

MUNICIPAL ISSUER BRIEF

HAPPY FOURTH OF JULY

MARKET COMMENTARY WILL RESUME AFTER THE HOLIDAY: This week's edition looks at the Securities and Exchange Commission's new Municipal Advisor Rule. Publication will resume July 14th. From everyone at **MMA**, we wish you a fun and safe July 4th!

SEC MUNICIPAL ADVISOR RULE OVERVIEW

The SEC's new Municipal Advisor Rule goes into effect tomorrow, July 1. As previously discussed in the *Municipal Issuer Briefs*, there are numerous consequences for issuers and the market participants, as some of the traditional business practices governments are used to will have to change. Most notably, **unless an exemption is met, issuers will only be able to receive advice or recommendations from municipal advisors** (those professionals with a fiduciary duty to the government), and not other parties, such as underwriters. Over the past few decades underwriters and bankers have advised governments on a variety of aspects related to their finances, even when they have not been hired for a specific transaction. Under the new rule, for an issuer to receive specific advice from a banker, the issuer must have hired the banker for a specific transaction, have a request for proposal out for underwriting services related to a specific transaction or hired a municipal advisor. This will alter longstanding relationships for many, especially smaller governments that in many cases have relied on discussing potential deals with bankers without officially hiring them.

Some of the key parts of the rule include:

- The rule **limits the ability of underwriters** to discuss with issuers specific recommendations related to a transaction or possible transaction unless the issuer has hired an MA or has an RFP out for response. This includes limiting the ability for underwriters and others to help advise governments on the investment of bond proceeds.
- When an issuer has an MA, but wants to receive advice or recommendations from an underwriter that it has not hired, **the issuer must represent in writing that they will rely on the advice of an MA**. The SEC has further clarified that the term "rely on" means that the municipal entity or obligated person will seek and consider the advice, analysis, and perspective of the municipal advisor. However, for purposes of this exemption, "rely on" **[does not]** mean that the municipal entity or obligated person must follow the advice of the independent registered municipal advisor.

GFOA has developed model language for governments to consider using when they wish to execute the MA exemption

- **Underwriters may include recommendations and advice when responding to an issuer's RFP** **IF:** the RFP is about a specific financing, the RFP has been sent to at least 3 reasonably competitive firms or is posted on the issuer's website, and has a response timeframe of less than 6 months.

- When an underwriter is engaged by the issuer on a transaction, it may discuss with the issuer a wide variety of items related to the issuance including, structure, timing, terms, and other similar matters.

Governments should consider entering into a letter of engagement with their underwriter early in the process.

- **Municipal Advisors now have a federal fiduciary duty** to their government clients and will be held to new professional qualification and business conduct standards.
- While underwriters and other professionals may not provide recommendations or advice to issuers unless an exemption is met, **underwriters may talk with the issuer about "general market information."** The SEC has stated that general information **"cannot contain or express subjective assumptions, opinions, or views or constitute a recommendation."** However, **general information includes market information, available products and even "information regarding a municipal entity's particular outstanding bonds, such as current market prices and yields, without this information constituting a recommendation."**
- **Those providing advice on the investment of bond proceeds must be registered as a municipal or investment advisor, unless an exemption is met.** Investment advisors may seek information from issuers that the bond proceed investments are separate from general and other funds.

Governments should examine whether your bond proceeds investments are not comingled with general or other funds, where this rule does not apply.