



NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

2018 Compliance Roundtable
June 21-22

Philadelphia, PA



**COMPLIANCE ROUNDTABLE
JUNE 21-22, 2018 - Philadelphia
1735 Market Street – 42nd Floor**

Thursday, June 21

1:00 – 1:15 Welcome and Introductions

1:15 – 1:30 Overview of NAMA Compliance Resources

Intended outcome: A review of current NAMA resources will be provided.

1:30 – 3:00 Compliance with MSRB Rules Discussion, Including Supervisory Responsibilities (Rule G-44) and Books and Records (Rules G-8/9)

- G-3: continuing education
- G-34: CUSIPs
- G-40: advertising

Intended outcome: We will discuss various aspects of MSRB rulemaking and how to help NAMA members understand and comply with rules, including supervisory and recordkeeping responsibilities

3:00 – 3:15 Break

3:15 – 4:00 MSRB Update Gail Marshall, Chief Compliance Officer, MSRB

Intended outcome: Learn about current MSRB guidance initiatives and have members provide feedback on needed outputs from the MSRB. Understand schedule for Series 54 exam.

4:00 – 5:00 SEC Enforcement and Exam Update Mark Zehner, Deputy Director, Municipal Securities and Public Pensions, SEC (tentative)
Cesar Davis, Staff Accountant, SEC (tentative)

Intended outcome: Mark and Cesar will discuss recent enforcement and examination issues of interest to municipal advisors.

5:00 Adjourn

6:00 Dutch Treat Dinners
Oyster House <http://oysterhousephilly.com>
Red Owl <http://www.redowltavern.com>

Friday, June 22

8:30 Exam Update Discussion

Intended outcome: Members will discuss reactions to Thursday's guest speakers related to compliance and examinations and relay their exam experiences to help develop guidance on the best approach for future exam proceedings.

9:00 – 10:00 Compliance with MSRB Rules, Continued from Thursday

- G-42: scope of services, conflicts, expertise, conduits, other
- G-44: Annual certification and WSPs
- Other (G-2, G-20 and G-37)

Intended outcome: We will discuss various aspects of MSRB rulemaking and how to help NAMA members understand and comply with rules, including supervisory and recordkeeping responsibilities.

10:00 Break

10:15 Bank Loans

Intended outcome: Members will discuss how they are approaching their MA work related to bank loans to ensure that they are not engaging in broker/dealer activity.

10:45 MAs and Disclosure

Intended outcome: Members will discuss how they approach disclosure work for their clients, recent enforcement activities related to disclosure, and whether NAMA should develop resources on this topic.

11:15 Cyber-security

Intended outcome: Members will discuss how the SEC is looking at cyber security procedures within MA firms, albeit with no subsequent rulemaking, and how NAMA should develop resources on this topic.

11:30 NAMA Resource Development and Compliance Outreach

Intended outcome: Members will discuss the types of resources and other materials that NAMA should be developing to best assist the membership.

12:00 Adjourn



Resource: MSRB Rule G-34 Obtaining CUSIP Numbers and Understanding the CUSIP Application Process

This document serves as a resource for NAMA members to better understand MSRB Rule G-34 and applying for CUSIP numbers. This document should not be relied on for compliance purposes nor does it constitute legal advice.

Additional Resources

- NAMA Webinar Presentation Materials and Access to Recording (May 16th Webinar): <https://nama2.memberclicks.net/nama-webinars?servId=7094>
- MSRB Notice on Rule G-34: <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/~~/media/42845714AEEB4907953B224B0F79F8E7.ashx>

Determining if CUSIPs are Needed in a Competitive Sale

- Per MSRB Rule G-34, effective June 14, municipal advisors must apply for CUSIP numbers for all competitive sales for which they serve as the MA unless an exception applies.
- Exceptions for MA applying for CUSIP -
 - Bank or government purchaser intends to hold to maturity
 - Limited to bank purchasers and bond bank type of entities
 - MA “reasonably believes” purchaser intends to hold to maturity
 - Determine through review of transaction structure or documents
 - Obtain written representation from investor
 - To be included in RFP for private placement (if potential purchasers are limited to banks):
 - In addition to any other certificates reasonably required by the [issuer] or its counsel or advisors, the winning purchaser shall be required to certify as follows:
 - 1) That it is a bank or an entity directly or indirectly controlled by a bank or under common control with a bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities; and
 - 2) That the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.
 - Other party has obtained CUSIP
 - Co-municipal advisor
 - Placement agent

Applying for CUSIP numbers

- Rule G-34 goes into effect June 14, but MAs should consider applying for CUSIPs a day or two prior to that in order to ensure that they are compliant with the rule.

