



SUMMARY OF INFORMATION/SEC CHARGES 12 MA FIRMS WITH RECORDKEEPING VIOLATIONS (September, 2024)

Examples of General Violations

- Firm employees were not advised regarding the use of text messaging for communications related to municipal advisory activity.
- Firm employees, including at senior levels, did not adhere to Firm recordkeeping requirements and the firm's own policies.
- Messages sent by text were not monitored, subject to review or archived.
- Firm personnel had engaged in off-channel communications relating to municipal advisory activities that involved both other employees of Firm and external contacts without preserving records.
- Firm employees sent off-channel communications relating to municipal advisory activities. Firm did not maintain or preserve these written communications.
- Firm Messages sent through unapproved communications methods were not monitored, subject to review or archived.
- Firm did not have processes in place to review, test or modify its reliance on employees' self-certifications. Firm's reliance on employees' self-certification was not reasonably designed to achieve compliance with recordkeeping requirements because it was not reliable absent appropriate follow-up measures.
- Firm failed to implement and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable recordkeeping requirements.
- Firm supervisory system did not address employees use of alternate electronic communication methods with respect to municipal advisory activity.
- Firm's supervisors, who were responsible for preventing this misconduct, themselves failed to comply with these recordkeeping requirements, as well as the firm's own policies, by sending off-channel communications relating to municipal advisory activities.

Specific Examples of Violations

- A municipal advisor exchanged text messages with a municipal issuer client addressing credit ratings for an anticipated municipal bond issuance. The text exchange also communicated information about a different series of bonds, expected to be issued at the same time as the first series. The communication about the second series of bonds described a lender's response to the municipal issuer client's request for the deletion of an event of default in financing documents and the municipal advisor representative's response to the lender.
- A municipal advisor principal texted a municipal issuer client describing improvement in municipal- securities market conditions, a request from a placement agent to execute a Bond Purchase Agreement and indicating approval that the client should proceed.
- Two employees including a municipal advisor principal, exchanged texts about the underwriter's coupon selection for a municipal issuer client's bond offering and the changes they planned to recommend.
- Three employees of Firm, including a municipal advisor principal, exchanged texts about the pricing of a municipal issuer client's negotiated bond offering, including discussion of oversubscribed maturities and requests made to the underwriter to change the spreads on certain maturities by a specified number of basis points.
- Municipal Advisor representative at Firm sent a text to a municipal issuer client advising the client how to structure its bond redemption for tax purposes.
- Two Municipal Advisor Representatives at Firm sent and received texts to or from each other about whether to structure a municipal issuer client's bond offering as a fixed rate deal.
- Managing Director of Firm exchanged texts with a municipal issuer client about the client's preliminary official statement in which the Managing Director indicated, among other things, that Firm staff were commenting on the body of the document (including numbers within tables).
- Managing Director of Firm exchanged texts with a municipal issuer client about the client's bond offering relating to the pricing wire and computation of the bond yield.
- A municipal advisor principal at Firm sent a text message to a municipal issuer client advising that if the municipal issuer client did not change the final maturity there would be two more months of debt service, but there would also be two additional months of interest earnings on the investment of bond proceeds at a favorable rate.
- A municipal issuer client sent a text message to a municipal advisor principal at Firm confirming they were engaged, confirming the fee for the engagement, and requesting an updated copy of the agreement for advisory services.

