



**COMPLIANCE ROUNDTABLE  
JUNE 20-21, 2019**

**MINNEAPOLIS**





**AGENDA**  
**Compliance Roundtable: June 20-21, 2019**  
**Minneapolis, MN: RBC Building 60 South Sixth Street, Conference Room B**

THURSDAY, June 20

|                    |   |   |
|--------------------|---|---|
| <b>1:00 – 1:15</b> | <b>Introductions</b>  | <b>David Holleran</b>                         |
| <b>1:15 – 2:00</b> | <b>MA and Principals Examinations and Registration</b> <ul style="list-style-type: none"><li>• General discussion on the Series 54 Pilot Exam</li><li>• Who needs to take the Series 54 exam</li><li>• Who needs to take the Series 50 exam</li></ul> | <b>Erik Dolan</b>                             |
| <b>2:00 – 2:30</b> | <b>Monitoring Employee Electronic Communications</b> <ul style="list-style-type: none"><li>• Policies and procedures</li><li>• Supervisory procedures</li><li>• Recordkeeping</li></ul>   | <b>David Holleran</b><br><b>Maggie Burger</b> |
| <b>2:30 – 3:30</b> | <b>MSRB Rule G-40: Upcoming Implementation</b> <ul style="list-style-type: none"><li>• Content standards</li><li>• Social media</li><li>• Principal approval</li><li>• Policies and procedures</li><li>• Employee education</li></ul>                 | <b>David Holleran</b><br><b>Dave Sanchez</b>  |
| <b>3:30 – 3:45</b> | <b>Break</b>  |   |
| <b>3:45 – 4:00</b> | <b>Refresher: MSRB Rule G-20</b> <ul style="list-style-type: none"><li>• Identifying problematic areas</li><li>• “Entertainment”</li></ul>  | <b>Leo Karwejna</b>                           |
| <b>4:00 – 5:00</b> | <b>G-42</b> <ul style="list-style-type: none"><li>• Conflicts</li><li>• Recommendations and recommendations</li><li>• Recommendations and advice</li><li>• Problematic areas</li><li>• Documentation standards</li></ul>                              | <b>Alicia Tricker</b>                         |
| <b>6:30</b>        | <b>Supper – CityWorks (Dutch Treat), 600 Hennepin Ave.</b><br><a href="http://cityworksrestaurant.com">cityworksrestaurant.com</a>  |   |

FRIDAY, June 21

|                      |   |                       |
|----------------------|---|-----------------------|
| <b>8:30 – 10:00</b>  | <b>Discussion with OCIE’s Robert Miller</b>   | <b>Susan Gaffney</b>  |
| <b>10:00 – 10:15</b> | <b>Break</b>  |                       |
| <b>10:15 – 10:45</b> | <b>MA vs non-MA Services</b>  | <b>Leo Karwejna</b>   |
|                      | <ul style="list-style-type: none"><li>• Considerations when MA firms offer non MA services</li></ul>  |                       |
| <b>10:45 – 11:15</b> | <b>Supervisory Procedures</b>   | <b>Dave Sanchez</b>   |
|                      | <ul style="list-style-type: none"><li>• Supervisory structures in firms</li><li>• Annual Compliance Review</li><li>• Pending concerns</li></ul> |                       |
| <b>11:15 – 12:15</b> | <b>Break Out Sessions</b>   |                       |
|                      | <ul style="list-style-type: none"><li>• Large Firm</li><li>• Small Firm</li></ul>   |                       |
| <b>12:15 – 1:00</b>  | <b>Regulatory Update, NAMA Activities and Exchange of Ideas</b>   | <b>Susan Gaffney</b>  |
| <b>1:00 – 1:30</b>   | <b>Wrap up</b>  | <b>David Holleran</b> |

*Light lunch will be served Thursday.  
Continental breakfast will be served Friday.  
Beverages will be available throughout the event.*

## 2019 NAMA COMPLIANCE ROUNDTABLE ATTENDEES

|                          |   |                                       |
|--------------------------|---|---------------------------------------|
| Kathleen Aho             | Principal                                 | Baker Tilly Municipal Advisors        |
| Nicole Aly               | Compliance Specialist                     | Ehlers Inc.                           |
| Steven Apfelbacher       | Senior Municipal Advisor/President        | Ehlers Inc.                           |
| Heidi Amspaugh           | Director                                  | Baker Tilly Municipal Advisors        |
| Alicia Antonetti-Tricker | Principal                                 | Crowe LLP                             |
| Robert Bendzinski        | President                                 | Bendzinski & Co.                      |
| Maggie Burger            | Senior Vice President                     | Speer Financial, Inc.                 |
| Steven Burke, CFA        | President                                 | MFCI, LLC                             |
| Brian Colton             | Principal                                 | Baker Tilly Municipal Advisors        |
| Christine Crowley        | Municipal Advisor, Vice President         | Fiscal Advisors & Marketing, Inc.     |
| Erik Dolan               | Director                                  | Alaric Compliance Services            |
| Jeff Eaton               | President                                 | Ehlers Inc.                           |
| Marianne Edmonds         | Senior Managing Director                  | PRAG                                  |
| Walter Goldsmith         | Managing Director                         | First Tryon Advisors                  |
| David Holleran           | Chief Compliance Officer                  | Ehlers Inc.                           |
| Leo Karwejna             | CCO                                       | PFM                                   |
| Tim King                 | President                                 | Kings Financial Consulting Inc.       |
| Larry Kleeman            | President                                 | Ranson Financial Group LLC            |
| Richard Malone           | Chief Operating Officer                   | Government Financial Strategies, Inc. |
| Christian Merritt        | Executive Managing Director               | Live Oak Public Finance               |
| Emily Metzler            | Senior Vice President                     | MuniCap                               |
| Anthony Miceli           | Senior Vice President                     | Speer Financial, Inc.                 |
| Shelli Ness              | Director                                  | Baker Tilly Municipal Advisors, LLC   |
| Brian Osowski            | President                                 | AMKO Advisors                         |
| Lori Raineri             | President                                 | Government Financial Strategies, Inc. |
| Mark Squillante          | CCO                                       | Phoenix Advisors, LLC                 |
| Dave Sanchez             | Senior Counsel                            | Norton Rose Fulbright                 |
| Emily Stolp              | Vice President & Chief Compliance Officer | Blue Rose Capital Advisors            |
| Tracy Truchon            | Chief Compliance Officer                  | First Tryon Advisors                  |
| Lindsay Wall             | Managing Director & Partner               | Longhouse Capital Advisors, LLC       |
| Kim Whelan               | Co-President                              | Acacia Financial Group, Inc.          |
| Noreen White             | Co-President                              | Acacia Financial Group, Inc.          |
| Daniel Wiles             | Principal & General Counsel               | Fieldman, Rolapp & Associates, Inc.   |
| Jennifer Wilson          | Managing Director                         | Crowe LLP                             |





## MSRB Series 54: Principals Qualification Examination OVERVIEW (updated March 29)

Municipal Advisors who serve as a Principal in their firm will soon be taking the pilot or permanent Series 54 exam. The exam promotes professional qualification standards to “demonstrate a specified level of competency in the regulatory requirements and application thereof to the firm’s MA activities.”

The information below has been developed to assist Municipal Advisor Firms understand key features of the rulemaking for and the Series 54 exam itself and should not be considered to be all encompassing information about Rule G-3 and the Series 54 exam, nor is this legal advice.

### Who Takes the Exam

Municipal Advisor Principal is defined under MSRB Rule G-3(e)(i), as a “natural person associated with a municipal advisor [firm] who is qualified as a MA representative [having passed the Series 50 exam] and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor [firm] and its associated persons [MA-Is in the firm].” Each firm must have at least one designated principal within their firm.

