

(iii) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(m) *Exemption.* Outbound telephone calls from a broker, dealer, or municipal securities dealer to a business entity, government, or political subdivision, agency, or instrumentality of a government are exempt from this rule, other than sections (a)(ii) and (d)(i)-(iii), (v) and (vi).

(n) *Definitions.*

For purposes of this rule:

(i) The term “account activity” shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(ii) The term “acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(iii) The term “billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. A “donor” means any person solicited to make a charitable contribution. A “charitable contribution” means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(iv) The term “broker, dealer or municipal securities dealer of record” refers to the broker, dealer or municipal securities dealer identified on a customer’s account application for accounts held by the issuer’s agent for municipal fund securities.

(v) The term “caller identification service” means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

(vi) The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(vii) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(viii) The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(ix) The term “credit card sales draft” means any record or evidence of a credit card transaction.

(x) The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(xi) The term “customer” means any person who is or may be required to pay for goods or services offered through telemarketing.

(xii) The term “established business relationship” means a relationship between a broker, dealer or municipal securities dealer and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the broker, dealer or municipal securities dealer or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer within the eighteen months immediately preceding the date of an outbound telephone call;

(B) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of an outbound telephone call; or

(C) the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the three months immediately preceding the date of an outbound telephone call.

A person’s established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer’s affiliated entities unless the person would reasonably expect them to be included. Similarly, a person’s established business relationship with a broker, dealer or municipal securities dealer’s affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(xiii) The term “free-to-pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(xiv) The term “merchant” means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(xv) The term “merchant agreement” means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(xvi) The term “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.

(xvii) The term “person” means any individual, group, unincorporated association, limited or general partnership, corporation, other business entity, government, or political subdivision, agency, or instrumentality of a government.

(xviii) The term “personal relationship” means any family member, friend, or acquaintance of the broker, dealer or municipal securities dealer making an outbound telephone call.

(xix) The term “preacquired account information” means any information that enables a broker, dealer or municipal securities dealer to cause a charge to be placed against a customer’s or donor’s account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(xx) The term “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(xxi) The term “telemarketing” means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call pertaining to municipal securities or municipal financial products, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer’s call.

Rule G-39 Amendment History (since 2003)

[Release No. 34-69635 \(May 24, 2013\), 78 FR 32483 \(May 30, 2013\); MSRB Notice 2013-12 \(May 29, 2013\)](#)

[Release No. 34-51533 \(April 12, 2005\), 70 FR 20196 \(April 18, 2005\); MSRB Notice 2005-20 \(March 23, 2005\)](#)

[Release No. 34-49127 \(January 26, 2004\), 69 FR 4548 \(January 30, 2004\); MSRB Notice 2004-05 \(February 2, 2004\)](#)

Rule G-39 Interpretation

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Rule G-40

Advertising by Municipal Advisors

(a) *General Provisions.*

(i) *Definition of "Advertisement."* For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the services of the municipal advisor or the engagement of a municipal advisory client (as defined in paragraph (a)(iii)(B)), or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses or registration statements, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by municipal advisors.

(ii) *Definition of "Form Letter."* For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.

(iii) *Definition of Municipal Advisory Client.* For the purposes of this rule, the term municipal advisory client shall include either:

(A) a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv) or

(B) a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined under section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

(iv) *Content Standards.*

(A) All advertisements by a municipal advisor, must be based on the principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular municipal security or type of municipal security, municipal financial product, industry, or service. No municipal advisor may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the advertisements to be misleading.

(B) No municipal advisor may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any advertisement.

(C) A municipal advisor may place information in a legend or footnote only in the event that such placement would not inhibit a municipal advisory client's or potential municipal advisory client's understanding of the advertisement.

(D) A municipal advisor must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. An advertisement must be consistent with the risks inherent to the municipal financial product or the issuance of the municipal security.

(E) A municipal advisor must consider the nature of the audience to which the advertisement will be directed and must provide details and explanations appropriate to the audience.

(F) An advertisement may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (a)(iv) (F) does not prohibit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of a municipal financial product; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

(G) A municipal advisor shall not, directly or indirectly, publish, circulate or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service rendered by the municipal advisor.