Applying for CUSIP numbers, Continued

- TIPS:
 - Link to applying for CUSIP using web-based platform - <https://www.cusip.com/cusiprequest/municipalDebt.do>
 - Not every field in the application must be completed when applying for CUSIPs. This will help MAs apply for CUSIPs within one business day of the Notice of Sale per the requirement in Rule G-34.
 - MA may indicate to NOT bill them (or client) by not checking the “bill to requestor” box. This will then allow CUSIP to invoice the winning underwriter.
 - Request Priority should usually be “REGULAR”
 - If you are not using the CUSIP platform for the application, you can email the offering documents to cusip_muni@cusip.com. The email should include notation that you are applying for CUSIP numbers, documentation such as the Notice of Sale or POS which includes information on the maturities, and that the CUSIP Bureau should invoice the winning underwriter.
 - Be sure that the security/source of payment section of the offering document is correct as it determines how the CUSIP number(s) are assigned.
 - Attach offering documents or in case of bank loan, consider submitting memorandum that discusses the sale and legal authority for the financing. A document must be uploaded with the application on the platform for the submission to be completed.
 - CUSIPs for short term notes (less than 12 months), are assigned AFTER the sale. However, to comply with Rule G-34, MAs should apply for the CUSIP per the Rule (no later than one business day after the Notice of Sale is distributed).
 - If the CUSIP numbers need to be amended due to final structuring of the bonds or cancelled, MAs should email CUSIP Global Services at cusip_muni@cusip.com. The MA will not be charged for cancelling CUSIPs
 - Unless client needs a LEI number (in addition to CUSIP) for the transaction, MA should UNCHECK the LEI number box. If getting an LEI number, the MA will be invoiced for the initial number, and the issuer will be invoiced annually for maintenance of that number. LEI numbers are mostly used for investments/investors outside of the United States.
 - **Once the bonds have been awarded to the winning bidder, final documentation needs to be sent to CUSIP to ensure that the previously unavailable data values are added to the CUSIP database (will be completed by CUSIP Bureau) and that the winning underwriter/purchaser will be invoiced. Final documents including the winning underwriter/investor and their contact information should be emailed to the CUSIP Global Services - cusip_muni@cusip.com. Or, documents can be uploaded directly using the final document link on the original CUSIP confirmation.**
 - If CUSIPs have already been assigned to a competitive transaction, the CUSIP Bureau will notify the MA that there is a duplicative application, and will provide the CUSIP numbers already assigned to the transaction. For G-34 purposes, even if CUSIPs are already assigned, MAs should document that they applied for CUSIPs.
 - CUSIP’s Municipal Operations Staff is willing to answer any questions you may have about the process.

Compliance Considerations

- MAs should retain the email sent to CUSIP with the offering documents or the email from CUSIP that the application has been received per the CUSIP platform to demonstrate that the MA applied for the CUSIP.
- MA Firms should revise their WSPs and policies and procedures to address Rule G-34
- MA Firms should determine how they will maintain an internal calendar of competitive sales and obtaining CUSIPs.
- If relying on an exception, MA Firms should determine how they will document using the exception.



New Customer Complaint Rules Go Into Effect October 13

RULEMAKING INCLUDES DEVELOPING POLICIES AND PROCEDURS, CLIENT NOTIFCATIONS AND ESTABLISHING AND MAINTAINING AN ELECTRONIC CUSTOMER COMPLAINT LOG

MA's Must Notify Clients the Availability of a Client Brochure/How to File a Complaint

Under MSRB Rule G-10: Investor and Municipal Advisory Client Education and Protection, **MA's must notify clients promptly after the establishment of a municipal advisory relationship and once each calendar year thereafter, in writing (which may include electronic transmissions) about the availability of a client brochure on the MSRB's web site that provides information on the processes for filing a client complaint.** For current clients, MAs have until December 31, 2017 to send those notifications. Please note that these notifications may be included in other disclosures or information (e.g. scope of services contract) that are required to be sent to clients.

The following information related to client complaints must be included:

(i) a statement that the municipal advisor is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

(ii) the website address for the Municipal Securities Rulemaking Board [www.msrb.org]; and

(iii) a statement as to the availability to the customer of a brochure that is posted on the website of the Municipal Securities Rulemaking Board that describes (1) the protections that may be provided by the Municipal Securities Rulemaking Board rules and (2) describes how to file a complaint with an appropriate regulatory authority.

LINK TO BROCHURE: <http://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=en>

MA's Must Use MSRB Standards to Maintain Client Complaint Log

In Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers and Municipal Advisors, MAs must record complaints received in writing using a standard set of complaint product and problem codes. **This recording of complaints must be kept in an electronic log format for compliance purposes.** Please note that MAs have additional requirements to disclose written and oral complaints within SEC Form MA-I, that are different than what is required in G-8.

Components of the electronic log must include:

- Identifying information about the MA client (name, address, client account number or code)
- Date complaint was received
- Date of the activity that gave rise to the complaint
- Name of each person identified by the client in the complaint
- Nature of complaint
- Action taken by MA concerning the complaint
- Code from the Standard Set of Product and Problem Codes

The MSRB has developed a sample electronic complaint log and client complaint checklist that MAs are encouraged to use. Those resources may be found on the MSRB's web site [HERE](#).

MA's are encouraged to carefully review the [Client Complaint Product and Problem Codes Guide](#) to fully understand the various product and complaint codes.

Likely Product Codes Related to MA Work (this list is NOT comprehensive):

- 15: Debt-Municipal
- 39: Auction Rate Securities
- 42: Structured Products
- 00: Miscellaneous
- 18: No Product Code

Likely Complaint Codes Related to MA Work (this list is NOT comprehensive):

- 01: Misrepresentation
- 04: Suitability
- 05: Failure to Follow Instructions
- 06: Documentation
- 10: Disclosure of Fees
- 15: MA Conflict of Interest
- 31: Other Theft/Forgery
- 40: Miscellaneous

MA's Must Maintain and Keep Complaints Within Their Log System for Six Years

Under MSRB Rule G-9(h)(iii): Preservation of Records, MA's must keep complaints within their log for six years. For this recordkeeping task, the six years begin from the "date of the resolution of the complaint" (per MSRB's FAQs on MSRB Rules on Investor and MA Client Education and Protection).

