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**SIFMA Best Practice Recommendation on
Disclosures Regarding Choice of Underwriters' Counsel
in Municipal Securities Transactions
(March 2013)**

In a municipal securities underwriting, the role of underwriters' counsel is a critical one. Underwriters' counsel is charged with representing the underwriters in the offering of the bonds. The typical duties of underwriters counsel includes:

1. Drafting the bond purchase agreement and, in many cases, the official statement or other disclosure documents;
2. Assisting the underwriters in meeting their legal responsibilities generally in the issuance and sale of the bonds (including, but not limited to, due diligence and assessing the adequacy of the issuer's disclosure); and
3. Rendering a legal opinion letter addressing certain legal matters in the transaction upon which the underwriters may rely.¹

As the ramifications for violations of the securities laws are potentially severe, it is of utmost importance that underwriters seek and retain counsel that is highly qualified, experienced, will give the highest priority to the transaction and has no conflicts of interest.

The Government Finance Officers Association ("GFOA") has adopted a Recommended Practice ("RP") entitled, "Issuer's Role in Selection of Underwriter's Counsel (1998, 2009)"². In this RP, GFOA recognizes that (1) the underwriter has a reasonable need to rely on such counsel's competence and confidential advice and (2) the potential for conflicts of interest exists if an issuer designates a firm to serve as underwriter's counsel. "The GFOA believes that issuers have a legitimate but limited role in the engagement of underwriters counsel. Specifically, the role of the issuer should be to ensure that underwriter's counsel is competent, has no conflicts of interest, and that the costs are reasonable."

As stated in the aforementioned GFOA RP, "The underwriter bears the ultimate responsibility for the adequacy of its own counsel. Any undue influence by an issuer, however, that calls into question the qualifications or independence of underwriter's counsel may create risk to the issuer and to the underwriter because of the increased

¹ See, Model Letter of Underwriters' Counsel, (<http://www.nabl.org/uploads/cms/documents/NABLFormalReportsModelDocs-ModelLetterUnderwritersCounsel.pdf>).

² Issuer's Role in Selection of Underwriter's Counsel (1998, 2009) (http://www.gfoa.org/index.php?option=com_content&task=view&id=1576)

potential of inadequate disclosure in the offering of the issuer's bonds and a reduced ability of the issuer to claim reliance on the expertise of its financing team.”

In light of these risks, the Securities Industry and Financial Markets Association (“SIFMA”) strongly recommends as a best practice that if an underwriter's counsel is retained based on the recommendation of the issuer, or if an issuer or its financial advisor or other agent specifies a limited pool of underwriter's counsel firms from which the underwriter is expected to choose, then disclosure of those facts should be made in the preliminary official statement, if any, and the official statement for the transaction.