MSRB
Municipal Securities Rulemaking Board

MSRB Municipal Advisor Regulatory Updates

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About the MSRB



- A self-regulatory organization created by Congress in 1975
- Protects investors, municipal entities including issuers of municipal securities, obligated persons and the public interest
- Promotes a fair and efficient municipal market

Municipal Securities Market: Regulatory Structure

Securities and Exchange Commission

- Rules
- Industry Oversight
- Examination
- Enforcement

- Rules
- Transparency Systems
- Education & Outreach
- Market Leadership

Municipal Securities Rulemaking Board

Financial Industry Regulatory Authority

- Rules
- Transparency Systems
- Examination
- Enforcement

- Rules
- Examination
- Enforcement

Bank Regulators

IRS

State Regulators

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Municipal Advisor Regulation Background

- Congress granted the MSRB its rulemaking authority in the Securities Exchange Act of 1934, which was amended by the Dodd-Frank Act
- In 2010, the Dodd-Frank Act expanded the MSRB's jurisdiction to include the regulation of municipal advisors and municipal advisory activities and the protection of municipal entities
  - Included a broad definition of municipal advisor later refined by the SEC in interpretive and related rules (collectively, the "SEC Final Rule")
    - Provision of certain advice to municipal entities and obligated persons
    - Solicitation of a municipal entity or obligated person on behalf of certain third-party financial professionals
  - Deemed municipal advisors to owe a fiduciary duty to their municipal entity clients

MSRB Municipal Advisor Regulatory Framework

MSRB Rule Summary (in relevant part)	Notice
Registration and Professional Qualifications	
Registration (Rule A-12) *Requires municipal advisory firms (incl. sole proprietors) to register with the MSRB, after first registering with the SEC*	---
Professional Qualifications *(Rules G-2 and G-3)* *Requires municipal advisors to be qualified in order to engage in municipal advisory activities; describes qualification classifications and number of supervisory personnel; as of September 12, 2017, all municipal advisors must have taken and passed a professional qualification exam to continue engaging in municipal advisory activity (Effective April 27, 2015)*	MSRB Notice 2015-04
Regulated Entity Administration	
Supervision and Compliance Obligations *(Rule G-44)* *Requires municipal advisors to establish, implement and maintain a system to supervise their municipal advisory activities that is reasonably designed to ensure compliance with applicable securities laws and rules; establishes other supervisory and compliance obligations (Effective April 23, 2015)*	MSRB Notice 2014-19

MSRB Municipal Advisor Regulatory Framework

MSRB Rule Summary (in relevant part)	Notice
Fair Practice and Conflicts	
Fair Dealing *(Rule G-17)* *In the conduct of their municipal advisory activities, requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest or unfair practice (Effective December 22, 2010)*	MSRB Notice 2010-59
Core Standards of Conduct *(Rule G-42)* *Establishes the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities (other than solicitations on behalf of third persons) (Effective June 23, 2016)*	MSRB Notice 2016-03
Gifts and Gratuities (*Rule G-20*) *Subject to exceptions, prohibits municipal advisors from giving gifts or providing services in excess of $100 to another person in relation to the municipal advisory activities of such person's employer; limits the giving and acceptance of non-cash compensation (Effective May 6, 2016)*	MSRB Notice 2015-21
Pay-to-Play *(Rule G-37)* *Subjects municipal advisors to a temporary prohibition on engaging in municipal advisory business with a municipal entity within two years of certain contributions to certain officials of that municipal entity; includes a limited prohibition on soliciting and coordinating contributions and payments; requires quarterly reporting of certain information to the MSRB (Effective August 17, 2016)*	MSRB Notice 2016-06
Investor and Municipal Advisory Client Education and Protection (*Rule G-10)* *Requires municipal advisors to provide annual written notifications to municipal advisory clients about their registration status, the MSRB's website address, the availability of a brochure that describes regulatory protections in place under MSRB rules and how to report a complaint to a regulator (Effective October 13, 2017)*	MSRB Notice 2017-03

Municipal Advisor Professional Qualification Standards

- The Dodd-Frank Act charged the MSRB with setting professional qualification standards for municipal advisors
- Persons associated with municipal advisors must take and pass the Municipal Advisor Representative Qualification Examination (Series 50)
  - Professional qualification exams measure a candidate's knowledge of business activities and applicable regulatory requirements
- As of Sept. 12, 2017, all municipal advisors must have taken and passed the Series 50 exam to continue, or to begin, to engage in municipal advisory activities

MSRB Rule G-44: Supervisory and Compliance Obligations of Municipal Advisors

- Follows a primarily principles-based approach to supervision and compliance
- Requires:
  - Internal supervisory system and compliance processes
  - Designation of municipal advisor principal(s) and a chief compliance officer (CCO)
  - Annual CEO (or equivalent) certification of compliance processes