**MA firms should identify those individuals in their firm who meet these criteria and update their written supervisory procedures (WSP) to reflect this designation. While MA firms may provide employees with various titles within their firm, it is important to clearly differentiate between these internal firm designations and those in the firm that meet the “principal” criteria according to MSRB Rule G-3(e)(i).**

It is also important to note that when a new individual is hired to serve as a principal or the firm elevates a person within their firm to a principal status (“principal” as defined by MSRB), that person has 120 days from the time they begin performing supervisory duties to take the Series 54 exam. Once an individual takes and passes the Series 54 exam, they can maintain that status even if they depart the firm/join a new firm.<sup>1</sup>

### MSRB Series 54 Exam Information

- **\*NEW\*** MSRB Document “Tips for Exam Day”
  - <http://www.msrb.org/Regulated-Entities/Professional-Qualification/~media/A724D503163446AEA11849CE5010B174.ashx>
- MSRB Resource on Series 54 (**this includes updates to the sample questions**) (January 24, 2019)
  - <http://www.msrb.org/Regulated-Entities/Professional-Qualification/Series-54.aspx>
- MSRB Notice/Series 54 Outline (original): **THE SAMPLE QUESTIONS IN THIS DOCUMENT HAVE NOT BEEN UPDATED – MAs SHOULD LOOK TO THE NEW RESOURCE AND THE SAMPLE QUESTIONS THERE TO ASSIST WITH PREPARATION**
  - <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2018-33.ashx??n=1>
- MSRB Notice 2018-30: SEC Approves Amendments to MSRB Rule G-3 to Establish a Municipal Advisor Principal Qualification Examination
  - <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2018-30.ashx??n=1>
- MSRB Rule G-3: [MSRB Rule G-3](#)
- MSRB On Demand Webinar on Preparing to Take the Series 54 Pilot Exam
  - <http://www.msrb.org/Regulated-Entities/Webinars.aspx>

## **Important Testing Dates**

- ~~Pilot Registration Period: March 4 – 15~~
- FINRA Exam Registration Page: <http://www.finra.org/industry/enroll-series-exam>
- FINRA Exam Registration FAQ: <http://www.finra.org/industry/tess-faq>
- Pilot Exam Period: 120 days following registration for pilot exam (March – July)
- Permanent Exam Period: Fall 2019 – Fall 2020 (exact dates to be determined)

## **Preparing for the Exam**

NAMA is aware of two test preparation companies that will develop Series 54 materials. These include:

Solomon Exam Prep <https://solomonexamprep.com/pages/series54news>  
STC <https://www.stcusa.com/securities/licensing/us/series-54/>

Municipal advisors may also wish to review:

- The MSRB Rulebook - <http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx>
- Your firm’s compliance manual/WSP/policies and procedures
- NAMA On Demand Webinars on various MSRB rules - <https://nama2.memberclicks.net/nama-webinars>
- NAMA Compliance Resources on various MSRB rules - <https://nama2.memberclicks.net/nama-compliance-resources>
- MSRB On Demand Webinars on various MSRB Rules - <http://www.msrb.org/Regulated-Entities/Webinars.aspx>

## **Pilot vs Permanent Exam**

The MSRB is offering a pilot exam for a short time to identify the passing score for the permanent Series 54 exam. Individuals who take and pass the pilot exam, will not need to take the permanent Series 54 exam.<sup>ii</sup> The permanent exam will be in place starting in the Fall of 2019. The permanent Series 54 exam will continually be enhanced over time to include new MSRB rules as they become effective.

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<sup>i</sup> If a Series 54 holder is not associated with a firm for more than 2 years, they must retake the exam. See MSRB Notice 2018-30

<sup>ii</sup> See [MSRB Notice 2018-30](#)



**MSRB Rule G-3**  
**Municipal Advisor Representative Definition**  
**Municipal Advisor Principal Definition**

(d) *Municipal Advisor Representative*

(i) Definition.

(A) The term "municipal advisor representative" means a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions.

(ii) Qualification Requirements.

(A) Every municipal advisor representative shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative. The passing grade shall be determined by the Board.

(B) Any person who ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph (d)(ii)(A) shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless a waiver is granted pursuant to subparagraph (h)(ii) of this rule.

(e) *Municipal Advisor Principal*

(i) Definition. The term "municipal advisor principal" means a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

(ii) Qualification Requirements.

(A) To become qualified as a municipal advisor principal a person must:

(1) As a pre-requisite take and pass the Municipal Advisor Representative Qualification Examination; and

(2) Take and pass the Municipal Advisor Principal Qualification Examination.

The passing score shall be determined by the Board.

(B) Any person qualified as a municipal advisor principal who ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor principal in accordance with subparagraph (e)(ii)(A) shall take and pass the Municipal Advisor Representative Qualification Examination and the Municipal Advisor Principal Qualification Examination prior to being qualified as a municipal advisor principal, unless a waiver is granted pursuant to subparagraph (h)(ii) of this rule.

(C) For the first 120 calendar days after becoming a municipal advisor principal, the requirements of subparagraph (e)(ii)(A)(2) shall not apply to any person who is qualified as a municipal advisor representative, *provided, however*, that such person shall take and pass the Municipal Advisor Principal Qualification Examination within that period.

(iii) Numerical Requirements. Every municipal advisor shall have at least one municipal advisor principal.





## Rule G-40 Overview and Compliance Considerations

### MSRB RULE G-40 BECOMES EFFECTIVE ON AUGUST 23, 2019

This resource provides information about some of the key provisions of Rule G-40, and raises issues that firms may wish to consider as they develop and implement policies and procedures to comply with Rule G-40. This document is not to be considered legal advice.

It is important for municipal advisors to understand the full reach of Rule G-40 which impacts communications that one may not identify as traditional advertisements.

**Municipal advisors should review Rule G-40 and other MSRB FAQs and materials for Rule G-40 (links in Resource section), and consult counsel or their compliance professionals about the integration of Rule G-40 into your firm's policies and practices.**

**Municipal advisors should also be aware that the presentation of information, recordkeeping and other compliance duties related to MA communications (whether advertisements or not) – including those within social media platforms – are governed by other MSRB Rules including G-8&9 (recordkeeping), G-17 (fair dealing), and G-44 (supervisory procedures).**

### Rule Framework

Under Rule G-40, advertisements refer to certain materials (as described in the Rule) concerning the services of the municipal advisor or the engagement of a municipal advisory client.

Advertisements include any firm generated electronic or other public media, written or electronic promotional literature available to the general public, municipal entities, and municipal advisory clients. This includes any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press releases, firm website content, and social media postings concerning the services of the municipal advisor or the engagement of a municipal advisory client.

Rule G-40 is in place to ensure that advertisements used by municipal advisors are based on the principles of fair dealing and good faith. Advertisements must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular municipal security or type of security, municipal financial product, industry or service. No MA may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the advertisements to be misleading.

## Rule Parameters

There are multiple factors that need to be considered to determine if a communication by an MA firm is advertising subject to Rule G-40 and, if it is advertising, whether it is permissible advertising. Some of the key highlights of the Rule include:

- Does NOT apply, in most cases, to POS, OS, preliminary prospectus, prospectuses.
- Does NOT apply to RFP responses, generally, or pitch books even if a firm uses standard materials in multiple RFP responses and those responses are distributed to multiple individuals within an entity.
- Does NOT apply to normal advisory communications with a client.
- Does NOT apply to “Tombstone” advertisements when the facts of the issuance are stated.
- Does apply to published material that is distributed to more than 25 people within a 90-day period. The 25 person limit is determined at the entity level and not at the individual person level. Also, this applies to publicly available information including information on publicly available Firm websites even if not accessed by anyone.
- A Municipal Advisor Principal (as designated by your firm and Series 50 and 54 (when applicable) qualified) must pre-approve, in writing, all advertisements.
- Statements made in advertisements need to be substantiated. Without that, the advertisement would not be permissible.
- Client lists may be used as long as the list is accurate and not misleading (as noted in Rule G-40 (a)(iv)), and may not include any testimonial or endorsement. Firms should be careful not to create a false or misleading impression (including exaggeration). The client list used should specify what the list demonstrates (e.g., all clients, clients within a time frame, clients of a certain type, clients within a geographic region) and the include the source from which the list is derived.
- Case studies may be presented within the guidelines of the Rule G-40(a)(iv) and be accurate and not misleading. The case studies must not include any testimonial type statement nor should the case study make statements that imply the MA was involved in matters where they were not.
- Firm may indicate registration with the MSRB and SEC but may not make any statement that implies that the MSRB nor the SEC is making a statement about your firm and professional skills and services.
- Presentations given at conferences which may include information about the MA firm and services would be considered advertisement. Third party content that includes testimonials or information about the MA firm would also need to be reviewed as possible advertising content.
- Sections of a Firm’s website that may be password protected or available only to clients may fall into the parameters of the Rule, if more than 25 entities can access that section of the website.
- Rule G-40 would apply to third party content shared by an MA if the MA was involved in the preparation of that content or implicitly or explicitly endorsed the content such as by stating “check out this great article out the XYZ School District about their successful bond sale.” Any such content subject to G-40 would be subject to approval by a Municipal Advisor Principal and may not contain prohibited content such as “testimonials.”
- A firm is not responsible for a third party’s postings on the Firm’s social media platforms if the Firm did not generate the content and does not comment or “like” the posting as that would show “entanglement or adoption” of the content which make such content subject to Rule G-40.
- Advertisements include content or postings about the firm’s advisory services or the engagement of firm clients on an individual MA’s personal social media account.

