

Annual G-42 Training and Regulatory Update



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Speaker

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Topics

- G-42 Overview
 - Conflict of Interest/Disclosures to Client
 - MA Relationship with Client and Documentations
 - Prohibitions in Conduct
 - Know Your Client
- G-44 Supervisory Procedures
- G-8 and G-9 Recordkeeping
- Special Topic: MA Pricing Duties
- Updated Rulemaking – Rule G-34
- Other Issues/Upcoming Rulemaking - 2023

Standards of Conduct

- A. Duty of Care (Applies to all Client Types)
 - 1. Must possess degree of knowledge and expertise necessary to provide informed advice
 - 2. Must make reasonable inquiry to the facts
 - 3. Must undertake reasonable investigation to determine that recommendation is not based on materially inaccurate or incomplete information
 - 4. Must have reasonable basis for:
 - a. Providing **advice** to client
 - b. Representations made in certifications of the municipal advisor
 - c. Any information provided to client or others in connection with preparation of OS where the MA is advising

Standards of Conduct

- B. Duty of Loyalty (Applies to Municipal Entity Clients)
 - 1. Deal honestly and with utmost good faith
 - 2. **Act in the client's best interests without regard to the financial or other interests of MA**
 - 3. **Conflicts of interest are managed or mitigated**

- C. Duty to Municipal Entity vs. Obligated Person

Disclosures/Conflicts of Interest

- G-42 (b) Disclosures of Material Conflicts of Interest Prior to or **Upon Engaging in MA Activities** Provided to Client or Potential Client in Writing
 - A. Affiliate of the MA provides advice or services related to MA activities for a client
 - B. Payments made by MA, directly or indirectly, to obtain or retain an engagement (**charitable contributions?**)
 - C. Payments to MA from third party
 - D. Fee-splitting arrangements (other than with UW which are prohibited)

Disclosures/Conflicts of Interest

- G-42 (b) Disclosures of Material Conflicts of Interest Prior to or Upon Engaging in MA Activities Provided to Client or Potential Client in Writing
 - E. **Conflicts arising from compensation for MA activities where payment is contingent on the size of closing of transaction**
 - F. Other or potential conflicts of interest
 - G. Statement of how conflicts will be **mitigated**
 - H. **Statement of no material conflicts of interest exist**
 - I. Information of legal or disciplinary events and reference to Forms MA/MA-I

MA Relationship with Client

- G-42 (c) Documentation of MA Relationship in Writing and Sent to Client Upon or Promptly After Establishment of MA Relationship, Must Include:
 - A. Form and basis of compensation for MA activities
 - B. Disclosures noted in G-42 (b) (conflicts and legal/disciplinary events)
 - C. Legal and Disciplinary events per Form MA and MA-I and date of last material changes to Forms
 - D. **Scope of MA activities to be performed and any limitations on the scope of engagement**
 - E. Date, triggering event or means for termination of the relationship
 - F. Terms, if any, related to withdrawal from the MA relationship

Recommendations

- Recommendations and Review of Recommendations of Other Parties
 - A. Have reasonable basis to believe the recommendation for municipal securities transaction/product is **suitable to client**
 1. **BIG R/little r recommendations**
 2. Suitability must be based on numerous factors Including client's:
 - a. Financial situation and needs
 - b. Objectives
 - c. Tax status
 - d. Risk tolerance
 - e. Liquidity needs

Recommendations

- Recommendations and Review of Recommendations of other Parties
 - 2. Suitability Must be Based on Numerous Factors Including client's:
 - f. Experience with municipal securities transaction/product,
 - g. Financial capacity to withstand changes in market conditions during term of product/length of bonds
 - h. Any other material information known by MA about client and the transaction/product after reasonable inquiry.

