SIFMA Municipal Advisor Model Language:
Model Letter of Intent for Remarketing Agents

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 firms that give advice to municipal entities and obligated persons, and imposes a fiduciary duty upon firms that give advice to municipal entities.

It is thought that much of the routine business of remarketing agents would be outside of the definition of advice, and thus not covered by the rule. However, if a remarketing agent would like to give (or if a municipal entity or obligated person requests) advice about matters related to or that may constitute a primary offering of municipal securities, such as a substitution or replacement of a liquidity facility or mode change, the underwriter exclusion to the Municipal Advisor Rule may be available to the remarketing agent in connection therewith.

The Municipal Advisor Rule allows for certain exemptions and exclusions to its general preclusion of giving advice on the issuance of municipal securities and municipal financial products. One such exclusion is for advice given to firms that have been engaged as an underwriter for a particular transaction. Although there is no regulatory requirement to have a written engagement letter, for compliance purposes some firms may find it useful to document the relationship. The model language below can be suggested to municipal entities and obligated persons if they would like to receive advice from a firm they want to contract with on a principal basis with as a remarketing agent on a transaction.

SIFMA’s model disclosures are designed to be a starting point to aid firms with compliance with the SEC’s Municipal Advisor Rule. 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 processes and continue to educate their personnel and clients 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 a firm has been engaged as an underwriter (including, in certain circumstances, a remarketing agent) by the municipal entity or obligated person. If you would like to receive advice from a financial services firm regarding the issuance of municipal securities by engaging them as an underwriter (including as a remarketing agent in connection with a transaction that could constitute a primary offering thereof), you should consider sending the language below to the financial services firm to aid 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.

[Name and Address of Broker/Dealer]

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

                Re:  Underwriting Engagement -- Remarketing

Ladies and Gentlemen:

[Municipal Entity/Obligated Person] is aware of the “Municipal Advisor Rule” of the Securities and Exchange Commission (effective July 1, 2014) and the underwriter exclusion from the definition of “municipal advisor” for a firm serving as an underwriter (including as a remarketing agent in connection with a transaction that could constitute a primary offering thereof) for a particular issuance of municipal securities.

Reference is made to the Remarketing Agreement between us and [Name of Broker Dealer] dated \_\_\_\_\_\_\_,\_\_\_\_\_\_ pursuant to which [Name of Broker Dealer] is the remarketing agent for $[DOLLAR AMOUNT AND NAME OF ISSUE] (the “Bonds”).   As part of your duties as remarketing agent, we would like your advice in connection with a potential mode change or credit/liquidity substitution relating to the Bonds and hereby engage you as the underwriter, for the purposes of the Municipal Advisor Rule, in any remarketing that could constitute a primary offering of the Bonds in connection with such mode changes or credit/liquidity substitution.  As an underwriter, for the purposes of the Municipal Advisor Rule, [Remarketing Agent] may provide advice to [Municipal Entity/Obligated Person] on the structure, timing, terms, and other similar matters concerning the Bonds.

While [Municipal Entity/Obligated Person] presently engages [Remarketing Agent] as the remarketing agent for the Bonds, this engagement letter is preliminary in nature.[[1]](#footnote-1) It is nonbinding and may be terminated by either [Municipal Entity/Obligated Person] or [Remarketing Agent]. Furthermore, this engagement letter does not restrict [Municipal Entity/Obligated Person] from entering into the proposed or any other municipal securities transaction with any other remarketing agents, underwriters or selecting a remarketing or underwriting syndicate that does not include [Remarketing Agent].Very truly yours,

[NAME OF ISSUER/BORROWER]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Title]

1. MSRB Rule G-17. Underwriters should consider the timing of sending the requisite Rule G-17 disclosures. Per the SEC January 2014 FAQs, an engagement letter or letter of intent must contain the following feature: “the engagement letter or a separate writing done at or before the time of the engagement provides all disclosures that are required to be made by underwriters by the time of an engagement under MSRB Rule G-17, including disclosures about the role of the underwriter, the underwriter’s compensation, and actual or potential material conflicts of interest (excluding only those permitted to be disclosed after the time of engagement under MSRB Rule G-17).” [↑](#footnote-ref-1)