## **Compliance Considerations**

MA firms should address all aspects of the Rule in relations to their firm’s operations and policies and procedures. Key items that firms should consider in order to comply with the Rule include:

- Gain clear understanding of the parameters of advertising under Rule G-40 and its impact on firm materials (newsletters, promotional materials distributed at conferences, ads in publications such as state GFOA conference materials, firm website).
- Revise Firm WSP to include Rule G-40 responsibilities.
- Have supervisory procedures in place to monitor firm policies related to Rule G-40 compliance.
- Educate employees on new G-40 requirements, including marketing and administrative staff who may be responsible for disseminating information.
- Establish process for written approval by Municipal Advisor Principal of Firm’s outstanding “advertisements” including web pages on firm website that prior to the effective date of Rule G-40.
- Establish process for pre-approval by Municipal Advisor Principal of future advertisements, including recordkeeping of the approvals.
- Review and possibly revise current publications and materials and firm website to determine if these documents meet the ‘advertising’ threshold and are in line with permitted advertisements (e.g., do not contain testimonials, promissory or misleading statements, predict or project performance, untrue statements) under Rule G-40.
- Review and possibly revise criteria for content presented within firm social media accounts.
- Review and possible revise criteria for employee use of social media accounts that intersect with professional duties (e.g., LinkedIn). For instance, a firm may wish to adopt a policy that states that no employees may discuss, post, or engage in MA business through any firm or personal electronic or social media platforms or have static information (such as a LinkedIn profile) unless approved by a Municipal Advisor Principal prior to use.
- If using case studies ensure, that they are written in a manner that is allowable under Rule G-40.
- If citing a ranking of the firm (e.g., HUSKER Advisors is a top 3 MA firm in Nebraska), it may be advisable for the source of the information to be cited in the advertisement because ads must provide a sound basis for evaluating the facts included in them and not make any misrepresentations. Firm should keep a copy of original source as part of its recordkeeping duties.
- Check documentation and website for links to external materials or third party information that may be subject to Rule G-40, including material or information prohibited by Rule G-40.
- If firm has other business segments that are regulated outside of municipal advisor rules (e.g., Investment Advisers, Broker-Dealers), then the firm should have processes in place to ensure that the Firm complies with the necessary rules of various regulators, especially when an advertisement might include information on two services (e.g., MA and IA).
- If firm has other business segments that are not subject to similar advertising rules (e.g., advice regarding municipal government operations), then the firm should have processes in place to ensure that any joint marketing materials (including the firm website) are being properly reviewed for Rule G-40 compliance.

## **Resources**

MSRB Rule G-40

MSRB FAQ: Use of Social Media Under MSRB Advertising Rule

MSRB FAQ: Use of Municipal Advisory Client Lists and Case Studies

MSRB FAQ: Application of the G-40 Content Standards to Advertisements by Municipal Advisors



## Topics for G-20 Resource

Understanding the \$100 annual gift limit

- Who are Recipients

- Who are Providers

Exclusions to gift giving limit

- Normal business dealings/"entertainment"

- Transaction commemorative gifts

- De minimis gifts

- Promotional gifts

- Bereavement gifts

- Personal gifts

Conflict of interest and gifts

- Professional and client

- Professional to professional

Firm practices and policies

- Valuating gifts and exclusions

- Pre-approval of both gifts and exclusions

- Tracking

- Supervising

State law application







**THE ITEMS BELOW SERVE AS AN OUTLINE OF THE NON-EXHAUSTIVE LIST OF CONSIDERATIONS RELATED TO MSRB RULES G-42, DUTIES OF MUNICIPAL ADVISORS, AND G-44, COMPLIANCE OBLIGATIONS, THAT MAs AND MA FIRMS SHOULD CONSIDER WHEN DEVELOPING THEIR OWN POLICIES, PROCEDURES AND PRACTICES. MAs ARE ENCOURAGED TO REVIEW THE FULL RULEMAKING AND CONSULT COUNSEL IN THEIR MISSION TO DEVELOP ROBUST POLICIES AND PROCEDURES.**

**THIS DOCUMENT SHOULD NOT BE VIEWED AS A SAFE HARBOR FOR COMPLIANCE OR PRACTICE PURPOSES.**

### **Fiduciary Duty**

MAs have a fiduciary duty to their client, and in most cases that entails meeting two standards – the duty of care and the duty of loyalty. However, it is important to note that when an MA is advising an obligated person, only the duty of care standard must be met.

A duty of care means that the MA has the responsibility to possess the requisite knowledge and conduct appropriate research to provide informed advice and make suitability determinations for recommendations to their clients.

A duty of loyalty means that the MA must act with utmost good faith and put their clients’ interests ahead of their own.

The fiduciary duty standard is the key element in an MA’s relationship with their client, and must be present in all dealings with the client. Key items to consider related to fiduciary duty include:

- Be informed about the client and have the qualifications necessary to perform requested services
- Exercise independent judgment
- MA advice and input should be based on the best interests of your client. When solicited to assist the issuer with hiring other finance professionals, ensure that your recommendations are unbiased and grounded on the qualifications and cost of the professional, and the needs of your client, and given without any prohibited or undisclosed conflict
- Avoid self-dealing transactions
- Provide full and fair disclosures of material facts and potential or actual conflicts of interest, and where applicable mitigation of those conflicts (see section below)
- Key areas where Fiduciary Duty Comes Into Play:
  - Interaction and engagement with client
  - Marketing materials and RFP responses
  - Review of correspondence with clients (including emails)
  - Agreements with interested third parties (e.g. solicitations)
  - Transactions listing for at least the prior two years
  - MA memos documenting advice
- Other items to address the additional and unique circumstances and responsibilities of your client and practice

## **Know Your Client**

The MA must be able to meet the “know your client” standard. Documentation should be produced in order to provide evidence of meeting these requirements upon request of SEC examiners. Key responsibilities include:

- MA must use reasonable diligence, in regard to:
  - the maintenance of the municipal advisory relationship,
  - knowing and retaining the essential facts concerning the client, and
  - the authority of each person acting on behalf of such client.
- The facts “essential” to “knowing a client” include those required to:
  - effectively service the municipal advisory relationship with the client;
  - act in accordance with any special directions from the client;
  - understand the authority of each person acting on behalf of the client; and
  - comply with applicable laws, regulations and rules
- Other items to address the additional and unique circumstances and responsibilities of your client and practice.

## **Conflicts of Interest**

The MA must provide full and fair disclosures of material facts and potential or actual conflicts of interest, and where applicable mitigation of those conflicts to the municipal issuer prior to, upon, or promptly after the establishment of the MA relationship, in writing. Considerations include:

- Conflicts, in general, include:
  - Conflicts arising from financial arrangements or relationships with third parties that may affect the advice provided to the client
  - Other information relevant to a client’s assessment of the municipal advisor’s integrity, such as legal or disciplinary actions against the municipal advisor
- Disclosure of how MAs will avoid or mitigate a conflict of interest is also part of the disclosure of conflicts of interest. Some options include:
  - taking no action;
  - enquiring as to whether all affected parties will consent;
  - seeking a formal exemption to allow participation (if such a legal power applies);
  - imposing additional oversight or review;
  - withdrawing from discussing or voting on a particular item of business;
  - exclusion from a committee or working group dealing with the issue;
  - re-assigning certain tasks or duties to another person;
  - agreement or direction not to do something;
  - withholding certain confidential information, or placing restrictions on access to information;
  - transferring the individual (temporarily or permanently) to another position or project;
  - relinquishing any private interest; or
  - resignation or dismissal from one or other position or entity.
- Other items to address the additional and unique circumstances and responsibilities of your client and practice.

