

# **Bond Case Briefs**

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## **How SIFMA Is Helping MAs Before Rule G-42 Implementation.**

TORONTO - The Securities Industry and Financial Markets Association has released four model documents designed to help municipal advisors as they work to come into compliance with the Municipal Securities Rulemaking Board's rule outlining the core duties for MAs.

The rule, G-42, becomes effective on June 23.

Leslie Norwood, managing director, associate general counsel, and co-head of munis for SIFMA, made clear that the documents that are catered to helping MAs comply with MSRB Rule G-42 are open to industry feedback until the end of May, at which time they will be finalized. She also said that while they were designed to aid SIFMA member firms, any MA can choose to adopt the documents or modify them to bring themselves into compliance by the rule's effective date.

The documents cover sample language for both existing MA relationships with issuers and obligated person as well as new engagements with those clients.

"SIFMA is pleased to provide municipal advisors with these compliance tools as the G-42 implementation date draws near," Norwood said. "We feel that the development and use of standardized model documentation plays a critical role in increasing legal certainty and decreasing legal costs and regulatory risk for firms in this business."

One model document outlines a possible MA engagement letter for new engagements on or after June 23. According to a drafting note attached to the document, it can be used for: a municipal or non-municipal entity client; an issuer or an obligated person; and engagements relating to new issues, municipal financial products, or both. The document must be promptly amended or supplemented during the term of engagement, according to the drafting note, to reflect any material changes or additions. The issuer also must promptly deliver the document to its client.

SIFMA also included a sample form, designed to supplement the letter for new engagement, that would provide an MA client with initial disclosures of legal and disciplinary events as Rule G-42 requires.

In addition to the documents for new engagements, SIFMA also provided a document for use by MAs with an ongoing engagement that would make required initial disclosures of legal and disciplinary events under the rule. Like the first two sample documents, SIFMA, in a drafting note, recommends MAs promptly amend the document during the term of engagement to reflect any material changes or additions.

The final document the dealer group is providing is a municipal advisory client worksheet that is intended to give generalized guidance on the types of information and considerations that may be relevant for municipal advisors to meet their obligations under the rule. SIFMA makes clear in its note on the document that the examples should not be treated as a best practice and should be appropriately tailored to individual firms' written supervisory procedures, practices and

circumstances.

Under Rule G-42's core standards of conduct, MAs owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation ... to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

G-42 originally contained an outright ban on a municipal advisor acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. However, after feedback from SIFMA and other groups, the MSRB decided to file an amendment to its proposal that provided a limited exception to the ban and instituted certain necessary conditions and documentation requirements to use it.

## **The Bond Buyer**

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