SIFMA Municipal Advisor Model Language:

Model Independent Registered Municipal Advisor Exemption Language

SIFMA has prepared model documents and related guidance to help brokers, dealers and other financial institutions comply with the new regulatory requirements created by the SEC’s Municipal Advisor Rule. The SEC’s Municipal Advisor Rule imposes a registration regime upon municipal advisors, i.e., firms that give advice absent an exemption or exclusion to municipal entities and obligated persons, and imposes a fiduciary duty upon municipal advisors that give advice to municipal entities. MSRB rulemaking will impose additional requirements and prohibitions on the conduct of municipal advisors.

The Rule granted certain exemptions and exclusions from the definition of municipal advisor for persons providing certain types of advice that would otherwise deem that person to be a municipal advisor. One such exemption is for advice given to municipal entities or obligated persons that are represented by and will rely on the advice of an independent registered municipal advisor. In order to rely on this exemption, a firm must receive certain representations from the municipal entity or obligated person. The model language below can be suggested to municipal entities or obligated persons if they would like to receive advice from a firm that is not otherwise covered by an exemption or exclusion.

SIFMA’s model disclosures are designed to be a starting point to aid firms with compliance with the SEC’s Municipal Advisor Rule; however, close attention must be paid to the specific language used as the Rule and the SEC’s interpretive guidance is very definitive in what is required for the exemptions or exclusions to properly apply. SIFMA encourages firms to expand or modify these documents as necessary to reflect their own analysis of the rule or specifics of particular transactions.

SIFMA recommends that firms update their internal procedures and continue to educate their personnel about this new regulatory requirement.

Attachment

Note to [Municipal Entity/Obligated Person]: Brokers, dealers, and other financial institutions (“financial services firms”) that seek to enter into principal transactions with municipal entities or obligated persons generally cannot give advice unless they qualify for an exemption or exclusion to the SEC’s Municipal Advisor Rule. One such exclusion to the rule for financial services firms is when the municipal entity or obligated person has an independent registered municipal advisor. If you would like to receive advice from financial services firms regarding the issuance of municipal securities, municipal financial products or the investment of bond proceeds, a municipal entity or obligated person may/should send the financial services firm the language below, to assist the financial services firm in documenting their compliance with an exclusion to the rule which would permit the firm to give advice to you as a municipal entity or obligated person.

[Model SIFMA Language]

DATE

[State or local government/Obligated Person] has retained an independent registered municipal advisor.   [State or local government/Obligated Person] is represented by and will rely on its municipal advisor [include name of firm here][if desired, include name of advisor at the firm here] to provide advice on proposals from financial services firms concerning the issuance of municipal securities and municipal financial products (including investments of bond proceeds and escrow investments).[[1]](#footnote-1) This certificate may be relied upon until (insert date). [[2]](#footnote-2)  [Proposals may be addressed to [State or local government/Obligated Person] at \_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[3]](#footnote-3) If the proposal received will be seriously considered by [State of local government/Obligated Person], the entity will share the document with its municipal advisor. Please note, that aside from regulatorily mandated correspondence between an underwriter and municipal advisor, the underwriter should not speak directly with or send documents directly to the municipal advisor unless specifically directed to by the entity.]

[Draft language for 2nd sentence to be used larger entities - The [State or local government/Obligated Person] uses a variety of municipal advisors in its debt management program. To know which firm is being used for a particular credit, please contact the entity’s debt management program at \_\_\_\_\_\_\_\_\_\_\_\_, [or see below for the appropriate listing]. ]

[If posted on the governmental unit’s or obligated person’s website, add the following language at the beginning:  By publicly posting the following written disclosure, [State or local government/Obligated Person] intends that market participants receive and use it for purposes of the independent registered municipal advisor exemption to the SEC Municipal Advisor Rule.]

1. If applicable. The drafter should consider modifying the scope of services, as appropriate. [↑](#footnote-ref-1)
2. The drafter should consider putting an end date on the certificate, although none is required under the SEC’s current guidance in FAQ 3.3. See, <http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf/> [↑](#footnote-ref-2)
3. To assist with compliance, the drafter of the certificate should consider listing a contact at the municipal advisor firm and/or the municipal advisor personnel working on the relevant transaction. If such contact information is not listed, then the drafter should be prepared to otherwise make the information available to firms upon request. Also, dealer advisors necessarily are associated persons with a broker dealer. To aid in the disclosure for dealer advisors, we suggest the following language, “The personnel of [Municipal Advisor] who will advise [Municipal Entity/Obligated Person] on such matters have represented to [Municipal Entity/Obligated Person] that they have not been associated with the firm engaging in the principal transaction [other than [Name of Related Broker Dealer Firm] within the two years prior to the date of this certificate.” [↑](#footnote-ref-3)