Misrepresentation or Material Fact Omission. (See Exhibit F)

2) Lack of Consensus on Responsibilities & Liabilities of Issues and Underwriters to “Vet” Expert Reports.

1) Greater Wenatchee Regional Events Center Public Facilities District—Disclosure of Prior Projections. Issuer & Underwriter SEC Liability. (See Exhibit G)

2) Las Vegas Monorail Deal—Bondholder Lawsuit Against Underwriter Re Disclosure of Prior Feasibility Report. (See Exhibit G)
Key Problems with Feasibility Studies

1) Inexperienced Developer Provides Projections and Assumptions.

2) Feasibility Consultant That Is Not Held to Any Objective Standard (i.e. not CPA, Engineer or MAI Appraiser).

3) Does Feasibility Report Contain “Feasibility Opinion?”

4) What Does Rate Need To Be in Order To Make Project Work?”
What Does Buy-Side Look for In Expert Reports?

1) Professional “Opinions” Not Just Recitation of Facts/Trends (E.g., Feasibility Opinion);
2) Address the Reasonableness of Assumptions Used by Borrower in Its Projections (Fiscal & Development);
3) Avoid Stale Information;
4) Address Existence & Findings of Prior Reports/Studies – Source of Securities Fraud Claims;
5) Independence of Expert-Disclose Prior Projects for Issuer, Borrower & Underwriter;
What Does Buy-Side Look for In Expert Reports? (continued)

7) Missing Expert Reports – A Red Flag!!
   a) If Not Requested – Explain Why.
   b) If Obtained, But Not Included, Explain Why.
      If Unfavorable Report, Failure to Disclose May be Actionable Fraud.

8) Expert Qualifications: Besides CPA Certification and MAI Designated Member, Other “Experts” Need to Demonstrate Their Expertise:
   a) Go Beyond Recitation of Academic Degrees;
   b) Recite Studies Done in Last Five Years with Authors
Expert Report Disclaimers: Must Be Reasonable

1) No Industry Disclaimer Standards.

2) Types of Expert Disclaimers:
   a) Forecasts subject to risk and uncertainty
   b) Differences caused by unforeseen events
   c) Reliance on information provided by others
   d) Consideration of the whole study (not select parts)
   e) No responsibility for updating information beyond date of the report.

Expert Reports: Need Executive Summary with Conclusions & Opinions

1) Lengthy Expert Reports With Limited or Unstated Conclusions & Opinions Are not Helpful.

2) “Feasibility” Study Needs to identify Key Assumptions and Present A Feasibility “Opinion” That Project Can Be Accomplished by Borrower In the Know Time Frame & Budget.

3) Expert Reports Must Identify the Important Facts That Underlie the Key Assumptions Made by Borrower.
Problem of Continuing Disclosure


2) If Such Material Information Is Not Publicly Available, Should the Issuer/Borrower Be Required to Update as Part of Continuing Disclosure?

3) If Issuer/Borrower Cannot Update, Should Expert Report Be Used in POS or Should a Specific Risk Disclosure Be Used?
Expert Report Panel Materials

Exhibit A. AICPA Financial Projection & Forecast Standards
(Excel Spreadsheet: Types of AICPA Reviews)

1) Examined Financial Projections and Opinions;
2) Compiled Financial Projections;
3) Agreed-Upon Review Procedures
Expert Report Panel Materials

Exhibit AB GASB Economic Condition Reporting – Issuer Financial Projections Project

1) Examined Financial Projections and Opinions;
2) Compiled Financial Projections;
3) Agreed-Upon Review Procedures
EVALUATING EWPS: RISK ASSESSMENTS

Heidi Schrader
Financial Manager III
Eastern Municipal Water District
Established in 1950

Agency serving:
- Water/wastewater/recycled
- Wholesale and retail

555 square miles – Riverside County, California

Population 804,000

Five district-elected board members

Annual operating & capital budget of $398 million for FY 2017-18

Debt Ratings – S&P/Fitch/Moody’s
- Senior Lien AA+/AAA/Aa2
- Working Lien AA+/AA+/Aa3

