



NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

2016 ANNUAL CONFERENCE

Hotel Monteleone—New Orleans

October 5–7

MA Practice Management

Mike Sudsina, Moderator

Steve Apfelbacher, Speaker

Dave Perkins, Speaker

Agenda

- Overview of Regulatory Environment
- What Changed in Our Environment?
 - SEC Rule
 - MSRB Rules and requirements
- Managing your MA Practice
 - Compliance and Recordkeeping
 - Client documentation
 - Legal Consultation
 - Bookkeeping
 - Insurance



Regulatory Environment

- 2010 Dodd-Frank Act
- Security & Exchange Commission (SEC)
 - 2012 Municipal Market Report
 - 2014 MA Rule with MA Books and Records requirements
 - Broker Dealer and MA line
 - Loan vs Security issue
 - Bank Loan Disclosure
 - Regulated Firm MA work vs Non-regulated Firm MA work
 - 15c2-12 statements suggesting no failures existed & MCDC
 - Ramped up SEC enforcement
 - Issuers
 - Local Officials

SEC MA Final Rule

- Advice-
 - A call to action on financial products or issuance of municipal securities
- Most significant impact on Public Finance since 1933/34 SEC Acts
- Does not just change the role of financial advisors
- Change roles and responsibilities of all muni participants
- Legitimizes the role of a Financial Advisor as a Municipal Advisor
- Great opportunity for MA firms that adopt to these new requirements

