

Customer Affirmation for Commission-Registered Investment Advisers

Rule D-15(c) allows customer affirmation to be provided either orally or in writing. When a customer provides written attestation, they formally document that they have exercised independent judgment, reviewed the trade recommendations, and discussed the associated investment risks with their dealer. This written record can be used during compliance reviews, financial audits, and other oversight processes as evidence supporting the trading activity conducted in the investment portfolio.

Municipalities are required to undergo annual financial audits, and auditors generally prefer written support over oral statements because written documents create a verifiable paper trail. This enhances transparency, provides a durable record, and supports greater accountability—benefits that oral confirmations cannot offer. Written documentation also provides assurance to investment committees and aligns with the guiding principles of the Public Funds Investment Act.

Allowing oral confirmation introduces additional risks, including the possibility that a trade may not meet required standards or established best practices. It may also place a greater burden on the entity to demonstrate to management and auditors that the trade complies with the organization's investment policy.

Threshold for SMMP Qualification for Municipal Entity Customers

Under Rule D-15(a), no distinction is made regarding whether the \$50 million asset threshold is based solely on governmental activities or includes business-type activities. Many municipalities would not meet the \$50 million threshold when considering only their governmental activity assets; however, when business-type activities are included, they may easily surpass this reduced threshold. While this may satisfy the literal guideline, it does not necessarily meet the underlying intent of determining whether a municipality qualifies as a sophisticated municipal market professional (SMMP).

Another relevant consideration is the number of municipalities across the United States experiencing rapid growth and significant annual infrastructure demands. These needs are often financed through increased debt issuance. As of October 2025, Electronic Municipal Market Access ("EMMA") reports 9,826 new municipal issuances for the year, with an average issue size of \$53.4 million. Although these figures exceed the \$50 million asset threshold, they do not inherently align with the spirit or purpose of the SMMP designation.

Moreover, introducing alternative standards or imposing additional criteria on dealers acknowledges that such requirements generate added compliance and operational costs. These costs would ultimately be passed on to municipal clients, thereby increasing the financial burden on the very entities the rule is intended to serve.