

S 3620

A bill to amend the Securities Exchange Act of 1934 to clarify provisions relating to the regulation of municipal advisors, and for other purposes.

Congress: 112 (2011–2013, Ended)

Chamber: Senate

Policy Area: Finance and Financial Sector

Introduced: Sep 21, 2012

Current Status: Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.

Latest Action: Read twice and referred to the Committee on Banking, Housing, and Urban Affairs. (Sep 21, 2012)

Official Text: <https://www.congress.gov/bill/112th-congress/senate-bill/3620>

Sponsor

Name: Sen. Wicker, Roger F. [R-MS]

Party: Republican • **State:** MS • **Chamber:** Senate

Cosponsors

No cosponsors are listed for this bill.

Committee Activity

Committee	Chamber	Activity	Date
Banking, Housing, and Urban Affairs Committee	Senate	Referred To	Sep 22, 2012

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

Bill	Relationship	Last Action
112 HR 2827	Related bill	Sep 20, 2012: Received in the Senate and Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.

Amends the Securities Exchange Act of 1934 to permit a non-registered municipal securities advisor, on behalf of a municipal entity or an obligated person, to: (1) provide advice regarding either municipal financial products or the issuance of such products, and (2) undertake the solicitation of a municipal entity.

Prohibits the rules of the Municipal Securities Rulemaking Board (MSRB) from regulating as municipal advisors the activities of certain persons specifically excluded from the definition of municipal advisor, namely: (1) a broker, dealer, or municipal securities dealer serving as an underwriter; (2) an investment adviser registered under the Investment Advisers Act of 1940 (or persons associated with such investment advisers who are providing investment advice); (3) a commodity trading advisor registered under the Commodity Exchange Act (or associated persons who are providing advice related to swaps); (4) attorneys providing legal advice or services that are of a traditional legal nature; and (5) engineers providing engineering advice.

Limits the fiduciary duty a municipal advisor and any associated person owe to a municipal entity (or associated person) the advisor advises to those times when the advisor acts pursuant to an engagement, for compensation, by the municipal entity or obligated person to advise on either municipal financial products or the issuance of municipal securities.

Directs the MSRB to require that a municipal advisor act in accordance with its fiduciary duty to municipal entity clients, but only in connection with specified activities involving those clients.

Prohibits the MSRB from barring: (1) principal transactions by municipal advisors, or (2) the receipt of compensation based on standard compensation involving the purchase or sale of a security or other instrument (including deposit or foreign exchange).

Authorizes the MSRB to: (1) issue rules requiring a municipal advisor to engage only in transactions or receive compensation consistent with the advisor's fiduciary duty, and (2) prohibit a municipal advisor who has been engaged to provide advice with respect to an underwritten offering of securities from acting concurrently as underwriter of such offering.

Redefines "investment strategies" as plans or programs for: (1) investment of the direct proceeds of municipal securities (but not other public funds) which are neither municipal derivatives nor guaranteed investment contracts, and (2) the recommendation and brokerage of municipal escrow investments, where such proceeds and investments are either known to the municipal advisor to comprise funds or investments maintained exclusively in a segregated account, or have been identified in writing as funds or investments constituting the proceeds of municipal securities or municipal escrow investments.

Excludes specified practices from "investment strategies" (and, therefore, from regulation under this Act), including: (1) merely acting as a broker or principal for the purchase or sale of a security or other instrument (including deposit or foreign exchange); (2) furnishing a list of, or price quotations for, investment options or securities or other instruments which may be available for purchase or investment or which satisfy investment criteria specified by a municipal entity; (3) acting as a custodian; (4) providing generalized information concerning investments not tailored to the specific investment objectives of the municipal entity; or (5) providing advice with respect to matters other than the investment of funds or financial products.

Limits the definition of "municipal advisor" to a person (who is not a municipal entity or obligated person, or an employee of a municipal entity or obligated person) but who is engaged for compensation by a municipal entity to advise on either

municipal financial products or the issuance of municipal securities.

Excludes from the definition of municipal advisors solely as a result of their performing the following activities: (1) a financial institution engaging in specified excluded activities pursuant to an exemption from registration, when acting as a dealer or principal with respect to deposits, foreign exchange, or identified banking products, providing other traditional banking or trust services otherwise subject to a fiduciary duty under state or federal law, providing administrative or operational services or support, or providing advice that is related to or in connection with any such activities and not for separate compensation; (2) a person providing state-regulated insurance products, services, or advice and not for separate compensation; (3) an accountant providing customary and usual accounting services or advising in connection with such activities and not for separate compensation; and (4) an attorney offering traditional legal advice or services.

Redefines "solicitation of a municipal entity" to: (1) eliminate solicitation for the purpose of obtaining or retaining an engagement by an investment adviser providing investment advisory services on behalf of a municipal entity, but (2) state that communications on behalf of a collective investment vehicle (investment fund) shall not be deemed to be on behalf of any investment adviser that advises or manages such collective investment vehicle.

Defines "municipal derivative" as a swap or security-based swap in which a municipal entity is a counterparty.

Defines providing advice "on behalf of a municipal entity or obligated person" as providing advice to a person known to be engaged by a municipal entity to provide services to the municipal entity in connection with the issuance of municipal securities.

Actions Timeline

- **Sep 21, 2012:** Introduced in Senate
- **Sep 21, 2012:** Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.