SIFMA Municipal Advisor Model Language:
Model RFP Exemption Language

SIFMA has prepared model documents and related guidance to help municipal securities dealers 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.

The Rule granted certain exemptions and exclusions to the rule for advice that would typically be covered. One such exemption is for advice given to municipal entities and obligated persons in response to a request for proposals (RFP) or request for qualifications (RFQ). In general, in order to rely on this exemption, the RFP must have been sent to at least 3 firms or be widely disseminated, such as by posting on a municipal entity’s or obligated person’s website. The model language below can be suggested to municipal entities and obligated persons if they would like to receive advice from underwriters in response to an RFP/RFQ. This form can also be used by a municipal entity or obligated person to conduct a “mini RFP” with pre-qualified underwriting firms. In that case, the mini RFP must be sent either to the entire group of pre-qualified firms or to at least 3 of the pre-qualified firms.

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 underwriters 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 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 exemption to the rule for financial services firms is when the municipal entity or obligated person has solicited information and advice through a request for proposals (RFP) or request for qualifications (RFQ). 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 by way of an RFP or RFQ, you should consider either posting the language below on your website, or sending it to at least 3 financial services firms, to assist the financial services firms in documenting their compliance with an exemption to the rule which would permit the firm to give advice to you as an municipal entity or obligated person. It is important to note that this RFP/RFQ is not required to rise to the level of what is needed for compliance with your jurisdiction’s procurement laws.

RFP/RFQ Exemption Language

[State or local government/Obligated Person] is aware of the “Municipal Advisor Rule” of the Securities and Exchange Commission (effective July 1, 2014) and the exemption from the definition of “municipal advisor” for a person providing “advice”. In response to an RFP/RFQ, [State or local government/Obligated Person] hereby notifies [all] [certain designated] investment banking firms that it wishes them to provide advice and recommendations on [insert description of particular objectives[[1]](#footnote-1) concerning the issuance of municipal securities and/or municipal financial products (as such terms are defined in the Municipal Advisor Rule)]. [State or local government/Obligated Person] intends for such advice and recommendations to qualify for the RFP/RFQ exemption. The advice and recommendations may be made orally or in writing. [State or local government/Obligated Person] reserves the right to accept or reject any proposals submitted to it and to conduct a formal procurement process, in each case if deemed by [State or local government/Obligated Person] to be in its best interests and to comply with applicable laws or procurement policies. This RFP/RFQ is open from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to [insert date no later than 6 months after the first date or, in the case of mini RFPs, a date that is no later than 3 months after the first date]. [State or local government/Obligated Person] understands that by responding to this RFP/RFQ, respondents are not municipal advisors to [State or local government/Obligated Person]. [If not posting publicly, add the following language: This RFP/RFQ is being sent to [a least 3 financial services firms] [the entire pool of firms].]

1. Examples of particular objectives would include ideas on how to structure a particular issuance of municipal securities to finance an identified capital project or program. [↑](#footnote-ref-1)