Resources

[MSRB FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection](#)

[Rule G-10](#)



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 FIRM 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 FIRM ?	
2. Has FIRM made any payments directly or indirectly to obtain or retain an engagement to perform municipal advisory activities for the Client?	
3. Has FIRM received any payments from a third party to enlist FIRM '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 FIRM 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 FIRM is aware after reasonable inquiry, that could reasonably be anticipated to impair FIRM '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 FIRM 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 FIRM 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 FIRM ’s most recent Forms MA or MA-1 filed with the SEC if FIRM 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: _____ 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 FIRM ’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 FIRM 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: _____ 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 FIRM)?	
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 FIRM 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 FIRM rely on counsel for authority? If so, who was counsel?	
3. Did FIRM review applicable laws, articles, by-laws and board vote(s)?	
4. Does client have a debt and/or swap policy?	
5. Did FIRM review other material debt management policies of the client?	
6. If so, were they reviewed by FIRM ?	

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 FIRM 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 FIRM ? (see below)	
3. Did FIRM review the recommendation of another party for the client?	
4. If so, did FIRM determine, based on the information obtained through the reasonable diligence of FIRM , 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: _____ 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. FIRM '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 FIRM 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 FIRM 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 FIRM possess the degree of knowledge and expertise needed to provide the Client with informed advice?	
2. Did FIRM 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 FIRM undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information?	
4. Did FIRM have a reasonable basis for any advice provided to the Client?	
5. Did FIRM 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 FIRM 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 FIRM 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 FIRM 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 FIRM ?	

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: FIRM '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 FIRM 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 FIRM 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 FIRM , 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 FIRM ?	
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 FIRM for a direct or indirect communication with a municipal entity or obligated person on behalf of FIRM 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 FIRM or any affiliate of FIRM 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 FIRM 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.



THE ITEMS IN THIS DOCUMENT SERVE AS A DISCUSSION OF THE NON-EXHAUSTIVE LIST OF ISSUES RELATED TO NEW IRS REGULATIONS WHEN DETERMINING THE ISSUE PRICE OF BONDS FOR ARBITRAGE PURPOSES. THIS MEMO DOES NOT SERVE AS LEGAL ADVICE. MAs ARE STRONGLY ENCOURAGED TO REVIEW THE FULL RULEMAKING AND CONSULT COUNSEL IN THEIR MISSION TO UNDERSTAND THE NEW RULEMAKING AND ITS IMPLICATIONS WHEN PROVIDING ADVICE TO CLIENTS. THIS DOCUMENT SHOULD NOT BE VIEWED AS A SAFE HARBOR FOR MA PRACTICE PURPOSES.

Background

The new IRS issue Price Regulations went into on June 7, 2017. The most significant change to the rule is that the issue price for bonds will be determined based on a ten percent of actual sales test and not on the current reasonable expectations test. This test is applied to each maturity and individual CUSIP in an issuance. Another key change is that in competitive sales, there is an exception to the 10% of actual sales that can be utilized if the issuance receives at least three bids from underwriters or meets certain other requirements (as discussed below).

Along with the new regulations, SIFMA has revised and developed new model documents including Notice of Sales, Agreement Among Underwriters, Selling Group and Retail Distribution Agreements for underwriters and issuers. NABL has also developed model tax certificates that correspond with the SIFMA documents. NABL's model documents also include a new MA certificate. These documents are further discussed below.

GFOA has expressed concerns with these documents, and has notified their members that the documents should be used as a starting, not ending point, and that the issuer should always remain in control of their sale and the documents used in their bond sale.

Municipal Advisors should be aware of the rules, and how they will impact each client and bond issuances. This is especially needed when engaging in competitive sales, as the rules state that it is the issuer's responsibility to determine prior to the issue date of the bonds, how the Rule will apply to their sale. Below are some areas of particular interest to MAs that should be reviewed and further studied.

General Rule/10% Sales Test

The general rule calls for the issue price of bonds to be determined based on the price at which the first ten percent for each maturity is sold. A definitive answer from Treasury and the IRS has not been provided, and there may be some uncertainty on how to determine that 10%. Based on the language in the regulation, one school of thought is that the issue price is determined based on the first sale of at least 10% to investors at a single price. Another approach is to average multiple sales that reach the first 10% of sales (for instance, averaging the price the first 7% of the bonds were sold, with the next 3+% of sales). MAs should discuss with an issuer's bond counsel the approach to be used for each issuance. This is especially of interest to MAs when the 10% test is used in competitive sales, and the underwriter will need to know how to calculate for the 10% actual sales test.

MA Certificate

The NABL documents include a MA certificate that may be used in competitive sales. **MAs should carefully review this document in each transaction and understand their responsibilities when signing the document.** This certificate asks the MA to certify various components of the competitive sale. One area to highlight is when the exception from the 10% actual sales test is used due to receiving three bids from underwriters, the Rule state that the bidding underwriters must have an “established industry reputation for underwriting new issuances of municipal bonds.” There is no further guidance or definition of how to determine if an underwriter has an established industry reputation, or how to confirm in situations when a bidder may have both underwriting and bank businesses, how to know who the bid is coming from. The SIFMA model documents for competitive sales bids provide for a statement to be made by the underwriter that they are in fact an underwriter with an established industry reputation. However, in the NABL model MA certificate, the MA is asked to confirm such statement.