Recommendations

- Recommendations and Review of Recommendations of other Parties
 - B. If reviewing recommendations of others is part of scope of services, **MA must determine through reasonable diligence whether the transaction is suitable for the client**
 - C. MA must inform client:
 1. MA's evaluation of material risks, potential benefits, structure and other characteristics of municipal securities transaction/product
 2. Basis for which the MA believes that the recommended transaction/product is or is not suitable
 3. Whether MA has investigated or considered other reasonably feasible alternatives to the recommendation that might also serve the client's objectives

Know Your Client

- A. MA must use reasonable diligence in regard to maintaining the MA relationship
- B. **MA must know and retain essential facts concerning the client and authority of persons acting on behalf of client**
- C. MA must **effectively service the relationship with client**
- D. MA must act in accordance with special directions from client
- E. MA must comply with applicable laws, regulations and rules

In Writing?

Prohibitions

- A. Receiving **excessive compensation** for MA services
- B. Delivering a materially inaccurate invoice for fees or expenses
- C. Making **representations or submitting information that the MA knows or should know is materially false or misleading due to omission of fact**
- D. Making or participating in fee-splitting arrangements with underwriters, and any undisclosed fee-splitting arrangements with providers of investments or services to client

Prohibitions

- E. Making payments for obtaining or retaining an engagement to perform MA activities outside of payments for permitted solicitation purposes.
- F. **Principal transaction** with the client that is related to the transaction where the MA is providing advice

Documentation and G-42

- Documents - External
 - Disclosure of Conflicts
 - Engagement Letters/Client Contracts/**Scope of Services**
 - Recommendations
 - Review of Information from Other Parties
 - Advice**
 - **(SEC MA Rule)**
 - RFP Responses

Documentation and G-42

- Documents - Internal
 - Recommendations
 - Suitability
 - Know Your Client
 - Transaction
 - Correspondence
 - Meetings
 - “Notes”
 - WSP
 - Process
 - Documenting the Process

- NAMA G-42 Checklist

Supervision and G-42

- **Supervisory Systems: How to Review and Update**
- How to Identify Conflicts of Interest
- How to Monitor that Contracts and Disclosures are Being Distributed
- How to Ensure MAs Have Sufficient Knowledge
- **How to Supervise MA Communications**
- Supervising Remotely

Special Topic: MAs and Pricing

- **Why is this such a hot topic?**
- **Inherent or specific MA duty?**
 - What is in the written scope of work?
 - What is performed?
- **How is pricing different than any other duty that MAs performs?**
- **Focus on MA obtaining “independent” information**
- **Documentation standards “showing your work”**
 - WSP
 - Transaction
- **The road to pricing vs the number itself?**
- **MSRB Pricing Resource**

Changes to Rule G-34

- Obligation for MAs to obtain CUSIP numbers in competitive sales “only applies in instances where no CUSIP number has been pre-assigned.”
- Eliminates requirement for MA to acquire CUSIP Numbers in a competitive sale, within one day after distributing the Notice of Sale. MAs now must obtain CUSIP numbers in competitive sales “at a time sufficient to ensure CUSIP number assignment occurs prior to the award of the issue.”
- Required data points to comply with G-34 are fully aligned with information in the CUSIP application.

Regulatory Reminders

- WSP Review
- Form MA Annual Update
- Form MA-I filings
- A-12 Affirmations (**WILL BE JANUARY 30 STARTING IN 2023**)
- MSRB Fees
- G-37 Filings
- G-44 CEO Certification
- G-3 Continuing Education Review and Implementation

Other Issues

- Addressing MA and non-MA Services
- MAs and Issuer Disclosure
- MAs and ESG
 - Issuer Disclosures and Rating Presentation
 - Labeled Bonds
- LIBOR – MAs Assisting Clients
- MA Registration When Disassociated with a Firm <3 Years
- In 2023 – Testimonials and G-40

NAMA Resources

- NAMA Compliance Resources
 - <https://www.municipaladvisors.org/nama-compliance-resources>
- NAMA Comment Letters
 - <https://www.municipaladvisors.org/nama-comment-letters>
- MSRB Rule Book and Compliance Resources
 - <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules>
- SEC OMS – Municipal Advisors Page
 - <https://www.sec.gov/municipal/municipal-advisors>