

# Rule G-23 Activities of Financial Advisors



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**Summary:** Requires dealers to evidence in writing financial advisory relationships and prohibits dealers from serving as financial advisor and underwriter or placement agent on the same issue.

(a) *Purpose.* The purpose and intent of this rule is to establish ethical standards and disclosure requirements for brokers, dealers, and municipal securities dealers who act as financial advisors to issuers with respect to the issuance of municipal securities.

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(b) *Financial Advisory Relationship.* For purposes of this rule, a financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue. For purposes of this rule, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter and not as a financial advisor, a broker, dealer or municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities.

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(c) *Agreement with Respect to Financial Advisory Relationship.* Each financial advisory relationship shall be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisory relationship (or promptly after the creation or selection of the issuer if the issuer does not exist or has not been determined at the time the relationship commences). Such writing shall set forth the basis of compensation, if any, for the financial advisory services to be rendered, including provisions relating to the deposit of funds with or the utilization of fiduciary or agency services offered by such broker, dealer, or municipal securities dealer or by a person controlling, controlled by, or under common control with such broker, dealer, or municipal securities dealer in connection with the rendering of such financial advisory services and shall be delivered to the issuer.

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(d) *Prohibition on Engaging in Underwriting Activities.*

(i) Subject to provisions of subsections (d)(ii) and (iii), no broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance of municipal securities shall acquire as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or act as agent for the issuer in arranging the placement of such issue.

(ii) Notwithstanding subsection (d)(i), a broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance of municipal securities shall not be prohibited from acting as agent for the issuer in arranging the placement of the entire issue with any state, local or federal governmental entity as part of a plan of financing by such entity for or on behalf of the issuer, but only if such broker, dealer or municipal securities dealer does not receive compensation from any person other than with respect to financial advisory services related to such placement and does not receive compensation from any person for underwriting any contemporaneous financing transaction directly or indirectly related to such issue undertaken by the state, local, or federal governmental entity with which such issue was placed.

(iii) The limitations set forth in this section (d) shall also apply to any broker, dealer, or municipal securities dealer controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer having a financial advisory relationship with respect to the issuance of municipal securities. The use of the term "indirectly" in this section (d) shall not preclude a broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance of municipal securities from purchasing such securities from an underwriter, either for its own trading account or for the account of customers, except to the extent that such purchase is made to contravene the purpose and intent of this rule.

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(e) *Remarketing Activities.* No broker, dealer, or municipal securities dealer that has a financial advisory relationship with an issuer with respect to the issuance of municipal securities shall act as the remarketing agent for such issue; provided, however, that this section shall not prohibit such broker, dealer, or municipal securities dealer from thereafter serving as successor remarketing agent for such issue if the financial advisory relationship in connection with such issue has been terminated for a period of at least one (1) year prior to such broker, dealer, or municipal securities dealer being selected to serve as successor remarketing agent.

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(f) *Applicability of State or Local Law.* Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or local law applicable to the activities of financial advisors.

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