(H) A municipal advisor may indicate registration with the Municipal Securities Rulemaking Board in any advertisement that complies with the applicable standards of all other rules of the Board and that neither states nor implies that the Municipal Securities Rulemaking Board or any other corporate name or facility owned by the Municipal Securities Rulemaking Board, or any other regulatory organization endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.

(v) *General Standard for Advertisements.* Subject to the further requirements of this rule relating to professional advertisements, no municipal advisor shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that such municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

(b) *Professional Advertisements.*

(i) *Definition of “Professional Advertisement.”* The term “professional advertisement” means any advertisement concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor.

(ii) *Standard for Professional Advertisements.* No municipal advisor shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.

(c) *Approval by Principal.* Each advertisement subject to the requirements of this rule must be approved in writing by a municipal advisor principal, as defined in Rule G-3(e)(i), prior to first use.

(d) *Interactive Content.* Notwithstanding the requirement of section (c), interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum is exempt from the requirement to be approved in writing by a municipal advisor principal prior to first use.

(e) *Records.* Each municipal advisor shall make and keep current in a separate file records of all advertisements.

Supplementary Material:

.01 Number of Persons. For purposes of Rule G-40(a)(ii), the number of “persons” for a response to a request for proposal (RFP), a request for qualifications, or similar request is determined at the entity level. Therefore, for example, if a municipal advisor were to send a response to an RFP to a municipal entity, that municipal entity would count as one “person” no matter how many employees of the municipal entity may review the response to the RFP.

.02 Supervision of Interactive Content. Notwithstanding Rule G-40(d), each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G 44(a), on supervisory system.

Rule G-40 Interpretations

See:

Rule G-21 Interpretive Notice – FAQs regarding the Use of Social Media under MSRB Rule G-21, on Advertising by Brokers, Dealers or Municipal Securities Dealers, and MSRB Rule G-40, on Advertising by Municipal Advisors, August 23, 2019

Rule G-40 Amendment History (since 2003)

[Release No. 34-85223 \(February 28, 2019\), 84 FR 8141 \(March 6, 2019\); MSRB Notice 2019-07 \(February 26, 2019\)](#)

[Release No. 34-85222 \(February 28, 2019\), 84 FR 8132 \(February 28, 2019\); MSRB Notice 2019-07 \(February 26, 2019\)](#)

[Release No. 34-84999 \(January 29, 2019\), 84 FR 1525 \(February 4, 2019\); MSRB Notice 2019-03 \(January 28, 2019\)](#)

[Release No. 34-83177 \(May 7, 2018\), 83 FR 21794 \(May 10, 2018\); MSRB Notice 2018-08 \(May 7, 2018\)](#)

Rule G-41

Anti-Money Laundering Compliance Program

Every broker, dealer or municipal securities dealer shall establish and implement an anti-money laundering compliance program reasonably designed to achieve and monitor ongoing compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. 5311, et seq. (“BSA”), and the regulations thereunder. A broker, dealer or municipal securities dealer that establishes and implements an anti-money laundering compliance program that is in compliance with the rules, regulations or requirements governing the establishment and maintenance of anti-money laundering programs of the registered securities association of which the broker, dealer or municipal securities dealer is a member (*e.g.*, FINRA Rule 3310) or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act (*e.g.*, 12 C.F.R. 21.21 (OCC); 12 C.F.R. 208.63 (FRB); 12 C.F.R. 326.8 (FDIC)) or, if applicable, the Office of Thrift Supervision (12 C.F.R. 563.177) will be deemed to be in compliance with Section 5318(h)(1) of the BSA and the regulations promulgated thereunder for purposes of this Rule.

Rule G-41 Amendment History (since 2003)

[Release No. 34-85699 \(April 22, 2019\), 84 FR 17897 \(April 26, 2019\); MSRB Notice 2019-11 \(April 10, 2019\)](#)

[Release No. 34-51620 \(April 27, 2005\), 70 FR 22952 \(May 3, 2005\); MSRB Notice 2005-14 \(March 4, 2005\)](#)

[Release No. 34-48169 \(July 11, 2003\), 68 FR 42793 \(July 18, 2003\); MSRB Notice 2003-28 \(July 16, 2003\)](#)

Rule G-42

Duties of Non-Solicitor Municipal Advisors

(a) *Standards of Conduct.*

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes a duty of loyalty and a duty of care.