MSRB Rule G-42: Duties of Non-Solicitor Municipal Advisors

- Sets forth basic duties and responsibilities of a municipal advisor when providing advice on municipal securities transactions and municipal financial products to municipal entities and obligated person clients
- Key provisions of Rule G-42 address:
  - The fiduciary duty (duty of care and duty of loyalty) owed by a municipal advisor to its municipal entity clients;
  - The duty of care owed by a municipal advisor to its municipal entity and obligated person clients;
  - Full and fair disclosure of conflicts of interest;
  - Documentation of the municipal advisory relationship;
  - Suitability of recommendations; and
  - Specific prohibitions against certain activities, such as those related to principal transaction, compensation and fees.

MSRB Rule G-42: Standards of Conduct - Duty of Care & Duty of Loyalty

Municipal advisors owe a duty of care to their obligated person clients, and a higher fiduciary duty (duty of care & duty of loyalty) to their municipal entity clients.

- Duty of Care
  - Due care
    - Must exercise due care in performing municipal advisory activities
  - Knowledge and expertise
    - Must possess the degree of knowledge and expertise necessary to provide advice
  - Inquiry and Investigation
    - Make reasonable inquiry as to the facts relevant to a client's determination to proceed with a course of action or that form the basis of advice
    - Conduct reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information
- Duty of Loyalty
  - Deal honestly and with the utmost good faith, and act in the client's best interest
  - Must not engage in municipal advisory activities for a municipal entity it cannot manage or mitigate conflicts of interest that will permit it to act in the client's best interests

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MSRB Rule G-42: Documentation and Disclosures

- Documentation
  - Municipal advisors must evidence their relationship *in a dated writing* delivered to the client *prior to, upon or promptly after* establishment of the relationship
  - Certain information required to be documented
    - Form and basis of compensation
    - Required disclosures
    - Information pertaining to legal or disciplinary events provided to the SEC on Forms MA or M-I
    - Scope of engagement
    - Termination/withdrawal from the relationship
- Disclosures
  - *Prior to or upon engaging in municipal advisory activities*, municipal advisors must provide full & fair disclosure, *in writing*, of material legal or disciplinary events and all actual or potential material conflicts of interest
    - Affiliate services, products or advice
    - Payments
    - Fee-splitting arrangements
    - Compensation
    - Other actual or potential conflicts

Rule G-42: Recommendations

- If a municipal advisor makes a recommendation, the municipal advisor must have a reasonable basis to believe the recommendation is suitable for the client, based on information obtained through reasonable diligence. If asked to review the recommendation of another, the municipal advisor must determine whether the recommendation is suitable.
  - The municipal advisor must inform the client about the material risks, potential benefits, structure, and other characteristics of the transaction or product
  - The municipal advisor must disclose the basis upon which it believes the transaction or product is (or is not) suitable for the client, and whether the municipal advisor investigated other reasonably feasible alternatives to the recommendation

Rule G-42: Specified Prohibitions

- A municipal advisor is specifically prohibited from certain unfair practices or activities, including:
  - Receiving excessive compensation;
  - Delivering an invoice that does not accurately reflect activities performed or the personnel that performed those activities;
  - Misrepresenting the extent of the municipal advisor's knowledge or qualifications;
  - Participating in fee-splitting arrangements with underwriters;
  - Making payments to secure municipal advisory business, with limited exceptions; and
  - Engaging in principal transactions with municipal entity clients that are directly related to the transaction for which the municipal advisor is providing advice.

MSRB Rule G-20: Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance

- Amendments to Rule G-20 extend the restrictions regarding gift giving applicable to dealers to municipal advisors
- Generally, Rule G-20:
  - Prohibits municipal advisors from giving gifts or providing services in excess of $100 to another person in relation to the municipal advisory activities of the gift recipient's employer (subject to exceptions)
  - Prohibit municipal advisors from seeking or obtaining reimbursement of certain entertainment expenses
- Provisions of Rule G-20 primarily designed to address improprieties and conflicts of interest that may arise from the giving of gifts by municipal advisors or their associated persons

