



CONSIDERATIONS FOR RECORDKEEPING AND SUPERVISION OF COMMUNICATIONS RELATED TO MA ACTIVITY September 2024

NAMA has developed this Resource to help members consider ways of addressing recordkeeping and supervisory requirements for communications of MA activities. Firms should determine their own policies and procedures and consult counsel as needed. This Resource does NOT serve as legal advice.

As stated in the SEC's Municipal Advisor (MA) Rule and as noted throughout MSRB Rules*, MA Firms are required to maintain records of written communications sent and received for MA activities and "related to" municipal advisory activities, as defined in Section 15B of the Exchange Act ("MA activities"), regardless of the format that is used for the communication.

In addition to traditional mail and business email correspondences, communications related to MA activity sent through other channels need to be maintained. These include:

- text messages, iMessages, and any other electronic messages;
- chat features in meeting and business platforms, including TEAMS, ZOOM, Bloomberg;
- chat features in social media platforms, for instance LinkedIn or Facebook;
- other electronic communications apps, for instance What'sApp and Signal; and
- personal email accounts

Firms need to have appropriate policies and procedures in place to monitor and supervise these types of communications to ensure that all written communication related to municipal advisory activities are preserved. Recent enforcement actions have used a broad definition of information subject to recordkeeping under the Exchange Act Section 15B(a)1-8, and NAMA suggests that Firms keep this in mind as they consider their recordkeeping procedures. This includes all communications relating to MA activities with clients, between Firm personnel, and with other deal team participants. Communications must be centrally located for easy retrieval and duplicate copies of communications must be kept.

Firms are encouraged to have a recordkeeping for communications policy that:

- Prohibits the use of communications platforms for MA activities or those related to MA activities where the communications are not preserved;
- Prohibits the use of communications platforms for MA activities or those related to MA activities if such communications can not be monitored and supervised;
- Encourages clients not to text or use other types of communications platforms with MAs, except for platforms that maintain or preserve the communication records;
- Incorporates preserving and maintaining communications for all municipal advisory and related to municipal advisory activities, including client driven messaging, internal messaging and deal team messaging, on platforms that maintain or preserve the communication records. It is important to note that if a covered communication appears in different types of formats (e.g., email and text) BOTH messages must be kept;
- Enables MAs to report, maintain and preserve a message that may not be captured in the Firm's systems (e.g., client text message to MA representative);

- Offers training at least once a year that is Firm specific to its policies and procedures for maintaining communications records related to MA activity;
- Have MA Representatives sign an attestation each quarter that states they did not use any communications platforms that are not captured by the Firm for any MA activities or that are related to MA activities;
 - Sample attestation to work from may be – *I, _____, attest that I have not used Off-Channel Communications relating to any municipal advisory activities (as defined in Section 15B of the Exchange Act), and adhere to the Firm’s Off-Channel Communications policy. If an Off-Channel Communication occurred, the information was forwarded to the firm’s system that maintains recordkeeping and is attached hereto for reference.*
- Implement written supervisory procedures that are reasonably designed to achieve compliance with the recordkeeping requirements. These supervisory procedures may include, monitoring MA communications on various electronic platforms, for example:
 - conducting word searches in emails to see if texts or other Off-Channel Communications are referenced;
 - reviewing attestations signed by Firm MAs for any patterns or concerns that need to be addressed;
 - randomly selecting certain MA representatives to conduct follow-up interviews with regarding use of any off-channel communications; and/or
 - capturing all communications such as texts and meeting messaging platforms using currently available technology (some examples include - Smarsh, Global Relay, OneSecure, or text capturing services offered by mobile phone service providers.

*** Citations**

SEC MA Rule; § 240.15B(a)(1)

(1) Originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications;

MSRB Rule G-8, Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors, <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-8>

MSRB Rule G-9, Preservation of Records, <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules>

MSRB Rule G-44, Supervisory and Compliance Obligations of Municipal Advisors
<https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-44>

Resources

SEC Charges MAs with Recordkeeping Violations (September 17, 2024) , <https://www.sec.gov/newsroom/press-releases/2024-132>

NAMA November 2023 Webinar, Off Channel Communications – slide deck, <https://nama2.memberclicks.net/assets/offchannelNOV2023updated.pdf>

SEC Observations from Investment Adviser Examinations Relating to Electronic Messaging, <https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20Electronic%20Messaging.pdf>

FINRA Notice – Supervision of Electronic Communications, <https://www.finra.org/sites/default/files/NoticeDocument/p037553.pdf>

SEC MA Risk Alert (general), August 2022, <https://www.sec.gov/municipal-advisor-risk-alert-2022.pdf>