



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
- Advice and contributions should be based on the best interests of your client. When solicited to assist the issuer with hiring other finance professionals, ensure that your contribution is 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, 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.
- 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 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>