(b) *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

(A) any affiliate of the municipal advisor 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 the disclosing municipal advisor;

(B) any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

(C) any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

(D) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and

(F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission 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 the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, it must 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 the municipal advisor. If the review of a recommendation of another party is requested by the municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information

obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is or is not suitable for the client. In addition, the municipal advisor must inform the client of:

(i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;

(ii) the basis upon which the municipal advisor 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; and

(iii) whether the municipal advisor 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.

(e) *Specified Prohibitions.*

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering 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;

(C) making any representation or the submission of any information that the municipal advisor 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 the municipal advisor, 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;

(D) making, or participating 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 the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor 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 reg-

istered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible "normal business dealings" as described in Rule G-20.

(ii) Except as provided for in paragraph .14 of the Supplementary Material of this rule, a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging 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 the municipal advisor is providing or has provided advice to the municipal entity client.

(f) *Definitions.*

(i) "Advice" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(ii) "Affiliate of the municipal advisor" shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(iv) "Municipal advisory activities" shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iii) of this rule.

(v) A "municipal advisory relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vi) "Municipal entity" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

(vii) “Obligated person” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(viii) “Official statement” shall, for purposes of this rule, have the same meaning as in Rule G- 32(d)(vii).

(ix) “Principal transaction” shall mean, for purposes of this rule, 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.

Supplementary Material:

.01 Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph .01. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a 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. 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:

- (a) any advice provided to or on behalf of a client;
- (b) 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 investors in the municipal entity client’s securities or securities secured by payments from an obligated person client; and
- (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.

.02 Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph .02. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client’s best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity’s best interests.

.03 Action Independent of or Contrary to Advice. If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

.04 Limitations on the Scope of the Engagement. Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.

.05 Conflicts of Interest. Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client 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 the municipal advisor addresses or intends to manage or mitigate each conflict.

.06 Relationship Documentation. During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other information and subsection (c) (ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

.07 Inadvertent Advice. A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

- (a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that

municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

.08 Applicability of State or Other Laws and Rules. Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

.09 Suitability. A determination of whether a municipal securities transaction or municipal financial product is suitable 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 the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

.10 Know Your Client. A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts concerning the client and concerning the authority of each person acting on behalf of such client. The facts "essential" to "knowing a client" 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.

.11 Excessive Compensation. Depending on the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor's compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor'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 whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

.12 529 College Savings Plans, ABLÉ Programs and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLÉ programs (*i.e.*, a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities. All references in this rule to an "official statement" include the disclosure document for a 529 college savings plan or an ABLÉ program and the investment circular or information statement for a local government investment pool.

.13 Principal Transactions - Other Similar Financial Products. For purposes of subsection (f)(ix) of this rule, which defines the term "principal transaction," the phrase "other similar financial product" includes a bank loan, but only if it is in an aggregate principal amount of \$1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

.14 Principal Transactions - Exception for Transactions in Specified Fixed Income Securities. Engaging in a principal transaction with a municipal entity client is not specifically prohibited under subsection (e)(ii) of this rule if:

(a) the municipal advisor is a broker-dealer registered under Section 15 of the Act, and each account as to which the municipal advisor relies on this paragraph .14 is a brokerage account subject to the Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member, and is an account as to which the municipal advisor exercises no investment discretion (as defined in Section 3(a)(35) of the Act), except investment discretion granted by a municipal entity client on a temporary or limited basis;

(b) neither the municipal advisor, nor any affiliate of the municipal advisor, is providing or has provided advice to the municipal entity client as to an issue of municipal securities or a municipal financial product that is directly related to the principal transaction (other than advice as to another principal transaction under circumstances meeting all the requirements of this paragraph .14);

(c) the principal transaction is a sale to or a purchase from the municipal entity client of any U.S. Treasury security, agency debt security, or corporate debt security (as defined in paragraph .15 of the Supplementary Material) and does not involve municipal escrow investments (as defined in 17 CFR 240.15Ba1-1(h)); and

