

UMAA

SEC's Municipal Advisor Rules

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The Regulators Have Been Busy

- ❑ The Securities and Exchange Commission
- ❑ The Municipal Securities Rulemaking Board
- ❑ The Dodd-Frank Act
- ❑ The GFOA

SEC's Municipal Advisor Rules

- The Dodd Frank Act of 2010 authorized the SEC and the MSRB to adopt rules governing Municipal Advisors.
- On September 18, 2013, the SEC approved its final Municipal Advisor Registration Rules.
- The rules were scheduled to be effective on January 13, 2014, but the SEC stayed the effective date until July 1, 2014.
- The new rules define who is, and who is not, a Municipal Advisor.

According to the SEC, A Municipal Advisor is:

- Any person who provides “advice” to a municipal entity regarding a municipal financial product or an issuance of municipal securities – or- a person that undertakes a solicitation to do so.
- “Advice” means, a recommendation that is specific or tailored to a particular client with respect to the structure, timing, terms, or similar matters related to a municipal debt issue.

Your Underwriter:

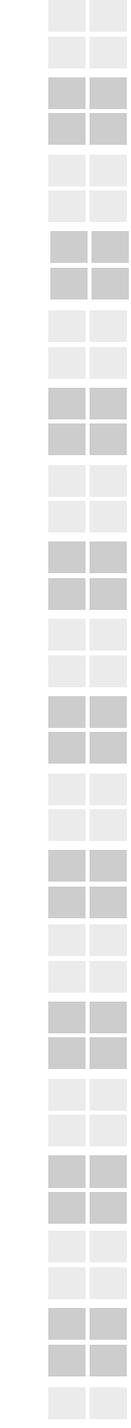
- Is *prohibited* from serving as your Municipal Advisor while also serving as your Underwriter on the same issue. (This is illegal under MSRB Rule G-23.)
- Is *prohibited* from providing you with “advice” unless certain exemptions apply.
- Is *prohibited* from being your underwriter if he/she does give you “advice” outside of the exemptions.

The Exemptions

- An Underwriter may give you (as an issuer) advice if you tell him/her, *in writing*, that you have retained a Municipal Advisor and that you are relying on that Municipal Advisor to assist you. (You will see these requests.)
- An Underwriter may give you advice in response to a legitimate RFP solicitation for underwriting services.
- An Underwriter may give you *certain* advice after he/she is hired as your underwriter, but that advice must be limited to “traditional underwriting activities”.

The Exemptions

- “Traditional underwriting activities” **do not include:**
 - ❑ which **method of bond sale** you should use;
 - ❑ preparing and/or evaluating **any** RFPs (BC, UW, MA, Trustee)
 - ❑ how you should invest your bond proceeds;
 - ❑ other investment strategies;
 - ❑ if and how to use swaps;
 - ❑ how your escrow funds should be structured and invested;
 - ❑ advice regarding your **debt or financial policies** or procedures;
 - ❑ how the current transaction may be **coordinated with your other debt issues**;
 - ❑ Mode changes for variable rate debt.



For this kind of advice, you will
need a

**Municipal Advisor
aka Financial Advisor**

GFOA Recommended Practices

- “A municipal advisor represents the issuer in the sale of bonds, and *unlike other professionals involved in a bond sale*, has an explicit fiduciary duty to the issuer per the Dodd-Frank Wall Street Reform and Consumer Protection Act.”

GFOA Debt Committee “Best Practices” Document Dated 2014
“Selecting and Managing the Engagement of Municipal Advisors”

GFOA Recommended Practices

- “The appropriate duties, roles and responsibilities of municipal advisors and underwriters are often not well understood. Municipal advisors are the only parties with a federal fiduciary duty to state and local government issuers.”

GFOA Debt Committee “Best Practices” Document Dated 2014
“Selecting and Managing the Method of Sale of State and Local Government Bonds”

Municipal Bond Teeter Totter

Price



Interest Rate

SEC Rule - Municipal Advisors:

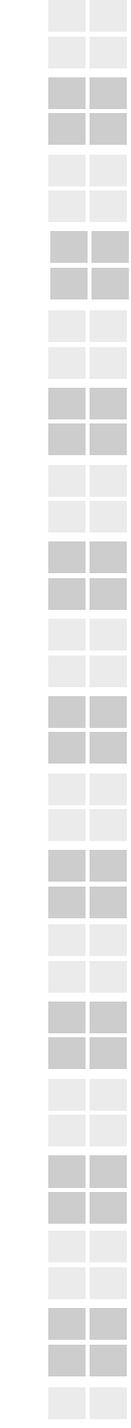
- Must register with the SEC and the Municipal Securities Rulemaking Board.
- Are subject to substantially the same SEC disciplinary rules as underwriters.
- Will be subject to a set of rules to be adopted by the MSRB that will impose a comprehensive regulatory regime, including:
 - Fees
 - Testing
 - Training
 - Supervision
 - Record keeping
 - Prohibited conduct
 - Compliance exams
 - Comprehensive code of conduct

SEC Rule - Municipal Advisors:

- Activity-based Exemptions
 - Officers and Employees of the Issuer
 - Underwriters
 - Banks
 - Registered Swap Advisors
 - Registered Investment Advisors
 - Accountants (audit and attest services only)
 - Engineers (with limitations)
 - Attorneys

According to the SEC, Advice:

- Is a ***recommendation that is particularized to the specific needs, objectives, or circumstances*** of an Issuer with respect to a “covered transaction”, including structure, timing, terms and similar matters.
- The more ***individually tailored*** the communication to an Issuer about a security or group of securities, the greater the likelihood that the communication may be viewed as a recommendation that constitutes advice.