38 percent built-out
Land-Secured Financing

- Forming 78th CFD
- 55 Active Community Facilities Districts
  - 92 Separate Financing Areas
    - Improvement Areas/Tax Zones
- Actively levying 14,191 parcels
  - Total annual debt service $13.7m
- Typically unrated
- Sometimes privately placed
- Pooled Financings issued through Western Riverside Water & Wastewater Financing Authority (WRWWFA)
- No Defaults or Draws on Reserves
Policy Principles Mitigate Investor Risk

- 2.0% Max Effective Tax Rate
- Minimum 4:1 Value to Lien Ratio
- Minimum 150 Lots
- All CFD Bonds Issued with Reserve Fund
- Price Point Studies, Absorption Reports, Appraisals
- Security if Landowner responsible for >20% Max Special Tax
- Delinquency Rate <5% at time of New Bonds
- RMAs Allow for Levy Prior to Issuance of Bonds
- Prompt Foreclosure Initiation on Delinquency
Mitigating Risks with Consultant Engagement

- Consultant Contracts are Competitively Bid on Regular And Recurring Basis
- Consultants are Independent, Are Paid By The District, Not By Advocate Or Third-parties
- Consultant Contracts Include Insurance Requirements, Indemnifies District for Errors Related to Work Product
- Advocate (Developer) Makes A Deposit To Fund Initial Analyses, But District Hires Consultants, Oversees Work Product, And Pays For the Work
- EWPs Are Incorporated Into The Public Record
  - Staff Reports Include the EWP, Such As Appraisals, Special Tax Consultant Report, Price Point Studies, And Other Analyses
Land-Secured Financing: EWP

- **Formation – Special Tax Consultant/Program Manager Prepares Preliminary Formation Analysis**
  - Development Status/Lots
  - Estimated Revenue Constraint, VTL, Overlapping Tax Rate
  - Proposed Use of Proceeds
- **Change Proceeding to Increase Special Tax Rates - Absorption Analysis and/or Price Point Study from Economics Consultant**
- **Bond Sale – Special Tax Consultant/Program Manager Provides Update of Formation Analysis for Review Prior To Moving Forward**
- **Analysis of Overlapping Debt**
- **Depending on Development Activity**
  - Absorption Report and/or Price Point Study
  - Independent Appraisal
  - Calculation of Landowner Security if responsible for >20% Max Special Tax
San Diego: State Route 125 Debt Restructuring

• 10-mile toll road in southern San Diego County
• Opened in 2007, Acquired by SANDAG in 2011 from bankrupt for-profit consortium
• SANDAG Purchase financed with high-interest loans
• Restructuring should save ~$60 million
• Need a Traffic and Revenue Study
San Diego: State Route 125 Debt Restructuring

Key Traffic and Revenue Study Assumptions:

• Traffic
  • Demographics of catchment area
  • Traffic on alternate routes
• Toll assumptions and customer response
• Economic Conditions/Development
QUESTIONS
JOIN CDIAC FOR LUNCH

Keynote Presentation:

The Honorable John Chiang, CA State Treasurer
Session Three

SETTING STANDARDS OF PRACTICE FOR CONSULTANTS

Facilitator: Susan Gaffney, Executive Director, National Association of Municipal Advisors

Leo J. Karwejna, Managing Director/Chief Compliance Officer, PFM Asset Management LLC
Gary Caporicci, Partner, The Pun Group
Robert Doty, President and Proprietor, AGFS
EXAMINING THE ROLES OF SPECIAL CONSULTANTS IN DEBT ISSUANCE AND ADMINISTRATION

Leo Karwejna, Chief Compliance Officer
PFM
Start at the Basics for Hiring a Consultant

- What should be done “in-house” versus tasks completed by Consultant(s) – build the scope first
- Internal expectations and performance measurement criteria for the project and Consultant contribution
- Governance – sponsorship, accountability, and oversight of Consultant
- Budget realities and resources
- Due diligence, competency, and procurement
Recognizing Important Consultant Obligations and Duties

- Statutory versus contractual
- Documentation
- The nature of the relationship
- Reasonable expectations
Recognizing Important Consultant Obligations and Duties – Examples for Discussion

- Municipal Advisor
- Investment Advisor
- Underwriter
- Dissemination Agent
- Engineer
- Sub-contractors
Establishing the Relationship

- Once the contract is signed and the chosen consultant comes in the door, the honeymoon is over and the challenging work begins.

