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SIFMA Releases Model MA Documents.

WASHINGTON — The Securities Industry and Financial Markets Association has released model documents designed to help its members comply with the municipal advisor registration rule, which takes effect on July 1.

The seven draft documents, unveiled Friday, cover various types of communications between broker-dealers and issuers and aim to help prospective underwriters of muni bonds avoid having to register under the Securities and Exchange Commission rule.

The rule, approved in September, requires a firm to register as an MA if it provides advice to state or local governments or conduit borrowers. The SEC has said firms will not be able to underwrite the bonds of issuers for whom they have become municipal advisors, so broker-dealer firms are going to need to use one of three exemptions from the rule created by the SEC.

“Our firms want to know that if they are looking to take advantage of those exemptions and exclusions, that they have the language right,” said Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at SIFMA. “We just tried to get a base level of the documents we thought were most important.”

The model documents include: an issuer’s certification that an investment account does not include the proceeds of municipal securities, underwriter engagement letters for both generic firms and remarketing agents; a form advising issuers that they can receive advice from an underwriter by soliciting it through a legitimate a request for proposals, and an underwriter’s letter advising an issuer that its information is of a purely informational nature and not is intended as “advice.” to the issuer. All of these documents aim to allow the flow of information between prospective underwriters and issuers, which some had worried would be severely limited by the MA rule.

Two documents deal with the independent registered municipal advisor exemption, commonly called the “IRMA” exemption. That provision of the SEC’s regulatory regime allows an issuer to receive advice from underwriters and other market participants as long as they retain and certify that they will rely on the advice of the IRMA. The IRMA exemption is expected to be among the most broadly used of those available, since many larger and more frequent issuers have municipal advisors.

The first such model document takes the form of an issuer certification that it has an IRMA. If this is posted to the issuer’s publicly-accessible website, SIFMA suggests it include language showing the issuer “intends that market participants receive and use it for purposes of the independent registered municipal advisor exemption to the SEC municipal advisor rule.”

The second document is a confirmation letter from an underwriter firm to the issuer stating that the exemption applies and the firm assumes no advisory responsibilities.

“Thank you for your representation concerning your independent registered municipal advisor,” that model document reads. “By obtaining such representation from you, [the firm] is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended.”

SIFMA also released a collection of talking points for investment bankers speaking to issuers. That document includes an explanation and description of the exemptions available that will allow underwriters to provide advice to issuers, as well as some answers to common questions. Some issuer officials questioned whether they might be able to "opt out" of the registration regime, which is required by the Dodd Frank Act. SEC officials have been quick to dispel that notion in public appearances, and the SIFMA talking points do so as well.

"There is no way for issuers to simply 'opt out' of the rules outside the narrowly tailored exemptions," one talking point states.

Norwood said additional documents may become available going forward, but emphasized that the newly-released documents are not final and are meant to generate feedback and provide a starting point for firms who will soon rely on similar documents to conduct their businesses within the limits of the rule.

"We encourage firms to modify these documents to suit their needs," Norwood said. She added that comment is welcome not only from SIFMA members and other broker-dealers, but from all market participants.

"We're looking for comment from all industry members," she said.

The SEC has said it is going to release additional technical guidance on its registration rule before the effective date. The Municipal Securities Rulemaking Board is also in the process of creating rules governing MAs. The self-regulator has already proposed rules governing MA conduct as well as professional qualification and supervisory requirements.

- Model Negative Consent/Affirmative Consent Certificates Relating to Bond Proceeds
- Model Disclosures and Disclaimers for General Information Exclusion and Business Promotional Materials
- Model Independent MA Exemption Language
- Model IRMA Confirmation Letter
- Model RFP Language
- Talking Points for Public Finance Bankers

SIFMA is soliciting industry comment on these draft documents. Please forward any comments, questions or concerns to Leslie Norwood at lnorwood@sifma.org.

BY KYLE GLAZIER

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