RFP Exemption

MODEL LANGUAGE FOR RFPS

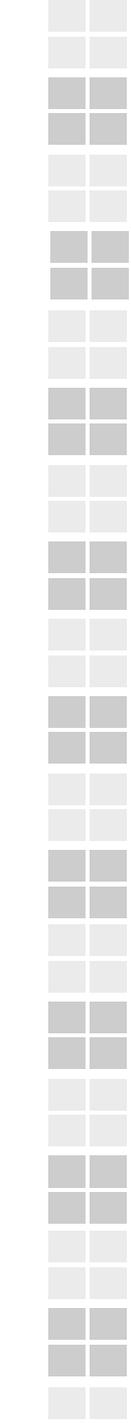
- The Issuer desires advice and recommendations regarding [description of the issuance of bonds].

The Issuer intends that such advice and/or recommendations may be made orally or in writing, to qualify for the RFP exemption.

This RFP/RFQ is open from _____ to [insert date that is no later than 6 months after the first date].

The Issuer understands that by responding to this RFP/RFQ, respondents are not acting as municipal advisors.

(If the RFP is not posted publicly, include the following: This RFP/RFQ is being sent to at least 3 firms.)



IRMA Exemption

IRMA EXEMPTION

- The municipal advisor rules exempt *all* advice and recommendations given by *any person* to an Issuer that is represented by an independent registered municipal advisor (“IRMA”).
- This exemption is subject to the following conditions:
 - The Issuer’s Financial Advisor must provide advice with respect to same aspects of a municipal financial product or municipal securities issuance about which the underwriter wants to speak.
 - The Issuer’s Financial Advisor cannot have had association with the person relying on exemption for the past 2 years.
 - The Issuer must represent *in writing* that it is represented by and *will rely* on the advice of its Financial Advisor.

IRMA EXEMPTION

- Underwriters relying on the FA exemption must:
 - ❑ Disclose in writing to the Issuer that it is not acting as a municipal advisor with respect to the transaction.
 - ❑ Disclose in writing to the Issuer that it is not subject to the fiduciary duty standard imposed on municipal advisors.
 - ❑ Provide a copy of such disclosures to the FA.

- Once the FA exemption has been established, it is not necessary to include the FA in discussions and meetings with its client.

SAMPLE ISSUER LETTER

- “Pursuant to the SEC’s Municipal Advisor Rule, we hereby represent to you that we are represented by, and **will rely** on the advice of _[insert name of FA firm]_ on **all matters** relating to issuances of municipal securities and municipal financial products.”

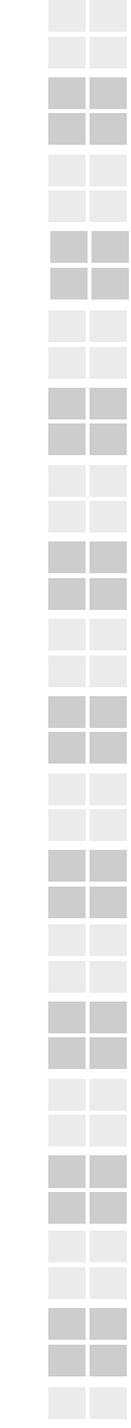
“We have been advised by _[insert name of FA firm]_ that it has registered as a municipal advisor with the SEC and the Municipal Securities Rulemaking Board; and that the following individuals, each of whom has been employed by the Advisor for at least two years prior to the date of this letter, will be responsible for representing and advising us with respect to [all matters relating to issuances of municipal securities and municipal financial products]:
[names of FA employees].”

SAMPLE ISSUER LETTER

- This statement may be posted to the Issuer's website, with reliance text.
- Scope of the financial advisor's engagement determines the scope of the exemption:
 - Only a single bond issue?
 - Investments and derivatives?

UNDERWRITER LETTER

- Any person relying on the IRMA exemption must send a disclosure statement to the issuer or borrower and its FA stating:
 - ❑ We are not a municipal advisor to you, and
 - ❑ We are not subject to the fiduciary duty imposed on municipal advisors.
- Additional disclosures:
 - ❑ We are acting as a principal and our interests differ materially from yours.
 - ❑ You should consult your own legal, financial and other advisors to the extent you deem appropriate.



Underwriter Exemption

UNDERWRITER EXEMPTION

- Requires an engagement to underwrite a specific issuance of municipal securities. Inclusion in a pre-approved underwriting pool is not sufficient.
- Oral or written acknowledgement of engagement from an the issuer/obligated person is permitted.
- Preliminary, non-binding engagements permitted so long as issuer/obligated person reasonably expects to formally engage the broker-dealer as underwriter.
- Multiple engagements are permitted, no need to specify status as senior or co-manager.
- The underwriter exemption is limited in duration:
 - Exemption begins once underwriter is “engaged as underwriter” and terminates at the “end of the underwriting period” under Rule 15c2-12 (the closing date in most cases).

SAMPLE UNDERWRITER ENGAGEMENT LETTER

“This letter confirms our engagement to serve as an underwriter for the Bonds. Delivered with this letter are the disclosures required by MSRB Rule G-17 regarding our role, duties and interests as an underwriter of the Bonds.

Your execution of this letter will confirm that [you reasonably expect that] we will serve as an underwriter of the Bonds, and will enable us to provide advice with respect to the structure, timing, terms, and other similar matters concerning the Bonds pursuant to the underwriter exclusion under the SEC’s municipal advisor registration rules.”