HAWKINS

Tender Offers, Municipal Advisor FAQ's, and Tokenization

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Introduction

This Hawkins Update describes (i) a recent exemptive order from the Securities and Exchange Commission (the "SEC") on tender or exchange offers for non-convertible debt securities[1] and (ii) new frequently asked questions related to municipal advisors issued by the SEC's Office of Municipal Securities[2]. This Hawkins Update also looks at developments in blockchain technology and the tokenization of municipal bonds.

SEC Exemptive Order on Corporate Tender Offers

Federal Regulations 14D and 14E,[3] which are applicable to non-exempt corporate securities, generally provide that a tender offer should remain open for a minimum of 20 business days, but such period has been shortened from time to time in SEC no-action letters and other guidance. The primary no-action letter on abbreviated offering periods was issued by the SEC in January 2015 (the "2015 No-Action Letter") and indicated that "[the SEC would] not recommend enforcement action under [the tender offer rules] if an offeror conducts a tender offer for non-convertible debt securities with a minimum offering period of five business days," provided that certain criteria set forth in the letter were met.[4]

On June 30, 2026, the SEC issued its "*Exemptive Order for Tender or Exchange Offers for Non-Convertible Debt Securities*" (the "2026 Exemptive Order"), which formalizes guidance that was contained in the 2015 No-Action Letter and in previously issued no-action letters as to the preconditions applicable to shortened offering periods for tender offers for non-convertible corporate debt securities. In issuing the 2026 Exemptive Order, the SEC noted that it:

believes it is appropriate and consistent with investor protection goals to further expand the availability of a five business day minimum offering period in certain types of debt tender offers in order to address market inefficiencies, better reflect technological advancements, reduce exposure to fluctuations in the market and in interest rates, and facilitate the availability of tender offers as debt management transactions.[5]

The 2026 Exemptive Order (i) supersedes the 2015 No-Action Letter, (ii) provides more broad-based authority for market participants as to the availability of abbreviated tender periods, (iii) clarifies the SEC's views as to the requirements for such periods, and (iv) loosens some of the more restrictive guidance provided in the 2015 No-Action Letter. This new guidance should be carefully considered by issuers and their advisers as they structure tender offers.

The 2026 Exemptive Order sets forth 15 criteria applicable to shortened tender periods, including, among others, that: (i) tender offers must be made by the issuer or certain related persons (conduit borrowers would not be considered a "related person" under the 2026 Exemptive Order); (ii) tender offers may be for a class or series of non-convertible debt securities, regardless of any particular rating assigned to such securities (separate offers for more than one class or series of non-convertible debt securities may be part of the same offer to purchase); (iii) consideration must be cash or, if the offer is limited to qualified institutional buyers, institutional accredited investors, and certain non-U.S. persons, Qualified Debt Securities[6]; (iv) partial tender offers that are oversubscribed must result in *pro rata* purchase; (v) tender offers may not be combined with consent solicitations for changes to debt documents requiring more than a simple majority; (vi) tender offers may not be made during the pendency of certain issuer-related defaults or insolvency-related events; and (vii) the dissemination of initial tender offers and notice of certain changes thereto must conform to detailed guidance outlined in the 2026 Exemptive Order. The 2026 Exemptive Order also eliminates the 2015 No-Action Letter's prohibition against the use of senior indebtedness to finance tender offers with an abbreviated offering period.

Municipal issuers have increasingly used tender offers for various purposes in recent years. In particular, in the absence of advance refundings, municipal issuers have considered tender offers as a mechanism to restructure their debt by purchasing its outstanding bonds and retiring them. This can be achieved by using cash on hand or by issuing refunding bonds to fund the tender purchase. Municipal tender offers are subject to the federal antifraud laws[7] but are exempt from the more comprehensive rules applicable to corporate tender offers in Regulations 14D and 14E. Other issuers of exempt securities (such as 501(c)(3) not-for-profit corporations) have also considered tender offers in recent years. Tender offers for 501(c)(3) corporate debt present interesting questions requiring careful consideration and application of certain of the corporate tender offer rules.

In practice, the corporate tender offer rules are reviewed closely for analogous guidance that may be applicable to structuring exempt tender offers to assure antifraud compliance and to utilize practical features that are familiar to market participants. This process has often resulted in exempt tender offers utilizing the 20 business day regulatory offering period or, when impracticable, considering abbreviated time periods described in secondary sources of guidance, such as SEC no-action letters, that provide options for reduced offering periods if certain conditions are met.

