

Corporate & Financial Weekly Digest

September 16, 2011 by [Daren R. Domina](#)

Broker-Dealers and Advisors Involved in Bank Loans to State and Local Governments May Be Subject to MSRB Rules

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The Municipal Securities Rulemaking Board (MSRB) has issued Notice 2011-052 (the Notice) which provides that certain financings that are called “bank loans” may be municipal securities and therefore subject to MSRB rules. For example, if a broker-dealer serves as a placement agent for a “bank loan” that is deemed a municipal security, the broker-dealer is subject to all applicable MSRB rules, as well as other federal securities laws. Additionally, the Notice provides that when, as agent, a broker-dealer effects a direct purchase of variable rate demand obligations (VRDOs) by its bank affiliate followed by a restructuring of such VRDOs, such restructuring may be so significant that it amounts to a primary offering of municipal securities which may trigger obligations under Rule G-32.

The Notice provides that when banks make loans to state and local governments, even if only to provide a source of funds for those governments to purchase their own securities, the question of whether those loans will be considered securities is often a difficult one. Therefore, broker-dealers and municipal advisors that play a role in bank financings evidenced by notes should consult legal counsel to determine whether the financings are securities or loans. Broker-dealers and advisors should be aware that whether the financing is merely called a loan is not necessarily dispositive of whether the financing is a loan or a security, and an incorrect analysis of such may have considerable consequences.

Click [here](#) to read MSRB Notice 2011-52

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