## **Contract With Client**

When beginning a municipal advisory relationship with an issuer client, municipal advisors must put into writing the details of the relationship, including compensation structure, scope of activities, required disclosures and any means for terminating the relationship. Key factors to consider, include:

- Documentation can take the form of a contract, engagement letter or other disclosure.
- For those involved with a client on the effective date of MSRB Rule G-42, June 26, 2016, the MA must provide a contract and conflicts of interest documentation to the issuer client at that time, and abide by all provisions of the Rulemaking, even if the MA started working with the client before June 26, 2016.
- What MUST be included in writing:
  - Scope of MA services being provided. It is important to be clear on the tasks where the MA is primary responsibility for and those for which the MA has been asked to assist the client.
  - Form and basis of direct or indirect compensation
    - A statement of the form of fee sufficient if specific dollar amount not included
  - Disclosure of all MA conflicts of interest
  - Description of any MA legal and disciplinary events
    - Information included on Forms MA and MA-I
    - Must let client know where the Forms can be accessed electronically (SEC Edgar website link)
  - Date of MA's last material change or addition to legal/disciplinary events
  - Date, triggering event, or means for termination of the relationship
  - Terms relating to withdrawal from the relationship
- Other items to address the additional and unique circumstances and responsibilities of your client and practice.
- OF NOTE: Amendments and material changes trigger revisions, during the time of the contract, that will require additional documentation internally, and with the client.

## **Suitability Standards**

If a Municipal Advisor recommends a municipal securities transaction, or is asked by the client to review a recommendation of a third party, the representative must use reasonable diligence to determine whether the transaction is suitable for the client. Documentation should be produced in order to provide evidence of meeting these requirements upon request of SEC examiners.

- Key suitability factors include:
  - Requires MA to “know your client” and consider a variety of factors such as the client’s risk tolerance, financial situation and experience with municipal securities transactions or municipal financial products
  - MA must inform the client about the risks, potential benefits, structure and other characteristics of the transaction or product
  - MA must disclose the basis for reasonably believing that the transaction or product is, or is not, suitable for the client, as well as whether the municipal advisor investigated other reasonably feasible alternatives to the recommended transaction
- A determination of whether a municipal securities transaction (or municipal financial product) is suitable must be based on certain factors:
  - The client’s financial situation and needs, objectives, tax status, risk tolerance, liquidity needs
  - Experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended

## **Suitability Standards, continued**

- Financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding
- Any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry

## **Recordkeeping**

New recordkeeping requirements must be in place to comply with Rule G-42, G-44 and other MSRB rulemaking. While all aspects of Rule G-42 may not require written documentation within the Rule (e.g., due diligence on know your client and suitability requirements), it is expected that such documentation will be requested by SEC officials in an examination. NAMA recommends developing documentation standards for all facets of your municipal advisory business and recommendations to clients.

- You must evaluate whether you have created and maintained sufficient books and records to document MA activities and SEC/MSRB administrative requirements:
  - *Exchange Act* Rule 15Ba1-8 (The MA Rule) set forth requirements for registration documentation, accounting documentation, and advice shared with clients
- Documentation requirements:
  - MSRB Rules G-8, G-9, and G-44 require that MAs maintain adequate documentation to evidence that MA follows relevant requirements (ex. gifts provided, political contributions, disclosures, supervisory oversight)
  - MAs should address electronic storage of documents, including off-site/cloud based storage of emails and documents that can be accessed easily.

## **Prohibitions**

There are numerous practices that are prohibited under Rule G-42. These include:

- Receiving “excessive” compensation
- Making payments in order to obtain or retain an engagement to provide MA services
- Fee splitting arrangements with underwriters
- Engaging in certain principal transactions with municipal entity clients

## **Resources**

- MSRB MUNICIPAL ADVISOR page - <http://msrb.org/Regulated-Entities/Municipal-Advisor-News.aspx>
- MSRB MAs: Understanding Standards of Conduct - <http://www.msrb.org/msrb1/pdfs/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>
- MSRB Rule G-42 Notice - <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2016-03.ashx?la=en>
- SEC Office of Compliance Examinations and Inspections 2014 letter regarding MA examination initiative - <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542678782>
- All MSRB Rulemaking - <http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx>
- SEC, Municipal Securities page – <https://www.sec.gov/municipal>



## DISCUSSION DOCUMENT – G-42 CHECKLIST

THE ITEMS BELOW SERVE AS AN OUTLINE OF THE NON-EXHAUSTIVE LIST OF DOCUMENTATION AND ADVISORY CONSIDERATIONS RELATED TO MSRB RULES G-42, DUTIES OF MUNICIPAL ADVISORS, AND G-44, COMPLIANCE OBLIGATIONS, THAT MAs AND MA FIRMS SHOULD CONSIDER WHEN DEVELOPING THEIR OWN POLICIES, PROCEDURES AND PRACTICES AND RECORDKEEPING STANDARDS. MAs ARE ENCOURAGED TO REVIEW THE FULL RULEMAKING AND CONSULT COUNSEL IN THEIR MISSION TO DEVELOP ROBUST POLICIES AND PROCEDURES.

THIS DOCUMENT SHOULD NOT BE VIEWED AS A SAFE HARBOR FOR COMPLIANCE OR PRACTICE PURPOSES.

**Client:**

**Date of Engagement:**

**FIRM Person Completing Form:**

**Type of Client:** [Obligated Person/Municipal Entity]

**Type of Engagement:**

**Describe Scope of Engagement:** [should tie to Engagement Letter]

### Review and Documentation

The following pages include various topics listed in Rule G-42 or its supplementary information. The purpose of these questions is to reasonably ensure compliance with Rule G-42 and to provide or reference additional documentation as appropriate. Each section indicates the type of answer that does and does not require additional documentation. Any questions should be directed to the Supervisor and if necessary the Chief Compliance Officer.

**A. Identification of Potential Material Conflicts of Interest after reasonable diligence by FIRM**

Any YES answers require additional explanation below.

| Question/Issue  | YES/NO |
|---|--------|
| 1. Does <b>FIRM</b> have any affiliate that provides any advice, service, or product to or on behalf of the Client that is directly related to the municipal advisory activities to be performed by <b>FIRM</b> ?   |        |
| 2. Has <b>FIRM</b> made any payments directly or indirectly to obtain or retain an engagement to perform municipal advisory activities for the Client?  |        |
| 3. Has <b>FIRM</b> received any payments from a third party to enlist <b>FIRM</b> 's recommendation to the Client of its services, any municipal securities transaction or any municipal financial product?   |        |
| 4. Are there any fee-splitting arrangements involving <b>FIRM</b> and any provider of investments or services to the Client?  |        |
| 5. Are there any conflicts of interest arising from compensation for municipal advisory activities to be performed that is <u>contingent on the size or closing</u> of any transaction as to which the municipal advisor is providing advice?   |        |
| 6. Are there any other actual or potential conflicts of interest, of which <b>FIRM</b> is aware after reasonable inquiry, that could reasonably be anticipated to impair <b>FIRM</b> 's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of MSRB Rule G-42(a) [for Obligated Person Client, duty of care; for Municipal Entity Client, fiduciary duty that includes duty of loyalty and duty of care]? |        |

Provide an explanation for any questions answered YES:

**B. Required Disclosure to Client**

Any NO answers require additional explanation below.

| Question/Issue   | YES/NO |
|--|--------|
| 1. Was the Client provided written disclosure of any material conflicts identified above or the lack of any such conflicts prior to or upon engagement? If there are any conflicts identified, such disclosures must be sufficiently detailed to inform the Client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how <b>FIRM</b> addresses or intends to manage or mitigate each conflict. |        |

| Question/Issue   | YES/NO |
|--|--------|
| 2. Was the Client provided with information regarding any legal or disciplinary event that is material to the Client’s evaluation of <b>FIRM</b> or the integrity of its management or advisory personnel? This may be done by identification of the specific type of event and specific reference to the relevant portions of <b>FIRM</b> ’s most recent Forms MA or MA-1 filed with the SEC if <b>FIRM</b> has provided detailed information specifying where the Client may electronically access such forms. |        |
| 3. Is copy of required disclosure in Client electronic file? File Name: _____<br>Date of written disclosure: _____   |        |

Provide an explanation for any NO answer:

### C. Engagement Letter

Any NO answers require additional explanation below.