(d) the municipal advisor either: (1) discloses to the municipal entity client in writing before the completion of the transaction the capacity in which the municipal advisor is acting and obtains the consent of the municipal entity client to such transaction or (2) executes the transaction under circumstances meeting all of the following requirements:

(A) neither the municipal advisor nor any of its affiliates are the issuer of, or, at the time of the sale, an underwriter (as defined in 17 CFR 240.15c2-12(f)(8)) of, the security;

(B) the municipal entity client has executed a written, revocable consent prospectively authorizing the municipal advisor directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the municipal entity client, so long as such written consent is obtained after written disclosure to the municipal entity client explaining: the circumstances under which the municipal advisor directly or indirectly may engage in principal transactions; the nature and significance of conflicts with its municipal entity client's interests as a result of the transactions; and how the municipal advisor addresses those conflicts;

(C) the municipal advisor, prior to the execution of each principal transaction, informs the municipal entity client, orally or in writing, of the capacity in which it may act with respect to such transaction and obtains consent from the municipal entity client, orally or in writing, to act as principal for its own account with respect to such transaction;

(D) the municipal advisor sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b-10 or Rule G-15, a conspicuous, plain English statement informing the municipal entity client that the municipal advisor disclosed to the client prior to the execution of the transaction that the municipal advisor may be acting in a principal capacity in connection with the transaction, the municipal entity client authorized the transaction, and the municipal advisor sold the security to, or bought the security from, the municipal entity client for its own account;

(E) the municipal advisor sends to the municipal entity client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon subsection (d)(2) of this paragraph .14, and the date and price of such transactions; and

(F) each written disclosure required by subsection (d)(2) of this paragraph .14 includes a conspicuous, plain English statement that the municipal entity client may revoke the written consent referred to in paragraph (d)(2)(B) of this paragraph .14 without penalty at any time by written notice to the municipal advisor.

This paragraph .14 shall not be construed as relieving in any way a municipal advisor from acting in the best interest of its municipal entity clients, nor shall it relieve the municipal advisor from any obligation that may be imposed by other applicable provisions of the federal securities laws and state law.

.15 Terms Relating to the Exception in Paragraph .14. For purposes of paragraph .14 and this paragraph .15 of the Supplementary Material:

(a) "agency" means a U.S. executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury securities;

(b) "agency debt security" means a debt security (i) issued or guaranteed by an agency, or (ii) issued or guaranteed by a government-sponsored enterprise, including a securitized product that is issued by an agency or a government-sponsored enterprise, or, for which, the principal or interest (or both) is guaranteed by an agency or a government-sponsored enterprise;

(c) "corporate debt security" means a debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer and, if a "restricted security" as defined in 17 CFR 230.144(a)(3), sold pursuant to 17 CFR 230.144A, but does not include a money market instrument;

(d) "government-sponsored enterprise" has the same meaning as defined in 2 U.S.C. 622(8);

(e) "money market instrument" means a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an agency or a government-sponsored enterprise, a maturity of one calendar year and one day or less;

(f) "securitized product" means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes, but is not limited to, an asset-backed security, a synthetic asset-backed security, and any residual tranche or interest of any security specified above, which tranche or interest is considered a debt security; and

(g) “U.S. Treasury security” means a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.

Rule G-42 Interpretations

Duties of Non-Solicitor Municipal Advisors in Conduit Financing Scenarios

July 13, 2017

The MSRB is providing interpretive guidance to address the applicability of Rule G-42, which establishes core standards of conduct for municipal advisors¹ that engage in municipal advisory activities,² other than municipal advisory solicitation activities (for purposes of this guidance and Rule G-42, “municipal advisors”), in the area of conduit financing. Using various scenarios, the guidance discusses a municipal advisor’s relationship(s) with, and duties and obligations owed to, a municipal entity issuer, an obligated person that is a conduit borrower,³ or both, in connection with the issuance of municipal securities for the conduit borrower. For purposes of this guidance, the MSRB assumes that the conduit borrower is not a municipal entity, as defined in Section 15B(e)(8) of the Exchange Act, except in the final section of the guidance entitled, “When a Conduit Borrower is also a Municipal Entity.”