Many MA firms have expressed concerns with having the MA confirm this statement about bidding underwriters, especially due to the lack of guidance to make that determination. Therefore, MAs should carefully review this section of the MA certificate (#4) and make any changes as needed. It is also important to note that it is not known how bond counsel will react to these changes. Below are some examples of how some firms are changing that language –

- 4. The Issuer received bids from at least three bidders who represented that they have established industry reputations for underwriting new issuances of municipal bonds. ~~Based upon the Municipal Advisor’s knowledge and experience in acting as the municipal advisor for other municipal issues, the Municipal Advisor believes those representations to be accurate.~~ Copies of the bids received are attached to this certificate as Attachment 2.
- 4. The Issuer received bids from at least three bidders, each of whom, by submitting a bid in accordance with the Office Notice of Sale, represents that it has an ~~who represented that they have~~ established industry reputations for underwriting new issuances of municipal bonds. ~~Based upon the Municipal Advisor’s knowledge and experience in acting as the municipal advisor for other municipal issues, the Municipal Advisor believes those representations to be accurate.~~ Copies of the bids received are attached to this certificate as Attachment 2.
- 4. The Issuer received bids from at least three bidders who represented that they have established industry reputations for underwriting new issuances of municipal bonds. Based upon the Municipal Advisor’s knowledge and experience in acting as the municipal advisor for other municipal issues, the Municipal Advisor believes those representations to be accurate. This knowledge is based upon [insert data source here]. Copies of the bids received are attached to this certificate as Attachment 2.

Competitive Sales

As noted above, an exception from the 10% of actual sales test can be achieved if the issuance receives three bids from underwriters (of note, other parties can bid on the bonds and have the winning bid, if within the sale there are at least three bids from underwriters). In a competitive Notice of Sale, the issuer (in consultation with their MA and counsel) needs to state to bidders how the issue price will be established if the competitive sale exception (3 bids) is not met.

In their model competitive NOTICE OF SALE documents, SIMFA has developed four alternative approaches for the issuer to use if the competitive sale exception – 3 bids – is not met. Again, it is important that the issuer

remain in control of this process and the documents, and choose the alternative that is best for them, with advice from their MA. It is likely that underwriters will strongly urge issuers to use these documents and determine which alternative they will use ahead of the sale. **Therefore, MAs should work with their clients, and allow for extra time to determine the best Notice of Sale alternative as well as give underwriters and other investors additional time to review the Notice of Sale.** Also, be aware that numerous changes to the model documents could result in the underwriter not bidding due to the inability to understand the terms of their own bid.

Additionally, MAs should discuss with their client and counsel, as well as underwriters, if the issue price needs to be determined on the sale date. Some transactions - for instance an advanced refunding or a bank qualified financing that is close to the \$10m bank qualified limit – may call for knowing the issue price prior to the final sizing and structuring of the bonds on the sale date. Other transactions, most notably certain new money financings, may not require knowing the issue price on the sale date and the issuer may wish to thus rely upon the 10% actual sales test. Currently, there is no statement in the regulation providing a deadline for when the 10% actual sales test must be satisfied. MAs should discuss with their client and bond counsel the extent in which they are comfortable keeping the window open to meet the 10% actual sales test threshold. (see Decision Matrix to assist with client discussion)

Overview of SIFMA's Four Notice of Sale Alternatives for Competitive Sales

Below is a brief description of the four alternatives provided for in SIFMA'S model documents. **MAs are strongly urged to review the language and adjust as needed to fit the facts and circumstances of each client.** To assist with understanding these alternatives, please view the following flow charts developed by Ehlers Inc. [see below] The discussion related to using the competitive sale exception, receiving three bids, is in Alternative 3.

Alternative One - 10% Sales Test/General Rule

The issue price of the bonds will be determined using the 10% of actual sales price. MAs and issuers should consult with counsel as to how that 10% actual sales threshold is determined. Also of note, the 10% sales does NOT need to be completed on the day of sale, and there is no statement in the rulemaking that makes a determination for how long the sales window can remain open to meet the 10% in actual sales threshold. However, most market participants have commented that the sales would need to be completed by the closing date.

Alternative Two – Hold the Price for Five Days

Where an issuer may not receive three bids, and may not sell 10% of each maturity of an issuance, the issuer can require the underwriter to “hold the price” for five business days on all or certain maturities of the bond sale. This means that the underwriter will agree not to sell the bonds higher than the initial offering price for five days. If in fact 10% of each of those or some maturities are sold within those 5 days, the 10% test can be used. In this alternative, an issuer and underwriter can use a combination of alternatives, using both the 10% actual sales test and the hold the price options for different maturities. This alternative may be advantageous when issue price certainty is needed on the day of sale. However, in this scenario, MAs and issuers should be aware of possible yield premium imposed by the underwriter to compensate for the risk they take by holding the price for five business days.

Alternative Three – Three Bids from Underwriters/Alternatives When That is Not Met

In this scenario, the issuer intends to use the competitive sale exception of receiving three bids for their bonds. However, if that does not occur, this alternative provides for how the team should proceed.

In the event that this alternative is used with the intention and expectation of receiving three bids, and three bids are NOT received, then the issuer must contact the winning bidder and let them know that the three-bid competitive sale exception cannot be used. The bidder may then withdraw the bid or confirm the bid under a 5-day hold the price or 10% actual sales test, or in conjunction with the issuer develop another scenario (e.g. direct placement). The bidder has ninety minutes to confirm in writing with the issuer if/when the hold the price option or other alternative will be used.