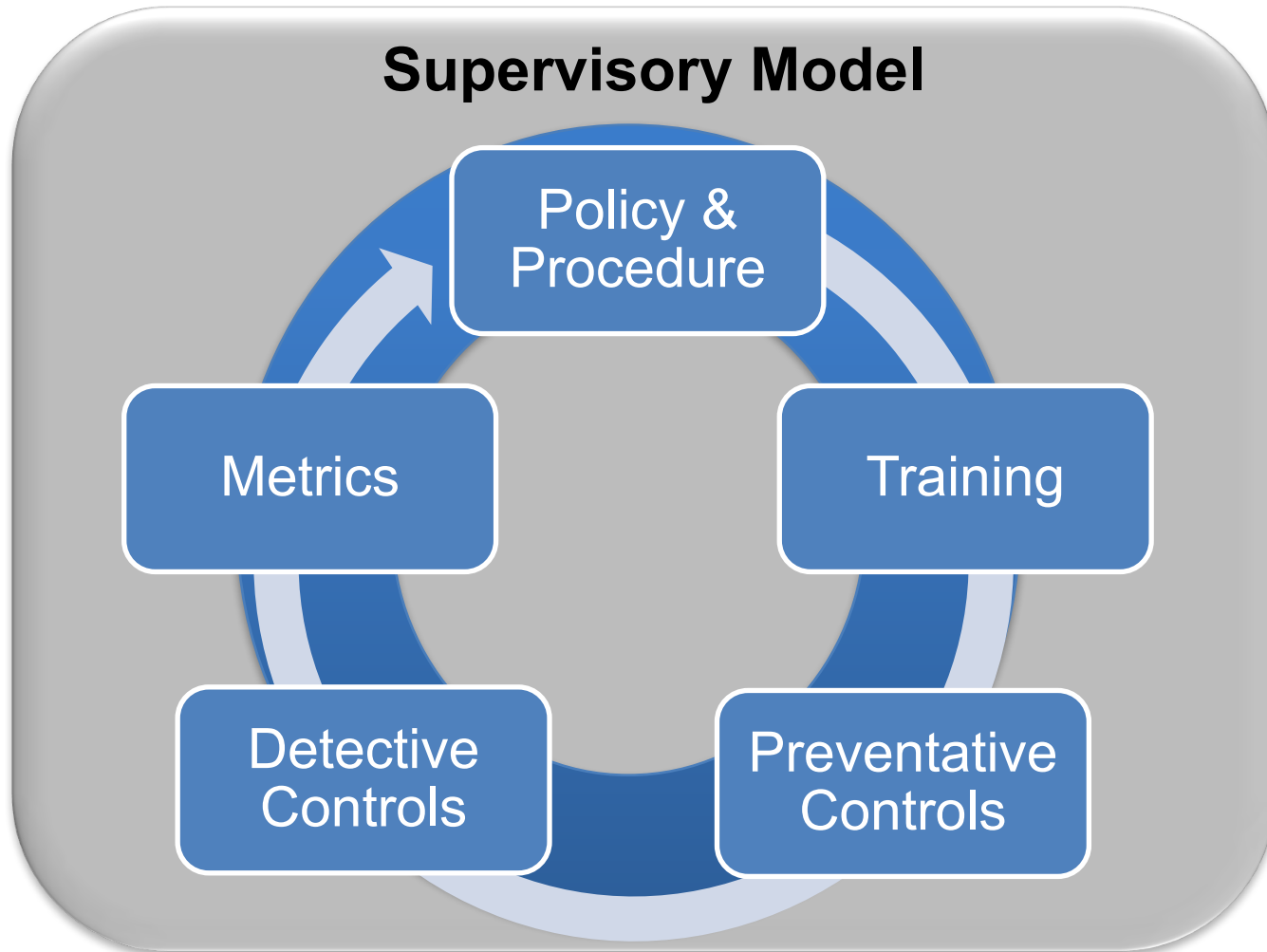
Casting the Regulatory Die

- MA's Also Subject To SEC Examinations
 - We are doing business in a whole new world
 - Auditors assume the worst
 - If it is not documented, it did not happen
 - They are highly trained and keep digging
 - Books and records organization critical
 - Expectation of “prompt” taken very seriously= Requires attention to detail
 - Evidence of supervision of policy and procedures required
 - You may trust it was done but verification required
 - Better to have no policies than policies you do not follow
 - Next SEC Examination
 - Many more rules that can trip us up
 - The SEC will have a definite opinion on what is acceptable and not acceptable
 - Enforcement's interpretation will differ from the written rule

Municipal Securities Rulemaking Board

- MSRB Key Rules Are Finally Effective Besides SEC MA Books & Records
- Current Rules Include:
 - Conduct of MA Activities (G-17)
 - MA Supervisory & Supervision (G-44)
 - Professional Qualifications (G-3)
 - Duties of Non-solicitor MA's (G-42)
 - Gifts and Gratuities (G-20)
 - Pay to Play (G-37)

Ehlers Regulatory Model



Ehlers Debt Approach

- Ehlers Has Adopted As Series Of Best Practices (BP) And Written Supervisory Policies (Wsp's) To Meet SEC Books/Records & MSRB Requirements
- Divided Debt Issues Into:
 - Fully competitive process
 - Limited competitive process
 - Non-competitive process
- Specific Process Steps Have Been Identified With Each Of Our Three Processes
- Internally Publish Processes For Reference
- Processes Updated As Needed By Working Group For Principal Approval

Ehlers Key Client Debt Documents

- Contract / Letter of Engagement/ Written Disclosure
- Project Background Folder
- Presale Report
- Quality Control Worksheet
- Offering Document
- Sale Day Report
- Closing and Post Sale Report

Approach to Supervision, Compliance and Testing

- Principals Are The Designated Supervisor For Their Respective Area Of Responsibility
- Written Supervisory Policy Establishing The Responsibilities Of The Supervisor
- A Review And Testing Procedure Requiring Completed Transactions Be Subjected To An Audit
- Audit Procedures Written To Identify Cause And Corrective Actions On Findings With Identified Owners
- Audit Summary Reports Reviewed By Principals Quarterly
- Non Compliance Will Be Resolved Through The Normal Performance Management Processes

Issues Impacting Ehlers Approach

- One Size Fits All Contracts/Letter Engagement/ Written Disclosures
 - Accurate scope of engagement
 - Properly describing any limitations
 - Are you really able to review Client alternatives?
- Providing General Conflict Disclosure and Project Disclosure?
- Pre and Post-Issuance pricing metrics?
- Is it a Loan or Security?
- MA crossing the invisible line being a Broker-dealer
- Incorporating a commitment to regulatory compliance within the culture/organization
- Continue to be profitable after incorporating regulation
- Commitment to Modify Our Regulatory Approach after “Connect the Dots”

Connecting the Dots- Example

- Ehlers drafted a Primary Disclosure Best Practice
- Our language for 15c2-12 was revised
- We were good
- Now have G-42 which states under Supplementary Materials, Duty of Care: A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

(c) 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 the municipal advisor is advising.