- No matter how rigorous the due diligence and negotiation process, each side will probably have a different concept of what they signed up for.

- If both issuer and consultant are vigilant, they can work together to minimize the impact of any differences.
Critical Success Consideration - #1

- Defining Roles and Responsibilities Expectations

  - Effective consultant management requires that the negotiation and agreement clearly defines what the roles are between the issuer and the consultant.

  - Effectively stated as a part of the Statement of Work or Scope of Services, prior to contract award. Expressly defining roles, responsibilities and expected work-product beforehand helps to avoid potential disputes down the line.
Communication

One of the communication tools that issuers use successfully with their vendors are regular reporting routines or meetings where end users can provide input to their consultants on the services provided.

These checks and balances allow the consultant as well as the issuer to share information and be on the same “page” in terms of service expectations.
Critical Success Consideration - #3

- Performance Measurement

- Consultant reporting on changes to service levels, employee turnover, staffing levels, disaster recovery, security, customer satisfaction, etc. is important to effective service management.

- Performance results and issues should be discussed regularly.
Key Inhibiting Factors Working with Consultants

- Reliance on a handshake or, conversely, the lack of due diligence.

- Lack of trust in original decisions to source will undermine working relationships.

- Relying on a consultant as a business advisor, strategic advisor, thought leader unless this is specifically the service they are contracted to provide.

- Assuming that cost savings will be the overriding benefit.

- Significant personnel change at the consultant.

- Sourcing your problem to an outside consultant will simply yield an externally sourced problem.
BOND BUYER PRE CONFERENCE WITH CDIAC AUDITING OF FINANCIAL STATEMENTS

GARY M. CAPORICCI, CPA, CGFM, CFF PARTNER

Monday, September 25, 2017
Auditing of Financial Statements

- What is Auditing?
- Hiring the Auditor and Importance of Independence
- Professional Standards for Auditors
- GFOA Best Practices
  - Hiring Auditor
  - Offering Statements
- Importance of Internal Controls
Selecting Auditing Services:

- Scope should encompass individual funds and component units, in addition to basic financial statements.
- Governments should ensure contracts state that auditors will conform to the GAO’s Government Auditing Standards.
- Contracts should be for at least five years.
- Competitive process should be used for securing auditing services.
- Selection process should focus on the ability for provider to perform a quality audit.
- Government should approve any non-audit services provided by independent auditors.
Having paid for the independent audit, a government owns the audited financial statements and should feel free to use them in any appropriate manner.

The independent auditor should not be permitted to create an essentially artificial “association” with audited financial statements included in offering statements or posted on the government’s website simply by inserting a clause to that effect in the audit contract.

When the independent auditor actually does happen to become associated with audited financial statements included in an offering statement, a state or local government should take steps to avoid unwarranted delays and unjustified costs.

The audit contract should clarify that the government is free to post its audited financial statements on its website.
COSO Internal Controls Overview

- Internal Controls
  - GFOA Best Practices
    - Internal Control Framework
    - Internal Control and Management Involvement
    - Internal Control Deficiencies in Audits
  - COSO Internal Controls Framework Purpose:
    - Overhaul and enhance the definition of internal control to discourage fraudulent financial reports
    - 5 Internal Control Framework
COSO IC Framework Components

- Control Environment
- Control Activities
- Risk Assessment
- Information and Communication
- Monitoring
COSO IC Basic Principles

- COSO Internal Controls Overview
  - 20 Basic Principles
  - AREA FOCUS: Control Environment
  - AREA FOCUS: Risk Assessment
SETTING STANDARDS OF PRACTICE FOR CONSULTANTS

ROBERT DOTY
AGFS
ANNAPOLIS

Published Standards and Market Guidance
Expert Work Products and Experts
(More in Session 4)

- Examples of Expert Work Products
  - Appraisals/Asset Valuations
  - Tax Rate/Market/Demand Studies
  - Financial Feasibility Studies
  - Financial Projections

- Examples of Consultants Providing EWPs
  - Accountants (AICPA Standards)
  - Engineers (Engineering Standards)
  - Appraisers (MAI Standards)
  - Tax Rate Consultants
  - Market/Demand Consultants
  - “Fly by Night” Consultants
Issuer’s Central Role