All **FIRM** engagement letters should include the required information listed here. This list serves as a cross-check for compliance purposes. If for some reason the answer is No, provide additional explanation and documentation, and review with Supervisor and Chief Compliance Officer if necessary.

| Question/Issue  | YES/NO |
|---|--------|
| Was the Client provided with dated writing or writings prior to, upon or promptly after the establishment of the municipal advisory relationship? Did the writing or writings include all of the following:   |        |
| 1. The form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed?  |        |
| 2. The information required to be disclosed related to material conflicts (or lack thereof) or legal or disciplinary proceedings? (note if included in a separate document – must be dated --other than the engagement letter and provide date of that separate document)   |        |
| 3. A description of the specific type of information regarding legal and disciplinary events requested by the SEC on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access <b>FIRM</b> ’s most recent Form MA and each most recent Form MA-I filed with the SEC? |        |

| Question/Issue   | YES/NO |
|--|--------|
| 4. The date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-1 filed with the SEC by <b>FIRM</b> and a brief explanation of the basis for the materiality of the change or addition? |        |
| 5. The scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement?  |        |
| 6. The date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none?   |        |
| 7. Any terms relating to withdrawal from the municipal advisory relationship?  |        |
| 8. Is copy of Engagement Letter in Client electronic file? File name: _____<br>Date: _____   |        |

Provide an explanation for any NO answers:

**D. Material Changes or Additions to the Client Relationship**

Any YES answers to Questions 1 or 2, and any NO answer to Question 3 require additional explanation below.

| Question/Issue   | YES/NO |
|--|--------|
| 1. Were there material changes or additions to the client relationship (this includes any changes or additions that are discovered based on the exercise of reasonable diligence by <b>FIRM</b> )? |        |
| 2. If so, was the Engagement Letter promptly amended or supplemented to reflect any material changes or additions and promptly delivered to the client?  |        |
| 3. If so, is a copy of the amended Engagement Letter or supplement in the Client electronic file? File name: _____ Date or dates of amendments or supplements: _____                               |        |

Provide an explanation for any YES answers to Questions 1 and 2, and any NO answer to Question 3:



**E. Knowing the Client**

Any YES or NO answers require additional explanation below.

| Question/Issue   | YES/NO |
|--|--------|
| 1. Did <b>FIRM</b> use reasonable diligence to know and retain the essential facts concerning the client and the authority of each person acting on behalf of such client? These facts include those required to (a) effectively service the municipal advisory relationship with the client, (b) act in accordance with any special directions from the client, (c) understand the authority of each person acting on behalf of the client, and (d) comply with applicable laws, regulations and rules. |        |
| 2. Did <b>FIRM</b> rely on counsel for authority? If so, who was counsel?  |        |
| 3. Did <b>FIRM</b> review applicable laws, articles, by-laws and board vote(s)?  |        |
| 4. Does client have a debt and/or swap policy?   |        |
| 5. Did <b>FIRM</b> review other material debt management policies of the client?   |        |
| 6. If so, were they reviewed by <b>FIRM</b> ?  |        |

Provide an explanation for any YES and NO answers, including dates of when diligence was conducted:

**F. Recommendations and Review of Recommendations of Other Parties**

Any YES or NO answers require additional explanation below.

| Question/Issue   | YES/NO |
|--|--------|
| 1. Did <b>FIRM</b> make a recommendation of a municipal securities transaction or municipal financial product to the client?   |        |
| 2. Did it have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client based on the information obtained through the reasonable diligence of <b>FIRM</b> ? (see below) |        |
| 3. Did <b>FIRM</b> review the recommendation of another party for the client?  |        |
| 4. If so, did <b>FIRM</b> determine, based on the information obtained through the reasonable diligence of <b>FIRM</b> , whether the municipal securities transaction or municipal financial product is or is not suitable for the client?                   |        |
| 5. Does the Client electronic file contain any memos or presentations or other writings that show any recommendations made to the client? File name: _____<br>Date(s): _____   |        |

Provide an explanation for any YES and NO answers:

*Note: A determination of suitability must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client’s financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by **FIRM** about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.*

Indicate YES or NO regarding extent of inquiry:

| Question/Issue   | YES/NO |
|--|--------|
| 1. Reviewed audited financials?  |        |
| 2. Reviewed unaudited financial statements?  |        |
| 3. Reviewed draft official statement or credit memo?   |        |
| 4. Reviewed credit rating report(s)?   |        |
| 5. Reviewed existing debt documents?   |        |
| 6. Reviewed swap documents?  |        |
| 7. Other material documents?   |        |
| 8. Discussion with client regarding financial situation and needs, objectives, risk tolerance, liquidity needs, experience and financial capacity to withstand changes in market conditions. |        |
| 9. Are the items you answered YES to in Questions 1-7, and notes on discussions with Client in the Client electronic file? File name: _____  |        |

Provide explanation or elaboration of extent of inquiry as needed, including date(s) of inquiries:

Did **FIRM** inform the client of each of the following:

| Question/Issue  | YES/NO |
|---|--------|
| 1. <b>FIRM</b> 's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product?  |        |
| 2. The basis upon which <b>FIRM</b> reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client? |        |
| 3. Whether <b>FIRM</b> has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives?         |        |
| 4. Were presentations or memos or other writings prepared for the Client?   |        |
| 5. If so, are they in the electronic client file? File name: _____ Date(s): _____   |        |
| 6. If done via conversation with client, are the notes contained in the electronic client file? Date(s): _____  |        |

Provide explanation as needed:

### G. Documentation of Duty of Care

Any YES or NO answers may require additional explanation below.

| Question/Issue  | YES/NO |
|---|--------|
| 1. Did <b>FIRM</b> possess the degree of knowledge and expertise needed to provide the Client with informed advice?   |        |
| 2. Did <b>FIRM</b> make a reasonable inquiry as to the facts that are relevant to the Client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client?   |        |
| 3. Did <b>FIRM</b> undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information?   |        |
| 4. Did <b>FIRM</b> have a reasonable basis for any advice provided to the Client?   |        |
| 5. Did <b>FIRM</b> have a reasonable basis for any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or |        |

| Question/Issue   | YES/NO |
|--|--------|
| investors in the municipal entity client's securities or securities secured by payments from an obligated person client?   |        |
| 6. Did <b>FIRM</b> have a reasonable basis for any information provided to the Client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which <b>FIRM</b> is advising? |        |

Provide explanation as needed, including dates and extent of inquiries:

**H. Documentation of Duty of Loyalty** (applicable for Municipal Entity Clients)

A NO answer requires additional explanation below.

| Question/Issue   | YES/NO |
|--|--------|
| 1. Did <b>FIRM</b> deal honestly and with the utmost good faith with the municipal entity client and act in the client's best interests without regarding to the financial or other interests of <b>FIRM</b> ? |        |

Provide an explanation for a NO answer:

**I. Specific Prohibitions**

Any YES answers require additional explanation below.