Alternative Four – Issuer Does Not Receive Three Bids and Does Not Want to Use the 10% Actual Sales Test Nor the Hold the Price Options

In the event an issuer does not receive three bids and thus cannot rely upon the competitive sale exception, the sale will be cancelled by the issuer.

Resources

- [IRS Issue Price Regulation](#)
- [SIFMA Model Documents](#)
- [NABL Model Documents](#)
- [NAMA Competitive Sale Decision Matrix \(from Ehlers\)](#)
- [NAMA Issue Price Webinar recording and materials](#)
- [GFOA Alert](#)
- [GFOA Issue Price Conference Session Materials](#)

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MSRB RULE G-37

THE ITEMS BELOW SERVE AS A DISCUSSION OF THE NON-EXHAUSTIVE LIST OF ISSUES RELATED TO MSRB RULES G-37, RECORDKEEPING RULES G-8 AND G-9, AND FORMS G-37 AND G-37X THAT NON BROKER/DEALER AFFILIATED MAs AND MA FIRMS SHOULD CONSIDER WHEN DEVELOPING THEIR OWN POLICIES, PROCEDURES AND PRACTICES. MAs ARE STRONGLY ENCOURAGED TO REVIEW THE FULL RULEMAKING AND CONSULT COUNSEL IN THEIR MISSION TO DEVELOP AND IMPLEMENT ROBUST POLICIES AND PROCEDURES.

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

Professionals Covered in the Document

The MSRB has defined and classified various types of MA professionals and provided information related to each type in its Rule G-37. This document provides information with respect to setting policies only for Municipal Advisor Representatives (MAs) and Municipal Advisor Principals as these are the types of professionals most common to non-dealer municipal advisory firms.

Professionals who serve in another capacity or MA Firms that employ such professionals, including Municipal Advisor Solicitors, Municipal Advisor Supervisory Chain Person and Municipal Advisor Executive Officer, should consult Rule G-37 to understand the obligations applicable to these types of professionals.

General Prohibitions Enacted in Rule G-37

The Rule places new standards on MAs and others to eradicate pay-to-play practices in this sector. The Rule has applied to Broker/Dealers and Broker/Dealer MAs for many years, and as of August 17, 2016, has applied to Municipal Advisors. As NAMA has repeatedly stated, MAs should avoid situations where providing a contribution – directly or indirectly – could influence their ability to obtain business. *MA firms should develop policies and practices that address numerous situations related to direct and indirect political contribution practices, approval processes, and recordkeeping and reporting standards.*

A violation of Rule G-37 could lead to a 2 year ban on business with a client. Further understanding of violations and penalties should be made in conjunction with counsel.

Contributions not only include direct money donations, but also event tickets benefitting a candidate and in-kind contributions. *MA firms should develop a policy on how to determine the monetary value of in kind contributions, and the contribution amount of any event ticket. MAs and MA firms may also wish to consult MSRB Rule G-20, ban on gifts, to ensure that any donation or contribution would not violate that rulemaking even if it is permitted under Rule G-37.*

A key trigger in Rule G-37 is whether or not the MA can VOTE for the person benefitting from the contribution made by him/her. If the answer is yes, then in most cases the MA can contribute up to \$250 without violating

the Rule and triggering a ban on business. If the answer is no, then in most cases the MA can not contribute any amount of money, yet if a contribution is made in these circumstances, it must be reported.

Specific Issues Snapshot

Below is a summary of some of the components of the Rule. *The scenarios outlined below should be used as a starting point for the development of policies and procedures.* Again, it is recommended that you consult counsel in gaining a full understanding of the Rule and its implications for your practice.

Contributions to Candidates:

If the **MA CAN VOTE** for the candidate, then the MA can contribute (directly or indirectly) up to \$250 (per election for specific candidate) without violating Rule G-37 and triggering a ban on business. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not.*

If the **MA CAN NOT VOTE** for the candidate, then no contribution can be made without violating Rule G-37, and triggering a ban on business. Any contribution under this scenario must be reported to the MSRB. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not, and how to record and report a contribution that violates the Rule.*

Firm Run PAC. A PAC established and run by an MA Firm should carefully consider how to abide by Rule G-37. *MA Firms running a PAC should ensure through policies and procedures that funds from the PAC do not exceed the \$250 amount where applicable, and in other situations contributions are avoided altogether. Policies and procedures should also have provisions for contributions to federal candidates.*

Contributions to Local and State Political Parties and non-Firm run PACs. MA Firms must determine whether their contributions will be directed to specific issuer candidates. The following considerations apply if the political party or PAC will direct contributions to specific issuer candidates.

If the **MA CAN VOTE** for the candidate or candidate who would benefit from a contribution, then the MA can contribute up to \$250 (per year) without violating Rule G-37 and triggering a ban on business. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not.*

If the **MA CAN NOT VOTE** for the candidate, then no contribution can be made without violating Rule G-37, and triggering a ban on business. Any contribution under this scenario must be reported to the MSRB. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not, and how to record and report a contribution that violates the Rule.*

Contributions to local and state political parties must generally be reported to the MSRB.