- Issuer’s Central Role, Expectations and Responsibilities
  - Ultimately in Charge
  - Ultimately Responsible
  - Issuer Should Contract with Experts
  - Reliance Must Be Reasonable (More to Come)

- Use of RFPs, Interviews

- Involving Other Professional Team Members in Selection Process

- Fees
  - Issuer Pay
    - Can Be Reimbursed by Developer/Project Promoter
    - Can Recoup from Bond Proceeds
  - Hourly, Lump Sum Fees
  - Contingent Fees Involve Severe Conflict of Interest, Destroy Expert Independence
    - Disclosure Endangers Bond Sale, Bond Prices; Conflict Places Issuer at Risk
  - Expert’s Independence Is Crucial
Standards, Disclosure for Expert Reports

- Expert’s Qualifications, Experience
  - Any Defaulted, Troubled Projects?

- Expert’s Identification of Assumptions
  - Should Fit Facts of Bond Issue, Project

- Expert’s Opinion on Reasonableness of Assumptions

- Expert’s Methodology

- Expert’s Identification of Applicable Professional Standards
  - If none, so state

- Did Expert Apply Those Standards?

- Expert’s Sources of Information
  - Was Information Obtained from an Interested Party?
Standards, Disclosure for Expert Reports

- Conflicts of Interest and Independence
  - Relationships with Developer/Promoters, Other Team Members

- Who Retained/Paid Expert?
  - Should Be Issuer

- Consider Alternative Conclusions Presented
  - e.g., in Appraisal

- Existence of Other Reports
  - Including Project Opponents

- Careful Review by Issuer, FA and Underwriters

- Discussions With Expert
  - Discuss, Question, Understand Methodology & Assumptions

- Consent To Use In OS
Standards, Disclosure for Expert Reports

“REASONABLE” RELIANCE ON EXPERTS, PROFESSIONALS
Four Factors Applied by Courts

- Seek Professional Advice as to Appropriateness of Specific Conduct
  - General Participation in Transaction Inadequate
  - Cannot Rely If Do Not Read, Understand EWP

- Complete Disclosure to Professional of Relevant Information

- Receipt of Advice that Conduct Is Appropriate
  - Preferably in Written Form
  - Not Merely Negative Assurance Letter

- Reliance on Advice in Good Faith

Miami Jury Verdict Found None of the Factors Present
QUESTIONS
Session Four

REGULATION AND YOUR CONSULTANTS:
Drawing the Line

Facilitator: Robert Doty, President and Proprietor, AGFS

Lakshmi Kommi, Director of Debt Management, City of San Diego
Leslie Norwood, Managing Director and Associate General Counsel, SIFMA
Mary Simpkins, Senior Special Counsel, Office of Municipal Securities, SEC
Nat Singer, Managing Director, Swap Financial Group
Expert Work Products and Experts

- **Examples of Expert Work Products**
  - Financial Feasibility Studies
  - Appraisals
  - Tax Rate/Market/Demand Studies
  - Financial Projections

- **Examples of Consultants Providing EWPs**
  - Accountants (AICPA Standards)
  - Engineers (Engineering Standards)
  - Appraisers (MAI Standards)
  - Tax Rate Consultants
  - Market/Demand Consultants
  - “Fly by Night” Consultants
Defining Municipal Advisors

General Rule

SEC Rule 15Ba1-1(d)(1)(i)

[T]he term *municipal advisor* means a person (who is not a municipal entity or an employee of a municipal entity) that—

- 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, terms, and other similar matters concerning such financial products or issues; or

- Undertakes a solicitation of a municipal entity or an obligated person
Defining Municipal Advisors

Certain Definitions—

**Municipal Financial Products**

Securities Exchange Act of 1934, Section 15B(e)(5)

The term “municipal financial product” means municipal derivatives, guaranteed investment contracts, and investment strategies

**Advice**, SEC Rule 15Ba1-1(d)(1)(ii)—

Advice excludes, among other things, the provision of general information that does not involve a recommendation …

**Certain Types of Municipal Advisors**, SEC Rule 15Ba1-1(d)(1)(ii)—

Municipal advisors include, without limitation, financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors [meeting the definition] …
Defining Municipal Advisors