Did **FIRM**:

| Question/Issue  | YES/NO |
|---|--------|
| 1. Receive compensation that is excessive in relation to the municipal advisory activities actually performed? Factors to take into consideration: <b>FIRM</b> 's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and |        |

| Question/Issue  | YES/NO |
|---|--------|
| whether <b>FIRM</b> is paying any other relevant costs related to the municipal securities transaction or municipal financial product.  |        |
| 2. Deliver an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities?  |        |
| 3. Make any representation or the submission of any information that <b>FIRM</b> knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of <b>FIRM</b> , in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities?  |        |
| 4. Make, or participate in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of <b>FIRM</b> ?  |        |
| 5. Make payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of <b>FIRM</b> for a direct or indirect communication with a municipal entity or obligated person on behalf of <b>FIRM</b> where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the SEC and the MSRB for making such a communication as described in subparagraph (1); and (3) payments that are permissible “normal business dealings” as described in Rule G-20? |        |

Provide an explanation for any YES answers:

**J. Only applicable if the client is a Municipal Entity:**

Any YES answers require additional explanation below.

| Question/Issue   | YES/NO |
|--|--------|
| 1. Did <b>FIRM</b> or any affiliate of <b>FIRM</b> engage with the Municipal Entity client in a principal transaction that is the same, or directly related to the, issue of municipal securities or municipal financial product as to which <b>FIRM</b> is providing or has provided advice to the Municipal Entity client? | N/A    |

Provide an explanation for any YES answers:

Definitions – see Rule G-42

**Affiliate of FIRM** – any person directly or indirectly controlling, controlled by, or under common control with **FIRM**

**Principal Transaction** – when acting as principal for one’s own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

#### **RESOURCES**

NAMA Resource: [Developing Policies and Procedures](#)

[MSRB Rule G-42](#)

MSRB [MA Compliance Advisory](#)

*Many thanks to Linda Port and SJ Advisories for sharing these discussion items with NAMA.*

## INTRODUCTION

In 2019, OCIE will prioritize certain practices, products, and services that it believes present potentially heightened risk to investors or the integrity of the U.S. capital markets. Designed to support the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation, the six themes for OCIE's 2019 Examination Priorities, which include perennial risk areas and developing products and services, are:

1. Matters of importance to retail investors, including seniors and those saving for retirement;
2. Compliance and risk in registrants responsible for critical market infrastructure;
3. Select areas and programs of FINRA and MSRB;
4. Digital Assets;<sup>1</sup>
5. Cybersecurity; and
6. Anti-Money Laundering.

### DID YOU KNOW?

In FY 2018, OCIE achieved examination coverage of approximately 17 percent of registered investment advisers, up from 9 percent just five years ago.

These priorities are not exhaustive and will not be the only issues OCIE addresses in its examinations, risk alerts, and investor and industry outreach. While the priorities drive many of OCIE's examinations, the scope of any examination is determined through a risk-based approach that includes analysis of the registrant's operations, products offered, and other factors. This risk-based approach often results in examinations that address key aspects of the SEC's regulatory oversight, such as the disclosure of services, fees, expenses, conflicts of interest for investment advisers, and trading and execution quality issues for broker-dealers.

OCIE's risk-based approach, both in selecting registered entities to examine and determining the scope of risk areas to examine, remains flexible in order to cover emerging and exigent risks to investors and the marketplace as they arise. OCIE is continually evaluating changes in market conditions, industry practices, and investor preferences to assess risks to both investors and the markets.

Although change may be continual, OCIE's analytic efforts and examinations remain firmly grounded in its four pillars: promoting compliance, preventing fraud, identifying and monitoring risk, and informing policy.

<sup>1</sup> Digital Assets include cryptocurrencies, coins, and tokens.

## Mutual Funds and Exchange Traded Funds

Mutual funds and exchange traded funds (ETFs) are the primary investment vehicles for many retail investors. OCIE will continue to prioritize examinations of these funds, the activities of their advisers, and oversight practices of their boards of directors. Examinations will assess industry practices and regulatory compliance in various areas that may have significant impact on retail investors.

OCIE will focus on risks associated with the following: (1) index funds that track custom-built or bespoke indexes; (2) ETFs with little secondary market trading volume and smaller assets under management; (3) funds with higher allocations to certain securitized assets; (4) funds with aberrational underperformance relative to their peer groups; (5) funds managed by advisers that are relatively new to managing Registered Investment Companies (RICs); and (6) advisers that provide advice to both RICs and private funds with similar investment strategies.

## Municipal Advisors

Municipal advisors (MAs) provide advice to, or on behalf of, a municipal entity with respect to the issuance of municipal securities or municipal financial products. OCIE will continue to conduct select examinations of MAs that have never been examined, concentrating on whether these MAs have satisfied their registration requirements and professional qualifications as well as continuing education requirements. OCIE will also prioritize whether MAs provided the appropriate disclosures regarding their conflicts of interests or otherwise violated their fiduciary duty to a municipal entity. Examinations

will also review for compliance with recently-effective MSRB rules, including those relating to advertisements by MAs and the standards of conduct for MAs obtaining CUSIP numbers on behalf of issuers.

## Broker-Dealers Entrusted with Customer Assets

Broker-dealers that hold customer cash and securities must abide by certain rules, including the Customer Protection Rule (Exchange Act Rule 15c3-3), and have a significant responsibility to ensure that those assets are safeguarded and accurately reported. The Customer Protection Rule restricts the use of customer assets and prevents the

broker-dealer from using customer assets as working capital. Examinations of select broker-dealers will focus on compliance with this rule, as well as procedures and controls to promote compliance.

## Microcap Securities

OCIE will continue examinations of broker-dealers involved in selling stocks of companies with a market capitalization of under \$250 million. OCIE will look at a variety of areas, including reviewing for manipulative schemes (i.e., pump and dump schemes), compliance with Regulation SHO, which governs short sales, and compliance with Exchange Act Rule 15c2-11, which governs the submission and publication of quotations by broker-dealers for certain over-the-counter equity securities.

### DID YOU KNOW?

Broker-dealers operate more than 156,000 branch offices, and approximately 10 percent of all broker-dealers are dually registered with the SEC as investment advisers.



## National Association of Municipal Advisors: SNAPSHOT: MA COMPLIANCE REMINDERS

*This document serves as a resource for NAMA members to be reminded of various compliance matters and deadlines. Only basic information is provided in this document and each firm should consult counsel or make their own determinations on how best to proceed with each item. This document should not be solely relied on for compliance purposes nor does it constitute legal advice. All Rule references are MSRB rules unless stated otherwise. (JULY 2018)*

### **Getting Started**

|   |             |
|---|-------------|
| File Form MA with the SEC (must obtain personal identifier to file on EDGAR)                | SEC MA Rule |
| Obtain Consent to Service of Process and File Form MA-I with the SEC for Each Individual MA | SEC MA Rule |
| File Form A-12 with the MSRB  | Rule A-12   |
| Individual MAs Must Pass MSRB Series 50 Exam Before Form MA-I Can Be Filed                  | Rule G-3    |
| Hiring New Employees: Checking Professional Qualifications and Disciplinary Actions         | Rules G-3/5 |
| Identify Firm's Chief Compliance Officer  | Rule G-44   |
| Develop and Implement Firm Written Supervisory Procedures (WSP)                             | Rule G-44   |

### **Engaging with a Potential Client**

|   |           |
|---|-----------|
| Send Conflict of Interest Disclosures to Client | Rule G-42 |
|---|-----------|

### **Securing a New Client**

|   |           |
|---|-----------|
| Written Engagement Letter with Client                     | Rule G-42 |
| Send MA Complaint Filing Disclosure Information to Client | Rule G-10 |

### **Transaction**

|  |                             |
|--|-----------------------------|
| Maintain copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability. Maintain written communications regarding advice with any party and agreements with clients. | SEC MA Rule<br>Rules G-8/42 |
|--|-----------------------------|

### **Quarterly**

|   |           |
|---|-----------|
| Political Contributions and Client List Filing to MSRB (deadlines: 1/30, 4/30, 7/31, 10/31) | Rule G-37 |
|---|-----------|

### **Annual**

|  |             |
|--|-------------|
| Annual Update of SEC Form MA-A (deadline - 90 days after end of Firm's FY)             | SEC MA Rule |
| Annual Needs Assessment, Written Plan and Completion of Continuing Education           | Rule G-3    |
| Send MA Complaint Filing Information to Clients (once per calendar year)               | Rule G-10   |
| Annual Review & Certification of Compliance & Supervisory Procedures (WSP) By Firm CEO | Rule G-44   |
| Payment of MSRB MA Professional Assessments (due April 30) (\$500 each MA as of 1/31)  | Rule A-11   |
| Payment of Annual MA Firm MSRB Registration Fee (due October 30) (\$1000)              | Rule A-12   |
| Confirm Form A-12 via MSRB Gateway (17 business days after Jan 1 of each year)         | Rule A-12   |
| Verify the MSRB list of MAs in Your Firm is Accurate                                   |             |