Federal Political Parties. If there is interest in contributing to a federal/nationwide political party, the MA should inquire whether or not funds from that political party would benefit a specific candidate in their state and/or locality. *MA firms should develop policies and procedures that address possible scenarios when contributions to a nationwide PAC or political party are and are not permissible.*

Bond Ballot Initiatives. Rule G-37 does not prohibit contributions to Bond Ballot campaigns. Any such contributions must be disclosed to the MSRB except contributions up to \$250 where the MA can vote. *MA firms should have policies and procedures in place for bond ballot initiatives, and be aware of additional local and state laws that may apply to these types of contributions.*

Inaugural Expenses. Donations to Inaugural events follow the same rules as if the funds were going to a candidate, PAC or political party in the general election. *MA firms should have policies and procedures in place related to contributions to Inaugural events.*

Volunteer Activities. MAs may volunteer for campaigns during non-work hours as long as those activities do not incur expenses and are not related to fundraising activities. *MA firms should develop policies and procedures specifying under what circumstances MAs may or may not volunteer for a campaign.*

Soliciting or Coordinating Contributions. MAs may not solicit for or coordinate contributions to candidates, PACs or political parties benefitting a candidate that is a client or potential client. Such activity would violate Rule G-37. *MA firms should develop robust policies and procedures related to soliciting and coordinating contributions for candidates, PACs and political parties.*

Contributions to Federal Candidates. Generally, there are no limitations on contributions or activities related to candidates for federal office. However, if the candidate currently serves in a local or state jurisdiction where the MA resides, then the \$250/election limit will apply on the same basis as it applies to other state and local officials. *MA firms should have policies for the conditions when contributions to federal candidates are and are not permissible.*

Contributions to Charitable Organizations. There is no ban on making contributions or donations to charitable organizations under Rule G-37. However, other MSRB Rulemaking (Rules G-42 and G-20) may apply in this area. Furthermore, MAs should avoid situations where making charitable donations could be perceived as a quid pro quo for doing business. *MA firms should develop policies and procedures regarding when MAs may make charitable contributions, that reflects MSRB Rules G-37, G-42 and G-20.*

Quarterly Forms

MA Firms must submit quarterly information electronically to the MSRB, beginning October 31, 2016, related to Rule G-37, and *MAs should ensure that they are set up in the MSRB Gateway system to submit that information well in advance of the due date.* In addition to listing contributions, Form G-37 also calls on MA firms to include their client list each quarter. *MAs should determine how best to track and record contributions and client work to ensure submissions are correct.*

MSRB Rule G-37 SNAPSHOT

This Should Not Be Used to Ensure Compliance With Rulemaking

Please Consult Rule and Counsel When Making Contribution Determinations, and Developing Appropriate Policies and Procedures

Action	Contribution* Allowed Without Triggering Ban on Business	Limit Without Triggering Ban on Business	Disclosure Requirement
Contribution by MA or MA-controlled PAC to Candidate (Issuer Official with MA Selection Influence)			
Jurisdiction Where MA Can Vote Including Client or Potential Client	YES	\$250/election*	No, if under \$250
Jurisdiction Where MA Can NOT Vote Including Client or Potential Client	NO	NONE ALLOWED	YES regardless of amount
Jurisdiction Where MA Can NOT Vote and Is NOT Client or Potential Client	NO, But Ban is Irrelevant if Not/Never Will be A Client	NONE ALLOWED, But Ban on Business is Irrelevant	YES, regardless of amount
Contribution by MA or MA-controlled PAC to State or Local Political Party (Need to determine ultimate beneficiary -- if not benefitting particular issuer officials then only the disclosure rules apply)			
Benefitting Candidate in Jurisdiction Where MA Can Vote Including Client or Potential Client	YES	\$250/year	No, if under \$250
Benefitting Candidate in Jurisdiction Where MA Can NOT Vote Including Client or Potential Client	NO	NONE ALLOWED	YES regardless of amount
Benefitting Candidate in Jurisdiction Where MA Can NOT Vote But No Client or Potential Client	NO, But Ban is Irrelevant if Not/Never Will be A Client	NONE ALLOWED, But Ban on Business is Irrelevant	YES regardless of amount
Not Benefitting Candidate	YES	No Limit	No, if under \$250 in jurisdiction where MA can vote

Action	Contribution* Allowed Without Triggering Ban on Business	Limit Without Triggering Ban on Business	Disclosure Requirement
Contribution by MA or MA-controlled PAC to National Political Party (Need to determine ultimate beneficiary -- if not benefitting particular issuer officials then only the disclosure rules apply)			
Benefitting Candidate in Jurisdiction Where MA Can Vote Including Client or Potential Client	YES	\$250/year	No, if under \$250
Benefitting Candidate in Jurisdiction Where MA Can NOT Vote Including Client or Potential Client	NO	NONE ALLOWED	YES regardless of amount
Benefitting Candidate in Jurisdiction Where MA Can NOT Vote But No Client or Potential Client	NO, But Ban is Irrelevant if Not/Never Will be A Client	NONE ALLOWED, But Ban on Business is Irrelevant	YES regardless of amount
Not Benefitting Candidate	YES	No Limit	NO
Contribution to Charitable Organization (Even With Ties to Client/Potential Client)	YES, however must be legitimate charity and not a pass through to candidate	NO LIMIT	NO
Contribution by MA to PACs not controlled by MA (need to determine ultimate beneficiary)			
Benefitting Candidate in Jurisdiction Where MA Can Vote Including Client-Potential Client	YES	\$250/election	No, if under \$250
Benefitting Candidate in Jurisdiction Where MA Can NOT Vote Including Client-Potential Client	NO	NONE ALLOWED	YES regardless of amount
Benefitting Candidate in Jurisdiction Where MA Can NOT Vote But No Client or Potential Client	NO, But Ban is Irrelevant if Not/Never Will be A Client	NONE ALLOWED, But Ban on Business is Irrelevant	YES regardless of amount
Not Benefitting Candidate	YES	No limit	NO