Attorneys

SEC Rule 15Ba1-1(d)(2)(iv)

Exclusion:

Any attorney to the extent that the attorney is offering legal advice or providing services that are of a traditional legal nature with respect to the issuance of municipal securities or municipal financial products to a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction.
Defining Municipal Advisors

Attorneys

SEC Rule 15Ba1-1(d)(2)(iv)

Not Excluded:

To the extent an attorney represents himself or herself as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, however, the attorney is not excluded with respect to such financial activities.
Defining Municipal Advisors

Attorneys
SEC Rel. No. 34-70462, 78 FR 67468, 67529 (Nov. 12, 2013)

Not Excluded:

- If an attorney represents himself or herself as a financial advisor or expert and engages in municipal advisory activities …

- If the attorney provides advice that is primarily financial in nature, such as:

  1. The financial feasibility of a project or financing;

  2. Advice estimating or comparing the relative cost to maturity of an issuance of municipal securities depending on various interest rate assumptions;
Defining Municipal Advisors

Attorneys
SEC Rel. No. 34-70462, 78 FR 67468, 67529 (Nov. 12, 2013)

Not Excluded:

(3) Advice recommending a particular structure as being financially advantageous under prevailing market conditions;

(4) Advice regarding the financial aspects of pursuing a competitive sale versus a negotiated sale; and

(5) Other types of financial advice that are not related to the attorney’s provision of legal advice and services of a traditional legal nature.
Defining Municipal Advisors

Accountants

SEC Rule 15Ba1-1(d)(3)

Exemption:

Any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person

SEC Rel. No. 34-70462, 78 FR 67468, 67526 (Nov. 12, 2013)

Both audit and other attest services are generally subject to regulation and professional standards, including professional independence requirements. Such requirements could potentially conflict with municipal advisors’ fiduciary duty …
Defining Municipal Advisors

Accountants

SEC Rel. No. 34-70462, 78 FR 67468, 67526 (Nov. 12, 2013)

Not Exempted:

The Commission does not believe it is appropriate to expand the exemption to cover activities or services that non-accountants could perform. Accordingly, the Commission is not including non-attest services in the accountant exemption.
Defining Municipal Advisors

Accountants
SEC Rel. No. 34-70462, 78 FR 67468, 67526 and n. 792 (Nov. 12, 2013)

Not Exempted:

- Although attest services are often included as part of larger engagements, such as the examination of prospective financial information that is included as part of a feasibility study or acquisition study, the accountant exemption includes only the attest portion of these engagements.

- The exemption would not apply to accountants that provide consulting services to municipal entities, including ... modeling future debt service coverage, suggesting future rate schedules, tax advice related to municipal securities and derivatives [e.g., arbitrage rebate services], and other non-attest services that constitute municipal advisory activities.
Engineers

SEC Rule 15Ba1-1(d)(2)(v)

Exclusion:

Any engineer to the extent that the engineer is providing engineering advice
Defining Municipal Advisors

Engineers
SEC Rel. No. 34-70462, 78 FR 67468, 67530-31 (Nov. 12, 2013)

Exclusion:

- [T]his exclusion covers an engineer’s provision of certain information to its client regarding a project schedule and anticipated funding requirements of the project.

- [P]rovision of engineering feasibility studies that include certain types of projections, such as projections of output capacity, utility project rates, project market demand, or project revenues that are based on considerations involving engineering aspects of a project.
Exclusion:

- [F]unding schedules and cash flow models that anticipate the need for funding at certain junctures in a project or engineering feasibility studies based on analysis of engineering aspects of the project

- [A] municipal entity might seek input from an engineering company about whether a project could be accomplished with estimated available funding, including the timing of such funding
Defining Municipal Advisors

Engineers

SEC Rel. No. 34-70462, 78 FR 67468, 67531 (Nov. 12, 2013)

Exclusion:

- [A] discussion of how much power might be generated by the installation of solar panels ... how to increase power output based on factors such as the placement of the panels or the number of panels ...

- [A]n engineer might provide estimates of water delivery capacity or a road’s traffic capacity ...

- Engineers who report on the physical condition of infrastructure, such as roads, bridges, or water and sewer systems ...

