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Affected Rules

[Rule A-11](#), [Rule A-12](#),
[Rule A-16](#), [Rule G-2](#),
[Rule G-3](#), [Rule G-5](#),
[Rule G-8](#), [Rule G-9](#),
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[Rule G-20](#), [Rule G-37](#),
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[Rule D-13](#), [Rule D-14](#)

Application of MSRB Rules to Solicitor Municipal Advisors

Overview

In 2015, the Municipal Securities Rulemaking Board (MSRB) adopted MSRB Rule G-42, on the duties of non-solicitor municipal advisors. Rule G-42 established core standards of conduct for municipal advisors that engage in certain municipal advisory activities, other than the undertaking of a solicitation of a municipal entity or obligated person on behalf of certain third parties. In adopting Rule G-42, the MSRB explained that the rule did not apply to municipal advisors undertaking such solicitations, but that the MSRB intended to undertake separate rulemaking or guidance for such municipal advisors. In addition, since the adoption of Rule G-42, the MSRB has received requests from municipal advisors that undertake such solicitations for additional information regarding the MSRB rules that apply to them. As previously planned, and in response to such requests, the MSRB is providing the below guidance to promote understanding of the regulatory framework applicable to solicitor municipal advisors' activities as well as their obligations under MSRB rules when soliciting obligated persons and municipal entities, such as issuers of municipal securities and various non-issuers, such as public pension plans.

In this notice, the MSRB: (i) summarizes several of the most important MSRB rules applicable to municipal advisors that undertake the solicitation of a municipal entity or obligated person (as discussed below) and includes references to various provisions of the Securities Exchange Act of 1934 (the "Exchange Act") and Exchange Act rules adopted by the Securities Exchange Commission (SEC or "Commission") that are applicable to the registration of such municipal advisors with the SEC; (ii) sets forth an exhaustive list of all the general MSRB rules applicable to such municipal advisors as well as the key administrative and definitional MSRB rules applicable to them; and (iii) refers to various MSRB and/or SEC resources for additional information on the content summarized herein and, more generally, to select additional



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resources that may be of interest to all municipal advisors.¹ Because much of the content of this notice applies to municipal advisors generally, this guidance may be useful to non-solicitor municipal advisors as well.

Questions about this notice may be directed to Michael L. Post, General Counsel – Regulatory Affairs; Sharon Zackula, Associate General Counsel; or Saliha Olgun, Assistant General Counsel, at 202-838-1500.

Background

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Dodd-Frank Act amended the Exchange Act to establish a federal regulatory regime applicable to municipal advisors. The amendments required municipal advisors to register with the SEC and expand the jurisdiction of the SEC and MSRB to regulate municipal advisors. The Dodd-Frank Act also expanded the MSRB’s original investor protection mandate to explicitly include the protection of municipal entities,² including state and local government issuers, 529 college savings plan sponsors and state- and locally-sponsored public pension plans.³ The Exchange Act and SEC rules and regulations thereunder identify two broad

¹ This notice is intended for use only as a resource. It does not purport to summarize or reference all federal securities laws or rules applicable to municipal advisors. The rule summaries contained in this document do not describe all provisions of such rules and/or relevant interpretations, and the MSRB has adopted other rules and interpretations that may be relevant for these purposes. In addition, the MSRB may amend any such rules or interpretations, or may adopt additional rules or interpretations, from time to time. The complete text of specific MSRB rules and interpretations is available at <http://www.msrb.org/Rules-and-Interpretations.aspx> and may be accessed via the links included in this notice.

² Because the MSRB’s rulemaking jurisdiction extends only to brokers, dealers and municipal securities dealers (collectively, “dealers”) and municipal advisors, the MSRB protects such municipal entities by establishing rules for dealers and municipal advisors designed to promote fair, efficient and transparent transactions; prevent fraudulent, manipulative and other unfair practices; and address dealer and municipal advisor conflicts of interest. The key rules for solicitor municipal advisors that are designed to achieve these purposes, as well as other key municipal advisor rules, are summarized herein.

³ The Dodd-Frank Act extends the jurisdiction of the MSRB to solicitor municipal advisors to address problematic conduct in the municipal securities markets. For example, as noted in the SEC’s release adopting final rules regarding the registration of municipal advisors and related matters, the solicitation of public pension plans in connection with investment advisory services has been subject to multiple SEC enforcement actions. See Release No. 34-70462 (September 20, 2013), 78 FR 67467, at 67482 (November 12, 2013) (File No. S7-45-10) (“Order Adopting SEC Final Rule”).

categories of municipal advisors—those that provide certain advice to or on behalf of a municipal entity or obligated person and those that undertake certain solicitations of a municipal entity or obligated person on behalf of certain third parties.⁴ This notice focuses on the latter category of municipal

⁴ Section 15B(e)(4) of the Exchange Act defines “municipal advisor” to mean a person (who is not a municipal entity or an employee of a municipal entity) that

- (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or
- (ii) undertakes a solicitation of a municipal entity.