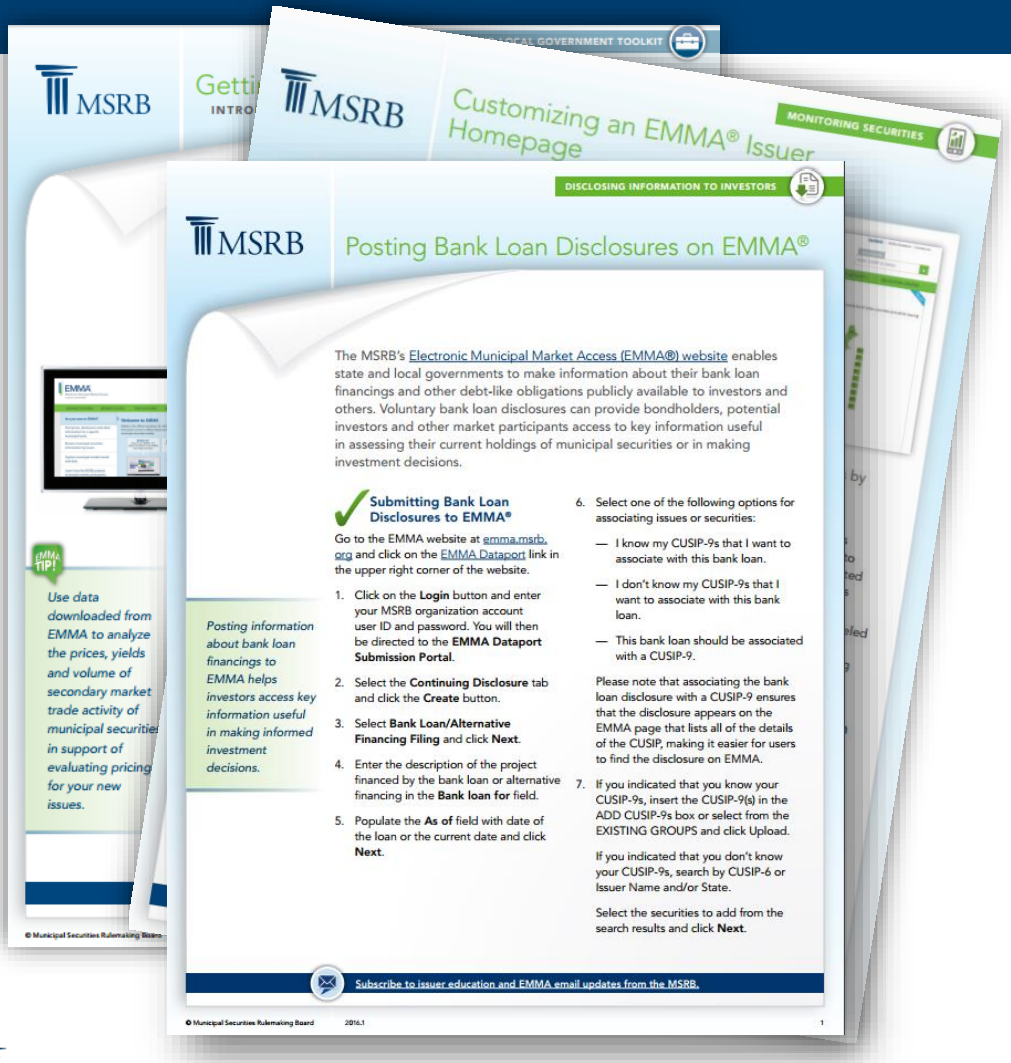
MSRB Rule G-10: Investor and Municipal Advisory Client Education and Protection

- Effective October 13, 2017, amendments to Rule G-10 require municipal advisors to promptly, after the establishment of a municipal advisory relationship and no less than once each calendar year thereafter during the course of that relationship, provide to the client:
  - A statement that it is registered with the SEC and MSRB;
  - The website address for the MSRB; and
  - A statement as to the availability of a municipal advisory client brochure on the MSRB's website that describes the protections that may be provided by MSRB rules and how to file a complaint with a regulator

MSRB Education Center



Free Educational Resources



- Checklist for preparing to submit financial disclosures
- Instructions for posting bank loan disclosures
- Overview of roles of financing team
- New resources added regularly