- Managing Director at Firm sent and received texts with municipal issuer client discussing the impact of a rating agency downgrade of the client's credit rating on the client's planned bond offering, including whether the client would have to pay higher rates.
- A Managing Director at Firm sent a text to municipal issuer client related to the pricing of the client's negotiated bond offering informing the client that the bond offering was oversubscribed and how this would impact interest rates.
- A firm principal exchanged text messages with a municipal issuer client relating to the client's credit rating and outlook.
- Firm representative exchanged text messages with a municipal issuer client relating to the decision to issue taxable versus tax-exempt bonds.
- A Principal at Firm exchanged text messages with a municipal issuer client discussing the pricing of a negotiated bond offering, including the demand for the different maturities, the investor pool and the impact on the amount of bond proceeds.
- An Associate at Firm and a Firm Executive exchanged text messages regarding the construction budget for an affordable housing project and the allocation of bond proceeds to pay post-construction interest and other fees to bond indenture accounts.
- Managing Director at Firm and a municipal issuer client exchanged text messages discussing edits needed to a Preliminary Offering Statement to update language in the section about Other Post-Employment Benefits, and a rating agency presentation.
- A Principal at Firm and a municipal issuer client exchanged text messages discussing projected present value savings from and cost of debt service for a planned bond refunding.
- A municipal advisor principal at Firm sent a text to a municipal issuer client describing current municipal market conditions, explaining the likelihood of a successful competitive sale for certificates of obligation or general obligation bonds and the reasons for keeping the bonds as a private placement.
- A municipal advisor principal at Firm sent a text to a municipal issuer client responding to a question about reimbursement from a bond offering for costs incurred before the bond offering and explaining how to achieve the reimbursement.
- A senior employee at Firm sent a text to a municipal issuer client explaining how negotiated bond sales work and how they differ from competitive bond sales, including the ability to give retail priority, and offering to support the use of negotiated sale for the next bond offering. In another example, another senior employee at Firm sent a text to a municipal issuer client explaining the option to capitalize the initial interest payments and earn additional interest on the project account.

Examples of Remedial Actions Taken by Firms

- Firm modified its policies and procedures, increased awareness and strengthened training concerning the use of electronic communications.
- Firm enhanced its policies and procedures concerning the use of approved communications methods, including by requiring quarterly attestations.
- Firm enhanced its policies and procedures concerning the use of approved communications methods.
- Firm began additional training concerning the use of approved communications methods
- Firm began implementing significant changes to the technology available to employees.
- Firm began implementing significant changes to the technology available to employees, including providing employees with firm-issued mobile devices that will be managed and monitored by Firm.
- Firm providing text messaging technology to employees that enables the capturing and archiving of text messages.
- Firm began implementing significant changes to the technology available to employees.
- Firm established a program of periodic training of all associated persons who engage in municipal advisory activities.
- Firm designated the municipal advisory principals as responsible for ensuring compliance by Firm with such policies and procedures and for implementing and maintaining a training program.

SEC Imposed Sanctions

- (i) establish reasonably designed written policies and procedures regarding the preservation of electronic communications;
- (ii) conduct a training of all associated persons who engage in municipal advisory activities regarding the preservation of electronic communications, to be provided by a person or entity with relevant expertise in the preservation of electronic communications and recordkeeping requirements under the Exchange Act, the rules and regulations thereunder, and under MSRB Rules;
- (iii) establish a program of periodic training of all associated persons who engage in municipal advisory activities regarding the preservation of electronic communications. The written policies and procedures should include the designation of a municipal advisor principal at Respondent responsible for ensuring compliance by Respondent with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of the initial training and the periodic training program.

- (iv) Certify, in writing, compliance with the undertakings set forth above. The certification shall: (i) identify the undertakings; (ii) provide written evidence of compliance with the undertakings in the form of a narrative; and (iii) be supported by exhibits sufficient to demonstrate compliance with the undertakings. The Commission staff may make reasonable requests for further evidence of compliance with the undertakings, and Respondent agrees to provide such evidence at the time and in the manner specified by Commission staff or advise the Commission staff of any request for further evidence that Respondent considers unreasonable.

SEC and MSRB Rules

Section 17(a)(1) of the Exchange Act requires municipal advisors to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. Exchange Act Rule 15Ba1-8 requires that municipal advisors make and keep true, accurate, and current originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor relating to municipal advisory activities, regardless of the format of such communications, and for such records to be maintained and preserved for a period of not less than five years, the first two years in easily accessible places.

Section 15B(c)(1) of the Exchange Act prohibits municipal advisors from engaging in any act, practice, or course of business that is in contravention of any rule of the MSRB.

MSRB Rule G-8(h)(i) requires municipal advisors to make and keep current all books and records described in **Exchange Act Rule 15Ba1-8(a)(1)-(8)**, which includes all written communications relating to municipal advisory activities.

MSRB Rule G-9(h)(i) requires the municipal advisor to preserve these records for a period of not less than five years.

MSRB Rule G-44, which requires municipal advisors to, among other things, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable MSRB rules.

SEC's September 2024 Press Release

<https://www.sec.gov/newsroom/press-releases/2024-132>