Notwithstanding the omission of the term, “obligated person” in connection with the undertaking of a solicitation under Section 15B(e)(4)(A)(ii) of the Exchange Act, the SEC has interpreted the definition of “municipal advisor” to include a person who engages in the solicitation of an obligated person acting in the capacity of an obligated person. *See Order Adopting SEC Final Rule*, at notes 138 and 408. *See also* Exchange Act Rule 15Ba1-1(d)(1)(i).

Section 15B(e)(9) of the Exchange Act defines “solicitation of a municipal entity or obligated person” to mean

a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.

The SEC has interpreted this phrase generally in a manner similar to the statutory definition. However, it has also added two exceptions to the statutory definition for (i) advertising by a dealer, municipal advisor or investment adviser and (ii) solicitations of an obligated person where such obligated person is not acting in the capacity of an obligated person or the solicitation is not in connection with the issuance of municipal securities or with respect to municipal financial products. *See* Exchange Act Rule 15Ba1-1(n).

Additionally, the SEC has exempted from the municipal advisor definition a person that undertakes a solicitation of a municipal entity or obligated person for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person of a dealer or a municipal advisor for or in connection with municipal financial products that are investment strategies, to the extent such investment strategies are *not* plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. *See* Exchange Act Rule 15Ba1-1(d)(1) and 15Ba1-1(d)(3)(viii).

advisors—specifically, municipal advisors that engage in the solicitation of municipal entities or obligated persons on behalf of an unaffiliated dealer, municipal advisor, or investment adviser for direct or indirect compensation (referred to herein as “solicitor municipal advisors”).⁵ For example, if a person communicates with a public pension plan for the purpose of getting a particular investment advisory firm hired by the plan to provide investment advisory services to such plan, that person may be a solicitor municipal advisor if such person is paid by the investment advisory firm for the communication and if such person and the investment advisory firm are not affiliated. Similarly, if a person communicates with an issuer of municipal securities for the purpose of getting a particular municipal advisory firm hired by the issuer to provide municipal advisory services to that issuer in connection with an upcoming issuance, that person may be a solicitor municipal advisor if such person is paid by the municipal advisory firm for the communication and if such person and the municipal advisory firm are not affiliated. Such person also may be a solicitor municipal advisor if, instead of seeking to obtain business for an unaffiliated municipal advisor, the solicitor, for direct or indirect compensation from an unaffiliated dealer, seeks to obtain or retain an engagement for such dealer to act as underwriter in connection with the issuance. While such conduct would make a person a municipal advisor under the Exchange Act and related SEC rules, under MSRB Rule G-38, on solicitation of municipal securities business, a dealer is generally prohibited from paying a third-party solicitor to solicit an issuer to engage or retain the dealer to provide specifically defined municipal securities business.⁶

Discussion

Since the passage of the Dodd-Frank Act, the MSRB has proposed and adopted through the public rulemaking process new rules and rule amendments in pursuit of establishing a regulatory framework for all municipal advisors. Because municipal advisors may engage in two broad and distinct categories of municipal advisory activities, limited initiatives have applied solely or differently to municipal advisors based on the type of

⁵ Municipal advisors that solicit municipal entities or obligated persons only on their own behalf (*i.e.*, seeking business for the municipal advisor itself) are not solicitor municipal advisors, as that term is used herein.

⁶ Rule G-38 was adopted before the Dodd-Frank Act’s expansion of the MSRB’s jurisdiction to regulate municipal advisors, and remains in effect today. The rule includes very limited exceptions regarding certain grandfathered payment streams established prior to August 29, 2005. These very limited exceptions are largely only of historical interest today.

municipal advisory activity in which they engage. In particular, Rule G-42 applies solely to municipal advisors that are not solicitor municipal advisors, and, for that reason, is not discussed in this notice. Additionally, as discussed below, Rule G-37, on political contributions and prohibitions on municipal securities business and municipal advisory business, includes tailored provisions that apply differently to municipal advisors based on the type of municipal advisory activity in which they engage.⁷

The MSRB has a set of definitional rules to address terms that appear frequently in other MSRB rules. The MSRB has adopted one new definitional rule and amended two pre-existing definitional rules to extend them to municipal advisors. The discussion below summarizes the definitional rules of key applicability to all municipal advisors, including solicitor municipal advisors.⁸

- **Associated Persons, Rule D-11**

An entity (including a sole proprietorship) that engages in municipal advisory activities is considered a municipal advisor. Under the Exchange Act, a “person associated with a municipal advisor” or “associated person of an advisor” generally means any partner, officer, director, or branch manager of such municipal advisor; any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of certain advice to or on behalf of a municipal entity or obligated person; and any person directly or indirectly controlling, controlled by, or under common control with

⁷ Although this notice summarizes and lists rules applicable to solicitor municipal advisors, municipal advisors should keep in mind that one may be, simultaneously, both a solicitor municipal advisor and a non-solicitor municipal advisor that provides certain advisory services to or on behalf of municipal entities or obligated persons. If a firm engages in both types of municipal advisory activity, the firm is subject to all municipal advisor rules applicable to solicitor municipal advisors (by virtue of its solicitor municipal advisor activities). In addition, the firm is also subject to Rule G-42 as well as additional provisions in certain rules applicable only to non-solicitor municipal advisors described below (*e.g.*, Rule G-37).