A few broad principles should be noted. First, institutions that are often conduit borrowers, such as large universities, may choose to issue debt securities directly without the involvement of a municipal entity issuer. The exemption from registration under the Securities Act of 1933 (“Securities Act”)⁴ may be based on Section 3(a)(4)⁵ or Regulation D under the Securities Act,⁶ rather than on Section 3(a)(2).⁷ In such cases, there may be no municipal security, and Rule G-42 would not apply. In cases where there is a private placement “tail” (*i.e.*, a non-municipal security) side-by-side with the issuance of a tax-exempt municipal security, the advice and the activities a municipal advisor engages in regarding the tax-exempt security, including any conduct or communication to fulfill the municipal advisor’s duties and obligations under Rule G-42, may have an impact or consequences for the municipal advisor with respect to its negotiations or other activities related to the non-municipal security (*e.g.*, the disclosure to the client of a material conflict of interest as required under Rule G-42(b)).

Second, the scenarios described below may involve advice given to both the municipal entity issuer and the conduit borrower. Rule G-42 provides that a fiduciary duty is owed only to a municipal entity, and a duty of care is owed to both the municipal entity and the conduit borrower. If an issue arises as to an activity that involves only the duty of care, such as inquiry as to the facts that provide the basis for advice provided to the client, the duty owed may be the same to both the municipal entity and the conduit borrower. Other issues, however, may involve the duty of loyalty owed the municipal

entity as part of the municipal advisor’s fiduciary duty, and thus the municipal advisor’s obligation to the issuer may be higher (or different) than the duty owed the conduit borrower.

Initially, the MSRB provides interpretive guidance regarding the applicability of Rule G-42 when an issuer hires a municipal advisor to provide advice directly to a conduit borrower (“First Scenario”). The MSRB then considers whether an issuer may retain a municipal advisor (either for a specific transaction, or on a long-term basis), and then provide advice that the issuer obtains from the municipal advisor, in connection with a specific issuance of municipal securities, indirectly through the issuer, to the conduit borrower in connection with the issuance (“Second Scenario”). In a third scenario, the MSRB considers whether a conduit borrower may retain a municipal advisor that, as a practical matter, will also provide advice to an issuer on which the issuer will rely, in cases where the issuer chooses not to retain a separate municipal advisor, and, in such circumstances, whether the municipal advisor must provide the issuer the disclosures set forth in Rule G-42 (“Third Scenario”). The MSRB also provides interpretive guidance regarding the application of Rule G-42 to an issuer and a conduit borrower when the issuer and the conduit borrower retain the same municipal advisor to provide advice regarding an issuance (“Fourth Scenario”). Finally, in a fifth scenario (“Fifth Scenario”), the MSRB interprets the applicability of Rule G-42 to a scenario involving two natural persons, A and B, who are employees or otherwise associated persons of a registered municipal advisor, where A is retained by the issuer to provide municipal advisory services to the issuer, and B is retained by the conduit borrower to provide municipal advisory services to the conduit borrower.

Section 1: First Scenario

In the First Scenario, the MSRB considers the applicability of Rule G-42, when, in connection with a specific issuance of municipal securities, an issuer hires a municipal advisor to provide advice directly to a conduit borrower. (For purposes of the First Scenario, the MSRB assumes that the municipal advisor does not provide municipal advisory services to the issuer. Instead, consistent with the issuer’s intent, the municipal advisor is retained for, and in fact, provides municipal advisory services solely to or on behalf of the conduit borrower.)

Under Rule G-42, a municipal advisor may provide municipal advisory services directly to a conduit borrower, in connection with an issuance of municipal securities by an issuer, if the municipal advisor is retained and compensated by the issuer. Whether a person (in this case, the municipal advisor retained by the issuer) is a municipal advisor to the issuer, another person (in this case, the conduit borrower), or both and therefore is subject to Rule G-42, is activity-based and turns on whether the person is providing advice or otherwise engaging in municipal advisory activities for or on behalf of the recipient. Although the First Scenario focuses on the payment of compensation by the issuer, the existence or non-existence of compensation is not a factor in determining whether the