Connecting the Dots- Example

- Based on MCDC settlements legal's Best Practice for Primary offering OFFICIAL STATEMENTS includes:
 - Disclose **ALL** Failures to Comply Within Preceding Five Years Regardless of Materiality
- What are consequences to a MA firm who is involved in drafting the OS for not making this change if drafting an issuer's OS?
 - No bids in a competitive sale?
 - Reputation risk in a negotiated sale?
 - SEC enforcement action against the client and MA?
 - Client lawsuit against MA?

Annual Certification

- April 23, 2017 under G-44 is your next compliance program certification (in place and it is effective)
- Questions to Consider:
 - What has changed in the Muni-world that requires a change in your regulatory approach?
 - Are your Written Supervisory Procedures reflective of your business practice and what you are doing?
 - Do your books & records practices create an acceptable audit trail?
 - Does your compliance structure match your firm's risk tolerance?
 - Are advertising/RFP response approved by a Principal?
 - Does your written client disclosure clarify all ambiguity and clearly state what you will do and more importantly not do?(Blanket scopes of services could be problematic)
 - Is the original conflict disclosure accurate for another specific engagements or a second disclosure required?

Annual Certification

- (Continued) Questions to Consider:
 - Does the organization proactively seek to identify risk and compliance events?
 - Are policy or control breaches tolerated?
 - Are Supervisors effective role models of firm culture?
 - What changes are required to address the gaps that you see?
 - Repeat offenders subjected to a higher percentage of monitoring
 - Focused and expanded testing for high frequency deficiencies
 - Compensation or Disciplinary action
 - Has legal been retained to help you stay on top of industry trends?
 - Do you need to budget a bigger reserve for legal expense and/or anticipate regulatory fines?
 - Should you be looking for another profession?

Future Issues

- MA MSRB Advertising Rule- One was previously proposed
- Customer complaint log?-RIA firms need it. SEC asked us
- More Continuing Disclosure Changes?
- Client Bank Loan Disclosure Best Practice?
- What is your Business Continuity Plan?
- What is your Cybersecurity Plan?

QUESTIONS?

Steve Apfelbacher
Ehlers
sapfelbacher@ehlers-inc.com



U.S. Risk

NAMA

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STANDARD INSURANCE COVERAGES

- ✓ General Liability: provides coverage for Bodily Injury or Property Damage
- ✓ Property Insurance: provides coverage for damage to your Property. Can be written on a broad or limited perils basis.
- ✓ Workers Compensation: provides coverage for Injury to your employees
- ✓ Commercial Auto: provides coverage for Bodily Injury or Property Damages to other or their property due to an automobile accident
- ✓ Umbrella Liability: provides excess liability coverage over GL/Auto/Comp and other losses not covered under primary coverage.

SPECIALTY INSURANCE COVERAGES

- ✓ Professional Liability/Errors & Omissions: provides coverage for alleged wrongful acts in the performance or failure to perform professional services.
- ✓ Directors & Officers Liability: provides coverage for wrongful acts against the D's & O's in their capacity as a Director or Officer of the Corporation.
- ✓ Employment Practices Liability: provides coverage for claims alleging Wrongful Termination, Discrimination & Harassment.
- ✓ Fiduciary Liability: provides coverage for wrongful acts alleged in the administration of employee benefit plans & violations of ERISA.
- ✓ Financial Institution Bond/Crime: provides coverage for employee dishonesty, theft of clients property, wire transfer fraud, etc.
- ✓ Cyber Liability: provides coverage for claims for Network Security/Privacy Liability and Data Breach Response.

WHERE CLAIMS COME FROM

- ✓ Professional Liability/Errors & Omissions: Customers, Bond Investors, Regulatory Agencies, etc.
- ✓ Directors & Officers Liability: Shareholders, Regulatory Agencies, Customers, Competitors, Creditors, etc.
- ✓ Employment Practices Liability: Employees, Prospective Employees & Third Parties.
- ✓ Fiduciary Liability: Employees and Regulatory Agencies.
- ✓ Financial Institution Bond/Crime: Employees, Third Parties committing Fraudulent Acts, etc.
- ✓ Cyber Liability: Customers, Employees, Regulatory Agencies, Other Third Parties.

Q&A