Action	Contribution* Allowed Without Triggering Ban on Business	Limit Without Triggering Ban on Business	Disclosure Requirement
Contribution by MA or MA controlled PAC to Bond Ballot Initiatives			
In State/Local Jurisdiction Where MA Can Vote	YES	NO LIMIT	NO, if under \$250
In State/Local Jurisdiction Where MA Can NOT Vote	YES	NO LIMIT	YES, regardless of amount
Contribution by MA or MA controlled PAC to Elected Official's Inaugural Expenses**			
Jurisdiction Where MA Can Vote Including Client or Potential Client	YES	\$250/election*	No, if under \$250
Jurisdiction Where MA Can NOT Vote Including Client or Potential Client	NO	NONE ALLOWED	YES regardless of amount
Jurisdiction Where MA Can NOT Vote and Is NOT Client or Potential Client	NO, But Ban May Be Irrelevant if Not/Never Will be A Client	NONE ALLOWED, But Ban on Business is Irrelevant	YES, regardless of amount
Candidates for Federal Office (unless candidate is currently serving in state/local capacity as a client)	YES	NO LIMIT	NO
Volunteer Activities During Non-Work Hours Without Incurring Expenses and Does Not Include Fundraising	YES	NA	NO
Soliciting or Coordinating Contributions for PAC, Political Party or Candidate (including as part of volunteer work)			
Benefitting Candidate Who is Client/Potential Client of MA	NO	NONE ALLOWED	YES, regardless of amount

* - amount includes contribution amount for tickets to fundraising dinners and events; and in kind contributions

**This Should Not Be Used to Ensure Compliance With Rulemaking
Please Consult Counsel When Making Contribution Determinations, and Developing Appropriate Policies and Procedures
NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS**



NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

**Securities Exchange Commission (SEC) Exam Request
Cover Page for Each Response
[Insert Municipal Advisory Firm Name]**

Item Number: [insert exam request number here; e.g. 2]

Requested Information: [insert text from SEC request letter; e.g. For the Firm and each affiliated entity, please provide descriptions of each of the Firm's and the entities' businesses, descriptions of the types of business the affiliated entities transact with the Firm, and a list of control persons, officers, and shared employees.]

Item Category: [insert exam category here, e.g., general]

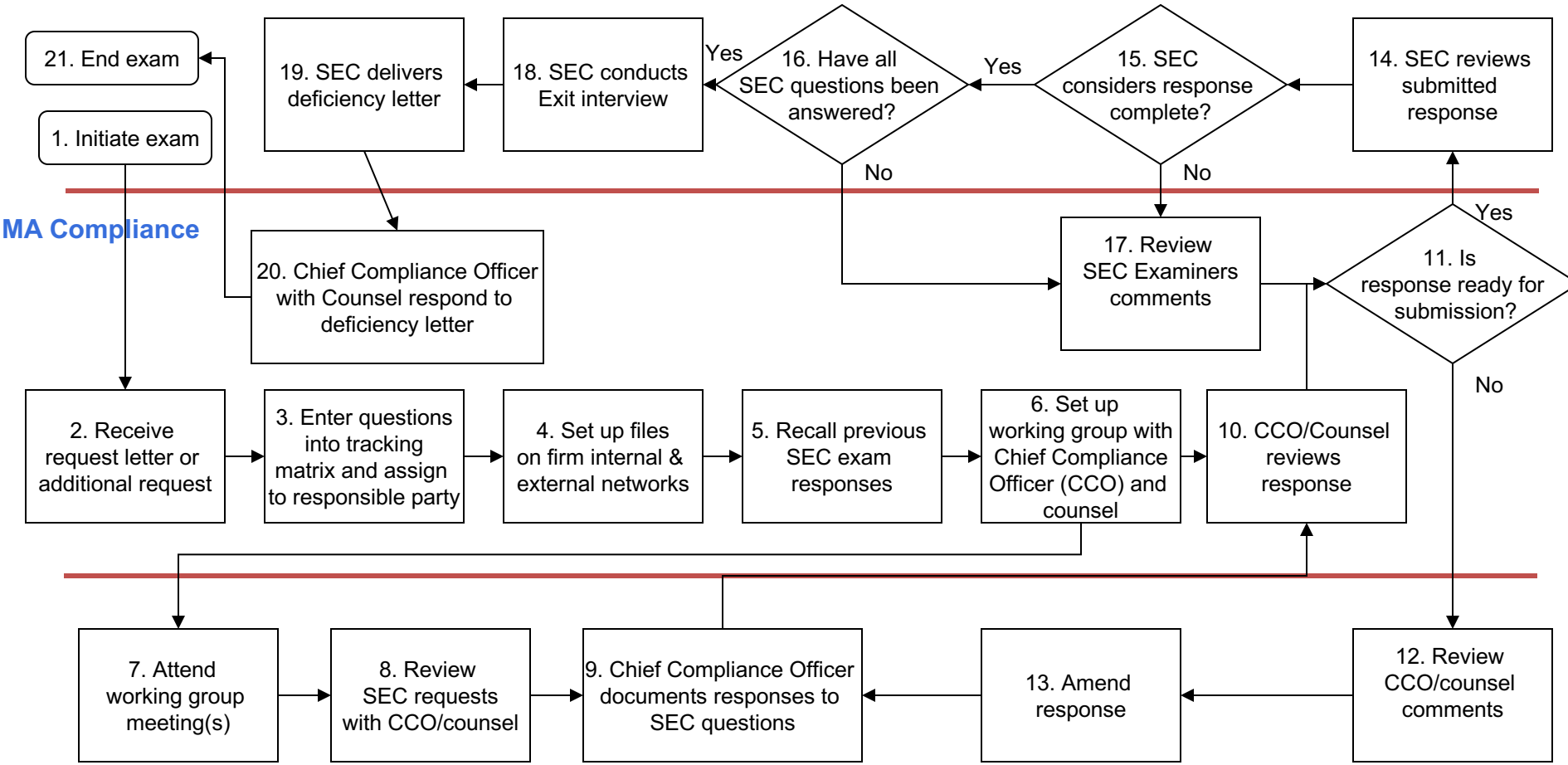
Additional Details: [insert details related to the information you are providing the SEC]

