

## 1.4. MSRB STANDARDS ON SUITABILITY OF ADVICE GIVEN BY A MUNICIPAL ADVISOR

MSRB Rule G-42 states that when a municipal advisor recommends a course of action to a municipal client, it must reasonably believe that the action is suitable for the client.

If a third party recommends a course of action and the municipal advisor is asked to review that recommendation, the advisor must perform reasonable diligence to determine if the recommendation is suitable for the municipality.

Whether the municipal advisor is making the recommendation or reviewing the recommendation, it must also provide the following:

- An explanation of the risks, benefits, structure, and other information regarding the transaction or the product
- The reasons that the advisor considers the transaction to be suitable or unsuitable
- Whether the advisor has considered alternatives to the recommendation

 **Example:** Smith & Smith, the underwriter for Goodville’s bond issuance, recommends issuing a revenue bond with a 4% yield that will mature in 2025. Goodville passes this recommendation on to its municipal advisor for its opinion. The municipal advisor determines that this is a suitable plan for Goodville. It explains to Goodville the potential risks and benefits inherent in the plan and offers some other bond structures the town could consider.

A description of additional requirements associated with MSRB Rule G-42 is included in Chapter 2 of this guide.

### WHAT ACTIVITIES REQUIRE MA REGISTRATION?

Type of Activity	Registration?
Providing advice about municipal financial products	Yes
Providing advice about issuing municipal securities	Yes
Providing indirect advice about issuing municipal securities or other financial products	Yes
Providing recommendations regarding the issuance of municipal securities	Yes
Soliciting municipal entities to invest in financial products	Yes
Soliciting municipal entities to issue municipal securities	Yes
Providing general information about municipal financial products or municipal issues	No
Providing general information about a firm’s past municipal transactions	No
Providing current interest rates for different types of bonds	No

**WHAT ACTIVITIES REQUIRE MA REGISTRATION?**

<b>Type of Activity</b>	<b>Registration?</b>
Providing risks and benefits of different kinds of debt financing structures	No
Answering questions about specific price quotes for financial products	No
Information about a firm's current financial products	No
Providing information on unfiled continuing disclosure filings	No
Providing information that is available to the general public on SLGS	No
Providing a potential range of interest rates and maturities for a new debt issue	No
Providing a potential price range for a new debt issue	No
Providing potential savings of refunding bonds with the same terms	No

## 1.5. MUNICIPAL ADVISOR REGISTRATION EXEMPTIONS

Several exemptions allow market participants (e.g., underwriters) to give advice to a municipal entity or an obligated person without registering as a municipal advisor. In other words, they are exempt from registration.

### 1.5.1. NATURAL PERSONS THAT ARE EMPLOYED BY A MUNICIPAL ADVISOR

Natural persons are exempt from registering as municipal advisors as long as they engage only in municipal advisory activities on behalf of a municipal advisor employer or are an associated person of the advisor. If the natural person is a sole proprietor, he must register as a municipal advisor.

### 1.5.2. MUNICIPAL ENTITIES AND THEIR EMPLOYEES

Municipal entities and their employees are exempt from registration as municipal advisors. This allows municipal employees to give advice on issuing municipal securities to a municipal entity without having to register as an advisor.

### 1.5.3. INDEPENDENT REGISTERED MUNICIPAL ADVISOR (IRMA) EXEMPTION

If a municipal entity has already retained an **independent registered municipal advisor (IRMA)**, then a market participant may provide advice to the entity with respect to municipal financial products or the issuance of municipal securities if the following requirements are met:

- The IRMA must be registered with the SEC and must not have been associated with the market participant for at least two years.
- The market participant must receive written notification from the municipal entity that it has retained an IRMA.
- The market participant must disclose in writing to the municipal entity and the municipal advisor that it is not a municipal advisor and does not hold any fiduciary duty to the municipal entity. This disclosure must be made early enough to give the municipal entity time to determine if the market participant holds any conflicts of interest or has any material incentive to give the advice.

If these requirements are met, then an underwriter or other market participant may offer advice to the municipal entity, as long as the municipal entity also relies on the advice of its IRMA.

In this instance, “relies on” means, as the SEC puts it, that the municipal entity will “seek and consider the advice, analysis, and perspective of the independent registered municipal advisor,” but it does not mean that the municipal entity is required to act on the advice of the IRMA.

- 📌 **Note:** Be sure to know what the acronym IRMA means because you will see it on the exam.
- 📌 **Note:** The IRMA must provide advice on the same issue that the market participant provided advice on so that the municipal entity can compare the two.

### 1.5.4. REQUEST FOR PROPOSAL (RFP) EXEMPTION

The request for proposal (RFP) exemption allows market participants (i.e., broker-dealers) to provide advice to a municipality as part of the RFP process. Specifically, the municipality may solicit ideas regarding the issuance of municipal securities in a competitive underwriting process. The request for proposal exemption is narrow and should follow these guidelines:

- The RFP is conducted by the municipal entity or obligated person, or a registered municipal advisor acting on its behalf
- A particular objective is identified in the RFP (e.g., ideas on how to structure a

particular issuance of municipal securities to finance an identified capital project or program)

- The RFP is open for a specified period of time that is reasonable under the facts and circumstances and that is not indefinite (an open period of up to six months generally is considered reasonable)
- The RFP involves a competitive process under the facts and circumstances (e.g., the RFP is sent to at least three reasonably competitive market participants or the RFP is publicly disseminated by posting it on the official website of the municipal entity or obligated person)

The RFP exemption can be used for **mini-RFPs**. A mini-RFP is an RFP that is distributed in a targeted way to market participants that the municipal entity or obligated person has pre-screened or pre-qualified. The exemption is allowed as long as the rules above are followed and the open period is shortened (an open period of up to three months generally is considered reasonable).

### 1.5.5. BANK EXEMPTION

Banks are exempt from the definition of municipal advisor to the extent that they provide advice only with respect to the following:

- Investments that are held in a deposit account, savings account, CD, or other deposit instrument issued by a bank
- Extensions of credit by a bank to a municipal entity, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account
- Funds held in a sweep account (a program for the investment of deposit funds into a no-load mutual fund that designates itself a money market fund)
- Investments made by a bank acting in the capacity of an indenture trustee

The bank exemption does not apply to advice on municipal derivatives or to advice on the issuance of municipal securities. In other words, if a bank gives advice to a municipal entity or obligated person about municipal derivatives or issuing municipal securities, it will have to register as a municipal advisor.

### 1.5.6. REGISTERED SWAP DEALER EXEMPTION

The SEC exempts swap dealers that recommend municipal derivatives or derivatives strategies to municipal entities from registering as municipal advisors, as long as they are registered with the Commodity Futures Trading Commission (CFTC). According to the