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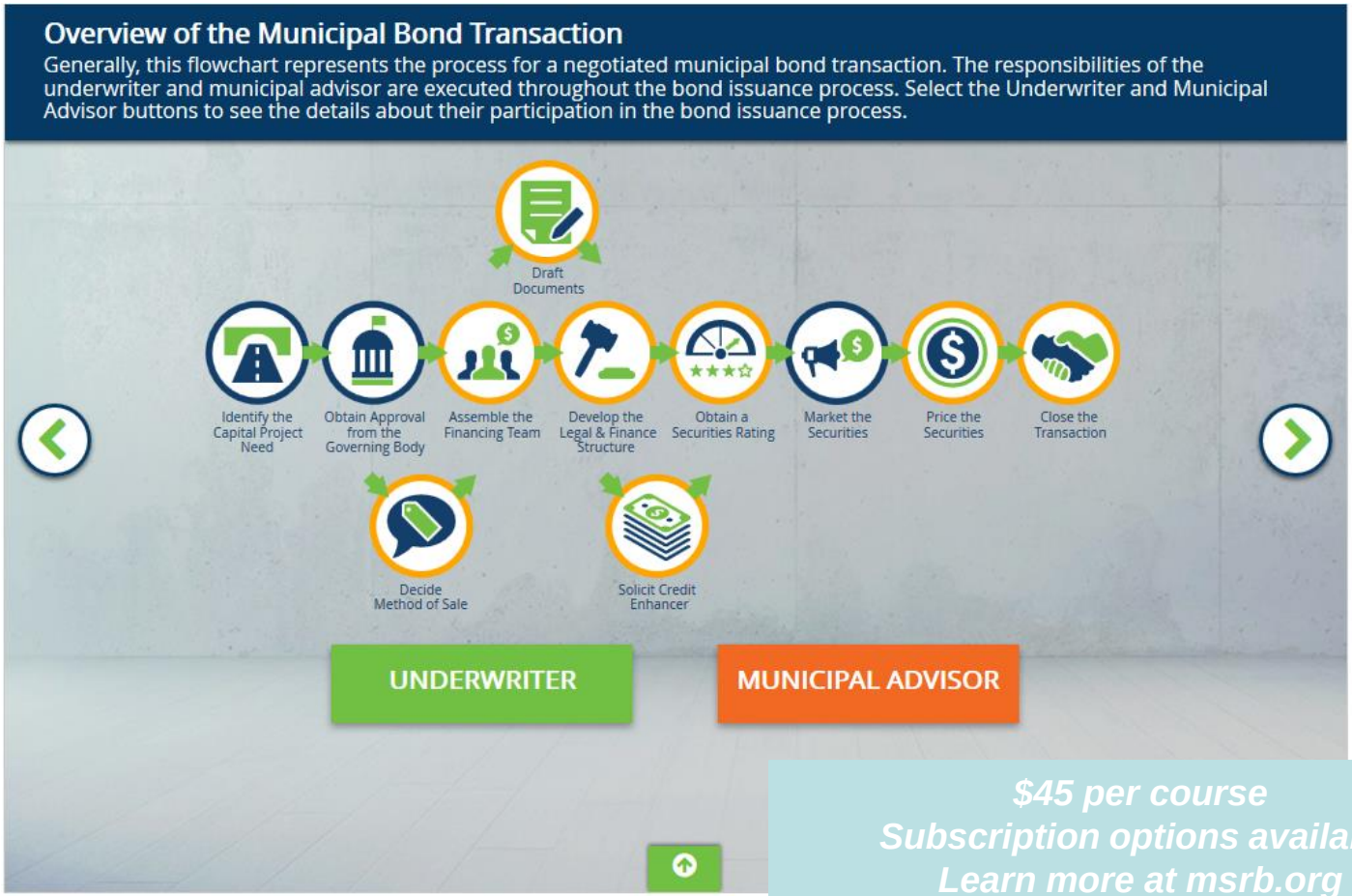
On-Demand Webinars

- MSRB webinar portal available on MSRB.org
  - News and Events > Webinars
- Register for upcoming live webinars on municipal market rules, new **EMMA®** features and other topics
- Watch free on-demand webinars
- Earn CPE credit



MuniEdPro℠: Municipal Market Education



$45 per course
Subscription options available
Learn more at msrb.org

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Checklist

- ✓ Is your municipal advisor registered?
  - Verify registration at http://msrb.org/MARegistrants.aspx
- ✓ Did your municipal advisor pass the Series 50 exam, if taken?
  - *Required as of Sept. 12, 2017*
  - View municipal advisor representatives that have passed the exam at http://msrb.org/MARegistrants.aspx
- ✓ Do you understand how municipal advisor obligations differ from underwriter obligations?
  - Consult MSRB Resources for Issuers and the MSRB Education Center at http://msrb.org/EducationCenter to learn more
- ✓ Are you receiving the appropriate documentation / disclosures required under Rule G-42?
  - Conflicts of interest
  - Material legal or disciplinary events
  - Documentation of the relationship
    - Compensation; scope of activities; legal and disciplinary events; termination / withdrawal
- ✓ Have you registered for free MSRB educational resources?
  - Emails reminders for recurring financial disclosures
- ✓ Do you know how to get in touch with the MSRB (*e.g.,* ask a question, alert us to a potential rule violation, *etc.*)?
  - View the contact information at the end of this presentation

MSRB Contact Information

MSRB Online

msrb.org

emma.msrb.org

MSRB Support

202-838-1330

Hours of Operation:

7:30 a.m. - 6:30 p.m. ET

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