- [A]n engineer’s use of assumptions provided by a municipal entity or obligated person regarding interest rates or debt levels in preparing an engineering feasibility study or cash flow analysis alone will not result in municipal advisory activity
Defining Municipal Advisors

Engineers
SEC Rel. No. 34-70462, 78 FR 67468, 67531 (Nov. 12, 2013)

Exclusion:

- An engineer could advise a municipal entity about whether a project could be safely or reliably completed with the available funds and provide engineering advice about other alternative projects, cost estimates, or funding schedules ...

- An engineering company that informs a municipal entity or obligated person of potential tax savings, discounts, or rebates on supplies ...
Defining Municipal Advisors

Engineers

SEC Rel. No. 34-70462, 78 FR 67468, 67531 (Nov. 12, 2013)

Not Excluded:

- Preparation of revenue projections to support the structure of an issuance of municipal securities
- Inclusion of revenue projections and debt service coverage calculations in a feasibility study
- Describing financing alternatives
- Introductions—May be “solicitation”
Defining Municipal Advisors

Rate Consultants
SEC Rel. No. 34-70462, 78 FR 67468, 67531 n. 846 (Nov. 12, 2013)

Not Excluded:

If a rate consultant provides advice on whether certain rates and revenues would support debt service on an issue of municipal securities, such activity would be municipal advisory activity that would subject the consultant to the registration requirement

Like all persons, [rate consultants] could apply for no-action letters or exemptive relief ...
Defining Municipal Advisors

Other Professionals Subject to General Definition
SEC Rule 15Ba1-1 and SEC Rel. No. 34-70462

No Specific Exclusion or Exemption—

- Real Estate Appraisers
- Other Asset Valuation Consultants
- Rate Consultants
- Financial Feasibility Consultants
- Market/Demand Consultants
- Consultants Preparing Financial Projections, Debt Service Schedules or Debt Service Coverage Calculations
Defining Municipal Advisors

Board Members, Employees

SEC Rule 15Ba1-1(d)(3)(iii)

Exclusion:

- Any person serving as [an elected, appointed or ex officio] member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity

- Any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment
Defining Municipal Advisors

Board Members, Employees

SEC Rule 15Ba1-1(d)(3)(iii)

Exclusion:

- [P]ersons who comment on municipal financial products or the issuance of municipal securities by making use of public comment forums

- Responding to factual questions about a past issuance by a former board member would not constitute municipal advisory activities, because providing such information in response to questions under such circumstances is factual ...
Defining Municipal Advisors

Board Members, Employees

SEC Rel. No. 34-70462, 78 FR 67468, 67508 and n. 543 (Nov. 12, 2013)

Not Excluded:

- [W]ould be required to register, however, if they are engaged by other municipal entities or obligated persons to provide services as compensated advisors in addition to their normal duties

- [I]f such a person is engaged and compensated outside the scope of [official] duties, he or she would not be eligible for the exemption and would be required to register
Solicitors

SEC Rel. No. 34-70462, 78 FR 67468, 67498-99 (Nov. 12, 2013)

Definition

Exchange Act Section 15B(e)(9) provides that the term “solicitation of a municipal entity or obligated person” means “a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser ... that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation ...”

Exclusion

Firm Advertisements, Rule 15Ba1-1(n)
Defining Municipal Advisors

Other Parties with Specific Treatment in Rule

- Underwriters (Leslie Norwood)

- Registered Investment Advisors Solely Providing Investment Advice—Fiduciary Duty Under Investment Advisors Act

- Certain Registered Commodity Trading Advisors and Swap Dealers (Nathaniel Singer)

- Banks As to Deposits, Letters of Credit, Loans, Sweep Accounts, Trustee Services
REGULATION AND YOUR CONSULTANTS
DRAWING THE LINE
PRIMARILY UNDERWRITERS

LESLIE M. NORWOOD, SIFMA

Bond Buyer Pre-conference 2017
In general, the regulatory focus is on the types of activities and services you are performing for a municipal entity or obligated person as opposed to the title of your role with respect to a transaction.