### **Ongoing**

|   |              |
|---|--------------|
| Amending Form MA as Needed Outside of Annual Update                                   | SEC MA Rule  |
| Amending and Withdrawing Form MA-I as Needed  | SEC MA Rule  |
| Firm Recordkeeping Requirements (per Section 15Ba1-8 in MA Rule)                      | SEC MA Rule  |
| Recordkeeping and Preservation of Records   | Rules G-8/9  |
| Electronic Log of Complaints Received   | Rules G-8/10 |
| Gift and Gratuities Limitations and Recordkeeping (Gift Log)                          | Rules G-8/20 |
| Fair Dealing with Clients   | Rule G-17    |
| Appointment of Principal(s) to Supervise Personnel (Review of Supervisory Procedures) | Rule G-44    |
| Update Form A-12 (within 30 days of information becoming inaccurate)                  | Rule A-12    |





## CEO Annual Certification Model Document

Municipal Advisor Firms have a requirement under MSRB Rule G-44(d) to conduct an annual CEO certification. The certification must be conducted annually based on date of the firm’s first CEO annual certification.

The information below has been developed to assist Municipal Advisor Firms develop their own Annual CEO Certification. This document should not be considered the only resource related to Rule G-44(d) that firms should consult nor is this legal advice.

### ANNUAL CERTIFICATION PURSUANT TO MSRB RULE G-44(d)

The undersigned [Name of Person Signing] is the [title of Office] of [Firm Name] (the “Municipal Advisor”) [which must be a position equivalent to the position of chief executive officer]. As required by MSRB Rule G-44(d), the undersigned make(s) the following certification:

1. The Municipal Advisor has in place processes to:
  - (A) establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules;
  - (B) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and
  - (C) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with MSRB rules and federal securities laws and regulations.
  
2. The undersigned [Title] has/have consulted with the chief compliance officer(s) and other officers as applicable and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in order to attest to the statements made in this certification.

[FIRM NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(After execution of this certificate on an annual basis it needs to be filed and maintained as provided in Municipal Advisor’s policies and procedures related to books and records but does not need to be sent to regulators or any other third party.)





## Considerations for Developing an Annual Compliance Review Matrix

As part of MSRB Rule G-44, a municipal advisory firm must review, no less frequently than annually, the firm’s written supervisory and compliance procedures and policies (“WSP”) according to the procedures identified for such activity within the firm’s WSP and any additional procedures deemed reasonable or necessary.

In order to accomplish the review, the Chief Compliance Officer (“CCO”) may choose to conduct interviews with the firm’s MAs and management team. The CCO may also determine if any updates need to be made to the WSP and/or prepare additional recommendations to the firm’s management about updates to the WSP. Changes or comments on specific firm procedures related to certain rules should be indicated within the matrix.

The information below has been developed to assist Municipal Advisor Firms develop their own annual review of their WSP. The information in the matrix is to be used as considerations for a firm developing its own annual review process. This document should not be considered the only resource related to Rule G-44 that firms use to develop their annual review nor a required resource. This document is not to be considered legal advice.

| Procedure Reviewed   | Testing Procedures, if any, (including frequency which may be annual) | Findings Summary/Conclusions | Recommended Change/Update (Include Responsibility, Action Plan and Target Date, if applicable) | Reviewer & Date of Review (Note if ongoing just denote ongoing and do not include date unless ongoing review was for less than full year) | Review by CCO | Completion Date & Final Actions (Other Comments) |
|--|---|------------------------------|--|---|---------------|--|
| REGISTRATION ISSUES: SEC Form MA compliance (annual and material updates completed)  |   |                              |  |   |               |  |
| REGISTRATION ISSUES. SEC Form MA-I compliance (inaccurate information updated on an ongoing basis)                               |   |                              |  |   |               |  |
| REGISTRATION ISSUES: Review of outside business activities of Firm and affected employees for updating SEC Form MA and Form MA-I |   |                              |  |   |               |  |

| <b>Procedure Reviewed</b>  | <b>Testing Procedures, if any, (including frequency which may be annual)</b> | <b>Findings Summary/Conclusions</b> | <b>Recommended Change/Update (Include Responsibility, Action Plan and Target Date, if applicable)</b> | <b>Reviewer &amp; Date of Review (Note if ongoing just denote ongoing and do not include date unless ongoing review was for less than full year)</b> | <b>Review by CCO</b> | <b>Completion Date &amp; Final Actions (Other Comments)</b> |
|--|--|-------------------------------------|---|--|----------------------|---|
| REGISTRATION ISSUES: Review of process for identifying required changes to SEC Form MA or MA-I   |  |                                     |   |  |                      |   |
| REGISTRATION ISSUES: Review of any services provided by non-advisory personnel to determine if any non-advisory personnel need to be registered at the SEC and the MSRB. |  |                                     |   |  |                      |   |
| REGISTRATION ISSUES. Consents to service of process on file for all employees with SEC MA-I required   |  |                                     |   |  |                      |   |
| REGISTRATION ISSUES (A-12). MSRB registration compliance.  |  |                                     |   |  |                      |   |
| MSRB Rule G-44 (WSP updated to reflect new regulations, business lines or compliance concerns)   |  |                                     |   |  |                      |   |
| MSRB Rule G-44 (MA Principals designated, changed or updated?)   |  |                                     |   |  |                      |   |
| MSRB Rule G-44 (Annual review and CEO certificate process)   |  |                                     |   |  |                      |   |
| MSRB Rule G-44 Recordkeeping: Do you have copies of all WSPs adopted for last five years? Do you have records of annual compliance review and CEO certifications?        |  |                                     |   |  |                      |   |

| <b>Procedure Reviewed</b>  | <b>Testing Procedures, if any, (including frequency which may be annual)</b> | <b>Findings Summary/Conclusions</b> | <b>Recommended Change/Update (Include Responsibility, Action Plan and Target Date, if applicable)</b> | <b>Reviewer &amp; Date of Review (Note if ongoing just denote ongoing and do not include date unless ongoing review was for less than full year)</b> | <b>Review by CCO</b> | <b>Completion Date &amp; Final Actions (Other Comments)</b> |
|--|--|-------------------------------------|---|--|----------------------|---|
| MSRB Rule G-2 and G-3 (Professional Qualification Standards) – Confirm that MA reps have passed Series 50 exam                                       |  |                                     |   |  |                      |   |
| MSRB Rule G-3 (Professional Qualification Standards) – Confirm that MA Principals have passed Series 50 exam and are preparing for Series 54 exam    |  |                                     |   |  |                      |   |
| MSRB Rule G-3 (Continuing Education) Have needs analysis and written training plan been completed annually?  |  |                                     |   |  |                      |   |
| MSRB Rule G-5 (Hiring Practices) Have any employees been banned or otherwise limited from practicing?  |  |                                     |   |  |                      |   |
| MSRB Rule G-10 (Customer Complaints) Confirm initial <b>and annual</b> distribution of brochure notice.  |  |                                     |   |  |                      |   |
| MSRB Rule G-10 (Customer Complaints) Confirm existence of electronic complaint log. Is process for identifying and investigating complaints working? |  |                                     |   |  |                      |   |

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| MSRB Rule G-10<br>(Customer Complaints)<br>Is process for identifying and investigating complaints working?  |  |  |  |  |  |  |
| MSRB Rule G-17.<br>Review of marketing materials for accuracy.   |  |  |  |  |  |  |
| MSRB Rule G-17 and Antifraud<br>Considerations:<br>Process to ensure that disclosure of any MA conflicts in offering document is considered; accuracy of disclosure regarding MA.        |  |  |  |  |  |  |
| MSRB Rule G-20<br>(Gifts and Gratuities)<br>Has firm clearly identified 12 month period for which gifts limits are applicable (calendar, fiscal etc . . ).                               |  |  |  |  |  |  |
| MSRB Rule G-20<br>(Gifts and Gratuities) .)<br>Has gift log been appropriately maintained?   |  |  |  |  |  |  |
| MSRB Rule G-20<br>(Gifts and Gratuities)<br>Are affected employees reporting gifts given and received? Is process and supervisory process for identifying and aggregating gifts working? |  |  |  |  |  |  |
| MSRB Rule G-34<br>(CUSIPs) Firm has identified procedure for obtaining CUSIPs in competitive sales.  |  |  |  |  |  |  |
| MSRB Rule G-34<br>(CUSIPs) Firm has sufficient procedures for recordkeeping related to obtaining CUSIPs in competitive sales.  |  |  |  |  |  |  |