The 2026 Exemptive Order gives municipal and 501(c)(3) issuers clearer analogue criteria against which to consider their tender offer practices. It also liberalizes the prior guidance. In particular, the 2026 Exemptive Order permits a tender offer utilizing the five business day offering period to be a partial tender offer (eliminating the previous requirement that the tender offer be made for "any and all" of a class or series of non-convertible debt securities). If there is a partial tender offer and more securities are tendered than the issuer will accept, tendered securities must be made on a *pro rata* basis (not permitted under the 2015 No-Action Letter). The availability of these features may allow issuers to more readily pursue tender offers for 501(c)(3) corporate debt.

Municipal Advisor FAQs

The SEC's final rules governing the regulation of municipal advisors were issued on September 18, 2013 (the "MA Rules"). The SEC has provided market guidance on the MA Rules in the form of the Adopting Release[8] and the Registration of Municipal Advisors FAQs (the "MA FAQs"), which have been updated from time to time. The MA Rules and the MA FAQs that initially established the regulatory framework remain generally applicable but have been supplemented by additional guidance. The development of the municipal advisor framework has been summarized and discussed in several prior *Hawkins Updates*.[9]

On July 9, 2026, the SEC updated the MA FAQs to offer more clarity on municipal advisor registration and recordkeeping requirements, relating to: (i) public-private partnership ("P3") market participants; (ii) remote work/"office" locations and regulation of municipal advisor-related business; and (iii) the scope of recordkeeping requirements for advice on the pricing of a new issue of municipal securities. The SEC remains focused on municipal advisor activities, with several recent SEC enforcement actions in the municipal market involving these market participants. The updates to the MA FAQs are meant, in part, to address areas of concern highlighted in such enforcement actions, including, among other things, unregistered municipal advisor activities.

With respect to the P3-related updates, the new MA FAQs address considerations applicable to determining whether information provided by a private entity in a municipal procurement process may constitute municipal advisory activity that might require registration and other compliance with the municipal advisory regulatory framework. This issue is addressed in connection with: (i) responses to requests for information ("RFIs"); (ii) submissions of an unsolicited proposal ("USP") by a potential private sector partner; and (iii) preparation of an RFP/RFQ ("RFP/RFQ"). The separate consideration of these three cases reflects a nuanced view based on facts and circumstances that include the nature of information provided by the private party, as well as the specific context in which it is provided.

The discussion provides illustrative examples where market participants could be providing municipal advisory services, noting that municipal advisory activity may extend to: (i) advice as to the use of municipal securities or municipal financial products that is not limited to responses required by an RFI or RFQ/RFP or to generalized information[10]; (ii) USP submissions that consider "the use of municipal securities or…[allocation of] risk based on the use (or avoidance) of a municipal financial product"[11]; (iii) USP submissions that include a value-for-money analysis that considers municipal securities or a project viability analysis that relies upon bond structuring assumptions provided by the private party[12]; and (iv) instances where a private sector partner is involved in the preparation of an RFP/RFQ for the solicitation of additional project partners or consultants where the private sector partner is providing advice to the municipal entity or obligated person on the parameters of such RFP/RFQ that relate to the potential use of municipal financial products or the issuance of municipal securities (such as developing the technical and financial scope of the RFP/RFQ related thereto, including "expected scope of work," "expected scope of services," or similar description of anticipated activities found in the RFP/RFQ)[13]. Such considerations suggest caution where private parties submit responses to an RFI or RFP/RFQ, submit a USP, or assist municipal entities or obligated persons with the preparation of a procurement.

Something to Watch – Tokenization of Municipal Securities

On July 15, 2026, The Depository Trust & Clearing Corporation ("DTCC") announced that it successfully converted assets held at The Depository Trust Company (DTC) into tokens that were then used in trades.[14] More than 30 firms representing traditional financial institutions and digital market participants took part in the initiative. One notable conversion was the tokenization of the Invesco QQQ Trust, which illustrates how a well-known exchange-traded fund (or ETF) can be converted into a digital asset and then operate within existing market infrastructure. The tokenized asset maintains the same liquidity, transparency, rights, and protections as the underlying traditional asset. DTCC's Tokenization Service is expected to launch in October 2026.[15]

For many municipal securities market participants, these digital asset concepts remain new and somewhat obscure. In order to shed some light on these concepts, the following explanatory overview is offered.

What is Blockchain?

A decentralized, distributed, and immutable digital ledger used to record transactions…[with] data stored in batches called "blocks" that are securely linked and ordered chronologically (over a computer network).[16] The first thing that might come to mind is cryptocurrencies, like Bitcoin, which are digital assets. In theory, once in digital format, anything of value can be tracked and traded on a blockchain network.

What is Tokenization?

Tokenization is the digital representation of a real-world asset on a blockchain, enabling programmable ownership, transfer, and settlement across digital environments.[17]

Can a Municipal Bond be Tokenized?

