

Roberts Consulting, LLC

Jonathan M. Roberts

Principal

370 Blair Circle, Aurora, Ohio 44202

Direct: [REDACTED] || Email: [REDACTED] || Cell: [REDACTED]

December 6, 2019

On behalf of my small company which is registered as a municipal advisor, I thank the Commission for its efforts to add clarity in exempting certain municipal advisors from registration as a broker dealer (File Number S7-16-19). This effort will add great clarity to the municipal advisory regulatory landscape.

My firm engages solely with obligated issuer clients. We think the conceptual comment provided below should serve as a litmus test as to any final rules and regulations to be determined by the Commission as to this matter. We believe this conceptual comment is applicable to all municipal advisors, no matter their client type. You will note that we are not holding ourselves out as possessing legal expertise, and as such we will not cite specific rules or regulations. We intend to convey our thoughts on this matter in what we hope is effective, pure, simple, laymen's English.

Conceptual Comment

Municipal advisors must be able to do all things legally allowed by their municipal advisory clients. Any rule or regulation to the contrary would be restrictive to a municipal advisory client's best interests and make a municipal advisor's services of lesser, or no value to them.

Supportive Commentary to Conceptual Comment

We believe the premise behind the delivery of an advisory service (including municipal advisory services) is to offer the client knowledge and expertise (and otherwise perhaps additional horsepower) that the client may not already possess itself.

In simple terms, we might describe that many rules and regulations which have been promulgated by the Commission and other agencies have been created with the purposes of preventing lesser knowledgeable parties from being taken advantage of by potentially conflicted, but much more sophisticated parties. In a transactional advisory service, the duty of that advisor is, at least in part, to bring their knowledge and expertise to bear in a way that levels the negotiating playing field between the less sophisticated participant with that of a more sophisticated one. Typically, a municipal advisor's clients less frequently engage in and are less knowledgeable about financing than the sophisticated financial intermediaries that practice in the municipal capital markets daily. Clearly a party not represented by a (municipal) advisor may find themselves at distinct disadvantage to those sophisticated financial intermediaries (and never even realize they may be being taken advantage of). After having been in the broker dealer world for a period, it was with this singular reality in mind that I decided to form Roberts Consulting, LLC in June 2000 (this being fourteen years before there was any requirement as to being a "registered municipal advisor").

Retail Investors

As a general matter, a municipal advisory client is not allowed to access the market and sell direct to the public on a retail basis without the involvement of a broker dealer. Again, like the argument posed above, the concern is for the party which is most likely to be disadvantaged. The public may not be able to do appropriate due diligence, may not know how to interpret the information provided and understand its suitability for their investment purposes, nor would they have the ability to recognize untrue statements or hidden fact. Retail investors are the less sophisticated party. They need an intermediary on which they can rely to protect them from false or misleading or omitted material information. Roberts Consulting sees this as an essential function that gives rise to the need for a broker dealer's involvement and the disclosure requirements imposed on broker dealers thereto. Meanwhile, as acknowledged by rule and regulation, a broker dealer acting in its capacity of underwriter has no obligation to act in the best interests of a municipal debtor and must disclose this fact. That broker dealer may in fact take a position of being the lender for any securities not yet sold. Clearly an underwriter's interests are not always aligned with the party obligated to repay. Such client would be well advised to think about the reason it has been determined these conflict disclosures are considered necessary. And as a result of these disclosures, they may realize that the receipt of outside advisory services might be beneficial to them. In this sale to retail investors scenario, we submit that the highest risk is to the retail investor, and next would be that party obligated to repay.

Sophisticated Investors

On the other hand, municipal advisory clients are permitted to borrow from banks and other sophisticated intermediaries without retail investor involvement. They can approach those sophisticated intermediaries (or be approached by them) and conduct transactions with them – and may we add, alone and without aid. They need not hire an advisor. They can send out RFP's to anyone of this kind – and do so whether they are familiar with the sophisticated intermediary or not. They can canvass the country doing so. We really don't think differentiating between loan and security matters much in these instances (as that argument seems to be one of form over substance, unless such security is intended for later public retail trading), but we doubt many potential municipal advisory clients even have the capacity to know the difference between a security and a loan. In the end, to them, it all translates into an obligation to repay debt. The bottom line is, the disadvantaged party in this case should be able to choose to protect itself by seeking the advice of a professional who is acting for their benefit. The highest risk is then solely to the party obligated to repay.

An Advisor's Duty/Position in Respect to its Client's Dealings with Sophisticated Investors

An advisor might be better thought of as an "almost employee" of a (municipal) advisory client. For if thought of in this way, the advisor can do and help the client accomplish that which the client is already (legally) allowed to do on its own. The differentiating factor: the advisor needs to be held to higher standard. After all, the advisor is holding itself out as a professional, having appropriate knowledge and skill to act in the interest of the client. Thus including, at a minimum, doing so with a duty of care (and for municipal advisors with municipal entity clients, including a duty of loyalty as well).

Potential municipal advisory clients may not know all the products or service available to them. That client may choose the "easy route" and contact only those parties with which it is familiar. Those sophisticated familiar parties may not actually have the product or service that best meets that client's needs. But that sophisticated intermediary nonetheless wants to

sell their products and/or services. That intermediary may never make the client aware that there may be better alternatives. This, and the client may never be aware this is happening.

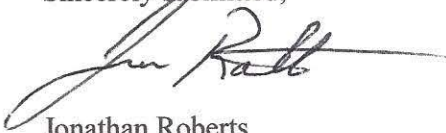
However, that same potential client may also choose a more difficult route. It may research its own alternatives and reach out to others with whom they are lesser, or not familiar with. Even then, if the client doesn't know enough, it may not be able to ascertain that it had indeed identified a "most appropriate" sophisticated participant. Nor would that client be able to know that this sophisticated participant offered them is their "best" deal, as that client may have never come to realize the potential negotiations it could have had. At the end of the day, that client can only go down one fork in the road, and they will not necessarily be able to put their outcome in context relative to all parties and negotiations. Yes, those potential clients can do all these things – and do so all on their own.

Alternatively, the client can also hire a municipal advisor. That advisor can make them aware of their choices and may even know some outside sophisticated parties with whom the client would be well advised to meet and consider. All the while, if permitted by the client, the comparison of alternatives to that of the final selected alternative could potentially be demonstrated. With the help of an advisor the client could be able to reach satisfaction that it has chosen a commercially reasonable execution in light of the facts and circumstances of their particularized situation and need.

Closing Remarks

In our opinion, if one were to agree that a municipal advisor should be able to do all the activities a client could do on its own, then we should also reject any notion that the municipal advisory client should itself be further restricted from dealing with a sophisticated intermediary, or further restricted because it decides to try to "advantage itself" by hiring a municipal advisor. To argue that a client should not be allowed to transact a borrowing with a sophisticated intermediary without a broker dealer's involvement (and/or a municipal advisor for that matter) would be a travesty. That outcome would deny the client as to their right in making a choice with whom they want to work and would clearly harm capital formation.

Sincerely submitted,

A handwritten signature in black ink, appearing to read "Jon Roberts", with a long, sweeping horizontal line extending to the right.

Jonathan Roberts
Principal