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| MSRB Rule G-37 (Pay-to-Play): Have all quarterly G-37 filings been made in a timely manner to the MSRB?   |  |  |  |  |  |  |
| MSRB Rule G-37 (Pay-to-Play): Is process for soliciting information from employees working? Is firm conducting independent verification of employee reporting?                          |  |  |  |  |  |  |
| MSRB Rule G-37 (Pay-to-Play): Are policies with respect to overall contribution limits in place and working? What about policies with respect to political parties and PACS?            |  |  |  |  |  |  |
| MSRB Rule G-37 (Bond Ballots) Are these contributions being reported? Are there more strict state laws or policies of the firm that are applicable?                                     |  |  |  |  |  |  |
| MSRB Rule G-40 (Advertising): Has firm started process of developing procedures and reviewing advertising materials in advance of August 2019 effective date, including firm's website? |  |  |  |  |  |  |
| MSRB Rule G-40 (Advertising): How will website materials be approved by a Principal? Will firm have designated location for approved advertising materials?                             |  |  |  |  |  |  |

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| MSRB Rule G-40 (Advertising): Is firm aware of social media usage by firm and firm employees that may constitute advertising? If so, have procedures been developed to either prohibit to approve this type of social media usage. See also Books and Records below? |  |  |  |  |  |  |
| MSRB Rule G-42 (Conflict Disclosure and Written Agreements) Are these being created and distributed to clients or potential clients in a timely fashion?   |  |  |  |  |  |  |
| MSRB Rule G-17/42 Identification of Conflicts of Interest. What is firm process for identifying conflicts? Is it working?  |  |  |  |  |  |  |
| MSRB Rule G-17/42 Identification of Conflicts of Interest. Is the firm mitigating conflicts in an appropriate manner?  |  |  |  |  |  |  |
| MSRB Rule G-42 (Prohibited Conflicts) What is firm process for identifying and avoiding prohibited conflicts?  |  |  |  |  |  |  |
| MSRB Rule G-42. Has firm reviewed its standard scope of services? Are there any issues with such services not properly identified or not being performed?  |  |  |  |  |  |  |
| MSRB Rule G-42 (Suitability) Review of firm processes related to suitability.  |  |  |  |  |  |  |

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| MSRB Rule G-42 (G-42 Recommendations)<br>Proper documentation of G-42. Is the firm maintaining documents created that were material to firm's recommendations.  |  |  |  |  |  |  |
| MSRB Rule G-42 (G-42 Recommendations)<br>Proper documentation of G-42. Is the firm maintaining documents related to its recommendations done of other parties work?   |  |  |  |  |  |  |
| MSRB Rule G-42 (Duty of Care) Is the firm or individuals at the firm providing services for which they have sufficient expertise? Does the firm have appropriate policies and procedures to determine sufficient level of expertise |  |  |  |  |  |  |
| Books & Records Generally (Storage Requirements and Email System) Are both physical and electronic records properly backed up? Does email system maintain non-alterable versions of all emails?                                     |  |  |  |  |  |  |
| Books & Records. Has firm considered or adopted policies to prohibit, limit or retain other written communication such as text messages? How are such polices working?  |  |  |  |  |  |  |
| Books & Records Maintenance of Corporate Records: Review corporate record requirements and make sure you have in accessible place.  |  |  |  |  |  |  |

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| Books & Records Maintenance of Financial Records; Review financial record requirements and make sure you have in accessible place. |  |  |  |  |  |  |
| Books & Records Maintenance of Transactions Records (Closed Deal Files; Transaction Summaries)                                     |  |  |  |  |  |  |
| Compliance with Other Internal Policies in WSP. (List separately)  |  |  |  |  |  |  |
| Any new State or local laws applicable to municipal advisor practice?  |  |  |  |  |  |  |
| Other Identified Risks both for the Firm and individual MAs.   |  |  |  |  |  |  |

MSRB Retrospective Rule Review

The MSRB identifies rules each (fiscal) year that would benefit from a retrospective review. This year the MSRB has updated Rule G-29 and eliminated the requirement that underwriter firms maintain a copy of the MSRB rulebook in each office. The Review also notes the need for rules to be reviewed for outdated references and other technical corrections. Of note to MAs, Rules G-34 and G-23, and G-17 guidance are also being reviewed.

*MSRB Rule G-23: Underwriter/Financial Advisor Activities*

The MSRB is reviewing Rule G-23 related to underwriters and financial advisor activities. Like the G-34 Notice, this Notice asks general questions about how the Rule is working in practice and does not contain any proposed changes to the Rule. NAMA's comments will focus on past comment letters and tenets of the association regarding the importance of separating broker/dealer and municipal advisory work and eliminating conflicts of interest that could harm issuers. Comments are due August 23.

MSRB Notice: <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2019-13.ashx??n=1>

*MSRB Rule G-34: CUSIPs*

MSRB is reviewing the current requirement in Rule G-34 that requires MAs to obtain CUSIPs in competitive sales. NAMA submitted general comments in May reiterating our position that no MA should be responsible for obtaining CUSIPs, as CUSIPs are related to the clearing, trading and selling of securities which are broker/dealer activities. There are also policy concerns and problems with administering the need to determine the intent of the investor in order to know if CUSIPs are needed, as well as the requirement to obtain CUSIPs no later than one business day after the Notice of Sale is released. The MSRB may propose amendments to Rule G-34 that could alleviate MAs' responsibilities related to obtaining CUSIPs in competitive sales.

MSRB Notice: <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2019-08.ashx??n=1>  
NAMA Comment Letter: <https://www.municipaladvisors.org/assets/NAMAG34May2019.pdf>

*G-17 Guidance: Conduct of Broker/Dealers, UW Disclosures to Issuers, and Fair Dealing*

In its Notice, the MSRB asked questions about the disclosures that underwriters provide issuers under Rule G-17 and practices therein as they review the current guidance. Of note to MAs, the MSRB asked about the language in G-17 that prohibits underwriters from discouraging the use of municipal advisors. NAMA asked that this language be strengthened, as NAMA and GFOA have noted anecdotally that some UW continue to deter the use of MAs. NAMA also made comments, similar to those of GFOA, noting the importance of bifurcating boilerplate UW disclosures from material disclosures, to not dilute the frequency of UW disclosures, and to maintain the delivery of UW disclosures to issuers and not EMMA. The MSRB may update its guidance per comments received.

MSRB Notice: <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2018-29.ashx??n=1>  
NAMA Comments: <https://www.municipaladvisors.org/assets/NAMAG17JAN2019.pdf>

**MSRB Notice Regarding General Retrospective Rule Review:** <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2019-04.ashx??n=1>

## MSRB Rule G-32/Changes to Form G-32

MSRB proposed changes to Rule G-32 related to primary offering practices. The SEC is currently reviewing the proposed changes. Of interest to MAs, is a new requirement for underwriters to input the name of the MA on the Form. NAMA has requested that further instructions be provided prior to the effective date so that the MA is correctly identified and if needed, can be corrected.

MSRB Filing with SEC: <http://msrb.org/~media/Files/SEC-Filings/2019/MSRB-2019-07-Fed-Reg.ashx?>

NAMA Comments on Form G-32: <https://www.municipaladvisors.org/assets/NAMAG32MAY2019.pdf>

NAMA Comments on Rule G-32 Changes: <https://www.municipaladvisors.org/assets/G1132FINALSept2018.pdf>

## Other

- MSRB Guidance
- MSRB Fee Assessments
- Future Retrospective Rule Review topics