For example, if you are performing activities or services that, based on a facts and circumstances inquiry, are considered municipal advisory activities, it may not matter what role you THINK you have or WANT to have on the transaction — you may be considered a municipal advisor.
What is and is not covered “advice” under the Municipal Advisor Rule

□ Covered Advice is:
  ▪ Involves a recommendation or call to action to a municipal entity or obligated person
  ▪ That is particularized to the specific needs of a municipal entity or obligated person or targeted group of municipal entities or obligated persons that share common characteristics such as school districts or hospitals
  ▪ With respect to municipal financial products or the issuance of municipal securities

□ Covered advice is not:
  ▪ General market information
  ▪ Promotional information
  ▪ Information unrelated to issuance of municipal securities, municipal financial products or the investment of municipal bond proceeds
Exemptions and Exclusions from Municipal Advisor Definition

- The Final Rules provide for a number of exemptions and exclusions to the MA definition, including:
  - **Underwriter Exclusion**: Begins when formally engaged as an underwriter on a specific transaction, through the end of the underwriting period with respect to activities that are within the scope of an underwriting
    - No blanket “pool” exclusion
    - Narrower from a timing perspective than the definition of advice with respect to the issuance of municipal securities
  - **RFP Exemption**: A response in writing or orally to a compliant RFP/RFQ from a municipal entity or obligated person for services in connection with a municipal financial
Exemptions and Exclusions from Municipal Advisor Definition (cont’d)

Independent Registered Municipal Advisor Exemption requires that:

1. An independent registered MA (‘‘IRMA’’) is providing advice on the same aspects of the related municipal financial products or issuance of municipal securities.

2. Firm receives a representation in writing from the municipal entity or obligated person that it is represented by, and will rely on the advice of, an IRMA (Reliance on that representation must be ‘‘reasonable’’).

3. Firm provides written disclosure to the municipal entity or obligated person and its IRMA that they are not a municipal advisor and are not subject to the statutory fiduciary duty applicable to municipal advisors.

4. IRMA (and key officers) must be independent of Firm for at least previous 2 years.
Exemptions and Exclusions from Municipal Advisor Definition (cont’d)

- **Independent Registered Municipal Advisor Exemption** requires that:
  1. an independent registered MA ("IRMA") is providing advice on the same aspects of the related municipal financial products or issuance of municipal securities
  2. Firm receives a representation in writing from the municipal entity or obligated person that it is represented by, and will rely on the advice of, an IRMA
  3. Firm provides written disclosure to the municipal entity or obligated person and its IRMA that they are not a municipal advisor and are not subject to the statutory fiduciary duty applicable to municipal advisors
  4. IRMA must be independent of Firm for at least previous 2 years
REGULATION AND YOUR CONSULTANTS
DRAWING THE LINE
ATTORNEYS, ACCOUNTANTS, ENGINEERS, GOVERNMENT OFFICIALS AND A FEW OTHERS

NAT SINGER
SWAP FINANCIAL GROUP
Defining The Engagement

Qualifications of your MA

Swap Advisor
Bond Advisor
Bond Pricing Advisor
Engineers
REGULATION AND YOUR CONSULTANTS:
DRAWING THE LINE

LAKSHMI KOMMI, DIRECTOR OF DEBT MANAGEMENT
CITY OF SAN DIEGO
Understand the Need

Evaluate why do you need a special consultant?

- **Is it a Debt Issuance?**
  - Product to be used (directly or indirectly) for an Official Statement or other debt issuance function?

- **Not a debt Issuance?**
  - General Consulting and Advisory Work?

- **Is it a stand alone or ongoing Post Debt Issuance consulting and advisory work?**
Outreach

Be Upfront in your RFQ/RFP

- Describe the project
- Describe desired role and services from a Special Consultant
- If the debt Issuance will have a separate **transaction advisor** state that fact upfront
- Ask and evaluate project qualifications, **knowledge and expertise** to provide informed advice in the special area
  - Due diligence - If the Special Consultant’s Scope and Services are deemed non exempt from MA Rule, ask if the special consultant is registered and qualified to serve
Contract Management

Write the special consultant contract before the advisory work commences -

- Services to be provided
- Timeline for the Product
- End Date
- Fee Structure
Municipal Advisor Registration Status

http://www.msrb.org/MARegistrants.aspx
Municipal Advisor Registration Status

https://www.sec.gov/municipal/municipal-advisors.html
QUESTIONS
CLOSE OF PROGRAM

Completion of Post Evaluations

General Conference