Yes, when a municipal bond is tokenized, the ownership, transfer rights, and economic terms of that bond are encoded into a digital token that lives on the blockchain. That token is the bond, but in a digital form.[18]

Once Tokenized, How Does it Work?

A tokenized bond functions via a smart contract, which is a program stored on a blockchain network that automatically carries out the terms of an agreement when specified conditions are met. Coupon payments, principal redemptions, transfers of ownership, and compliance conditions can be built directly into the token (and the smart contract) itself. [19]

As traditional financial institutions explore blockchain and tokenization conversions of assets and the regulatory environment for digital assets continues to evolve, it remains to be seen whether such concepts are introduced on any large scale for municipal securities financings. While to date there have been only limited ventures into digital issuances of municipal bonds using blockchain technology, tokenized municipal bonds could become more prevalent as issuers gain familiarity with digital asset concepts and market participants demonstrate confidence in conducting pricings and executing closings using such platforms.

[1] See "Exemptive Order for Tender or Exchange Offers for Non-Convertible Debt Securities" (June 30, 2026); SEC, The Office of Mergers and Acquisitions, Division of Corporation Finance, available at https://www.sec.gov/files/rules/exorders/2026/exemp-order-tender-or-exchange-offers-non-convertible-debt-securities-063026.pdf.

[2] See "SEC Office of Municipal Securities Updates FAQs for Registration of Municipal Advisors," available at https://www.sec.gov/newsroom/press-releases/2026-66-sec-office-municipal-securities-updates-faqs-registration-municipal-advisors (July 10, 2026), with the full set of this guidance available at https://www.sec.gov/about/divisions-offices/office-municipal-securities/registration-municipal-advisors.

[3] Regulation 14D (17 CFR §§ 240.14d-1 through 240.14d-101) and Regulation 14E (17 CFR §§ 240.14e-1 through 240.14e-8).

[4] *See* SEC No-Action Letter, Cahill Gordon & Reindel LLP (Jan. 23, 2015).

[5] See 2026 Exemptive Order at 1-2.

[6] "Qualified Debt Securities" means non-convertible debt securities that are substantially similar in all material respects (including but not limited to the issuer(s), guarantor(s), collateral, lien priority, covenants, and other terms) to either (1) the debt securities that are the subject of the tender offer or (2) the most recent issuance of debt securities that are *pari passu* to the debt securities that are the subject of the tender offer, except in either case for the maturity date, interest payment and record dates, redemption provisions, and interest rate; provided that Qualified Debt Securities must have all interest payable only in cash." See 2026 Exemptive Order at footnote 7.

[7] See Rule 10b-5 of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 17(a) of the Securities Act of 1933 (the "Securities Act"), which prohibit fraudulent practices and material misstatements and omissions in the purchase and sale of securities. For tender offers, Section 14(e) of the Exchange Act also applies and provides that "it shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.

[8] See SEC Rel. No. 34-70462 (Sept. 20, 2013) (the "Adopting Release"), available at https://www.sec.gov/files/rules/final/2013/34-70462.pdf.

[9] See (a) "*SEC Approves Municipal Advisor Rules*" (October 3, 2013), (b) "*Municipal Advisor Rules – SEC Staff posts FAQs; SEC Delays Effective Date*" (January 24, 2014), (c) "*SEC Staff Posts Additional FAQs and Related Responses Regarding Municipal Advisor Rules*" (May 30, 2014), and (d) "*Current SEC Municipal Advisor Concerns*" (August 7, 2025). Municipal advisor regulation was also covered in a *Hawkins Update* on Municipal Securities Rulemaking Board (the "MSRB") Rule G-42, which establishes standards of conduct for municipal advisors that engage in municipal advisory activities (see *Hawkins Update, "MSRB Rule G-42"* (June 23, 2016)).

[10] See MA FAQs at Question 2.3.1.

[12] See *id.* at Question 2.3.2.

[13] See *id.* at Question 2.3.3 and footnotes 35 and 36.

[14] See "DTCC Turns Tokenization into Reality: U.S. Trades Successfully Processed Using DTC-Tokenized Assets," available at https://www.dtcc.com/news/2026/july/15/dtcc-turns-tokenization-into-reality.

[15] *Id.*

[16] See "MuniThink Muni blockchain and tokenization: Evolution not revolution," Gregg Bienstock, The Bond Buyer (June 4, 2026); see also "Tokenization is coming to the muni market ... eventually," Colin Royal, The Bond Buyer (June 15, 2026).

[17] *Id.*

[18] *Id.*

[19] *Id.*

Attorneys

- Brian Garzione
- Kenneth Roberts