[Insert Municipal Advisory Firm Name] respectfully requests that this information be treated as confidential under the Freedom of Information Act.

Illustrative Exam Process Flow Map

SEC

MA Compliance



Business Contact(s)



Municipal Advisors Must Pass the Series 50 Qualification Exam by September 12

MA's WHO HAVE NOT PASSED THE SERIES 50 BY SEPTEMBER 12 MUST WITHDRAW THEIR MA-I FORM AND CAN NOT PERFORM ADVISORY WORK UNTIL THEY PASS THE EXAM. ENGAGING IN MUNICIPAL ADVISORY WORK WITHOUT HAVING SERIES 50 QUALIFICATION COULD BE A VIOLATION OF MSRB RULES AND OTHER FEDERAL SECURITIES LAWS.

MA-I Forms and the Series 50

According to MSRB Rule G-3, Municipal Advisors must pass the Series 50 qualification exam by September 12, 2017. Those MAs that are currently practicing and do not pass the exam by that date, **must promptly withdraw their SEC MA-I form**. The firm can reactivate the MA-I Form by filing an amendment to the SEC MA-I form **after** the professional has passed the Series 50 exam.

SEC Instructions for Form MA Series: <https://www.sec.gov/files/2017-03/formmadata.pdf>

Engaging in Advisory Work and the Series 50 Exam Deadline/Current MAs

Those professionals who have not passed the Series 50 exam by September 12, will **not be able to perform advisory work for their clients**. According to the [MSRB's FAQ on the Professional Qualifications Exam](#):

After September 12, 2017, the only individuals who can engage in municipal advisory activities on behalf of a municipal advisor are those that have passed the Series 50 exam and whose firm has filed SEC Form MA-I (Information Regarding Natural Persons Who Engage in Municipal Advisory Activities) on their behalf.

Engaging in Advisory Work and the Series 50 Exam Deadline/New Hires

Similarly, for MA professionals hired after September 12, **those professionals will need to pass the Series 50 Exam prior to performing advisory work**. The MSRB states in the FAQ the following on this issue -

If a municipal advisor hires an individual to engage in municipal advisory activities on or after September 12, 2017, the individual will need to take and pass the Series 50 exam before engaging in MA activities on behalf of the firm.

The firm must file the professional's initial SEC MA-I Form **only after** the new hire has passed the Series 50.

Identifying Municipal Advisory Work

MA firms should be very cautious with the tasks and responsibilities performed by non Series 50 qualified/MA-I professionals, as such tasks must not include advisory activities. The MSRB states in the [FAQ, MA Professional Qualification Standards and Requirements](#) that **all** MAs within a firm must complete the Series 50 exam unless their work is related to *only clerical, administrative, support or similar functions*. Under the SEC's Registration Rule for MAs, municipal advisory activities are broadly defined to include ... *advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or ...undertaking a solicitation of a municipal entity...*

Resources

NAMA Series 50 Resource Page: <http://www.municipaladvisors.org/series-50-testing-information>



This document serves to provide NAMA members with industry participant resources related to derivatives and information related to the regulatory framework over professionals advising on these types of transactions. As further resources are gathered as well as developed, they will be posted on this document.

This document should not be viewed as providing legal advice nor should be used to determine your specific regulatory responsibilities.

REGULATIONS

- SEC: Municipal Advisor Web Page
<https://www.sec.gov/municipal/municipal-advisors.html>
- SEC MA Rule FAQ (see 4.1 related to swaps)
<https://www.sec.gov/info/municipal/municipal-advisors-faqs.pdf>
- CFTC Staff Advisory Concerning Trading Advisors and Swaps (see especially Section III)
<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/13-79.pdf>
- CFTC Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties (see page 9739)
<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2012-1244a.pdf>
- MSRB Rule G- 42 (see especially .1, .9 and .10 in the Supplementary Materials Section)
<http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-42.aspx>

GENERAL

- GFOA Advisory: Debt Related Derivatives
http://www.gfoa.org/sites/default/files/ADV_Using%20Debt-Related%20Derivatives.pdf
- GFOA MA Rule Resource Center for Issuers
<https://www.gfoa.org/products-and-services/resources/federal-government-relations/municipal-advisor-ma-rule-resource>
- NABL White Paper: Ban on Tax Exempt Advance Refundings – Now What?
<https://www.nabl.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1156>