⁸ Municipal advisors should also consult other MSRB definitional rules, which define terms used within other MSRB rules that are applicable to both dealers and municipal advisors (*e.g.*, Rule D-1, providing that, unless the context otherwise specifically requires, terms used in MSRB rules have the meanings set forth in the Exchange Act).

such municipal advisor.⁹ Thus, depending on the facts and circumstances, the employees, independent contractors and other persons that perform municipal advisory activities on behalf of a municipal advisor may be “associated persons” of such municipal advisor.

In some instances, it is appropriate for a regulatory obligation to be specific to the regulated entity but not the associated persons of that entity, and, in some instances, specific to associated persons but not the entity, and sometimes to both. Rule D-11 and the term “associated persons” are used in the MSRB rule book to make this distinction as appropriate.

Based on its authority over municipal advisors, the MSRB amended Rule D-11, defining “associated persons,” to state that the use of the term, “municipal advisor” in MSRB rules includes a municipal advisor’s associated persons unless the context otherwise requires or an MSRB rule specifically provides otherwise.¹⁰ Rule D-11 also provides that, unless otherwise specified, persons whose functions are solely clerical or ministerial are not considered associated persons for purposes of MSRB rules.¹¹

- **Municipal Advisory Activities, Rule D-13**

Rule D-13 defines “municipal advisory activities.” The term is used in multiple MSRB rules (*e.g.*, Rules G-3, G-20 and G-44). Rule D-13 provides that, unless otherwise specified in an MSRB rule, the term “municipal advisory activities” means the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Exchange Act and the rules and

⁹ See Exchange Act Section 15B(e)(7). However, municipal advisors should note that, for purposes of SEC Form MA, the form that municipal advisors must submit to register as a municipal advisor with the SEC and discussed, *infra*, the SEC has defined “associated person or associated person of a municipal advisor” to have the same meaning as in Exchange Act Section 15B(e)(7), but to exclude employees that are solely clerical or ministerial. See Order Adopting SEC Final Rule, at n. 1054 (discussing the associated persons definition).

¹⁰ Rule G-37, for example, distinguishes between the municipal advisor and the municipal advisor’s associated persons. See discussion in “Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business, Rule G-37,” *infra*.

¹¹ Compare n. 9 (describing associated persons under the Exchange Act and SEC Form MA).

regulations thereunder.¹² It is essential that a solicitor municipal advisor and its associated persons, including its supervisory and compliance personnel, understand the term “municipal advisory activities” to ensure compliance with the rules applicable to solicitor municipal advisors that engage in these defined activities.

- **Appropriate Regulatory Agency, Rule D-14**

The MSRB amended Rule D-14, defining the term “appropriate regulatory agency,” to provide that, with respect to municipal advisors, “appropriate regulatory agency” means the Commission (*i.e.*, the SEC). The term “appropriate regulatory agency” is used in multiple rules applicable to dealers and municipal advisors (*e.g.*, Rules A-11 and A-12) when discussing certain obligations owed by dealers and municipal advisors to other regulators under MSRB rules. (Previously Rule D-14 applied only to dealers. The current definitional rule provides that the term “appropriate regulatory agency” has a different meaning for dealers.) Municipal advisors should consult this definition before reviewing MSRB rules applicable to municipal advisors to help ensure that they understand their obligations under MSRB rules and the entities to whom such obligations are owed.

- **Disciplinary Actions, Rule G-5**

The MSRB amended Rule G-5 to provide that municipal advisors, including solicitor municipal advisors, and their associated persons may not engage in municipal advisory activities in contravention of restrictions imposed upon them by the SEC. (Previously, the rule only applied to dealers and prohibited them from engaging in municipal securities activities in contravention of restrictions imposed on them by the SEC, a registered securities association, or another appropriate regulatory agency.)

Resources for Rule G-5:

- [MSRB Notice 2010-59](#)
- [Rule G-5](#)

¹² The term “municipal advisory activities” is also defined in Exchange Act Rule 15Ba1-1(e), discussed below. The MSRB definition of “municipal advisory activities,” through its reference to rules under the Exchange Act, is coextensive with the definition in the Exchange Act rule.

- **The Registration Process under the Exchange Act, MSRB Rule A-12 and Form A-12**

Solicitor municipal advisors, like all other municipal advisors, are required to be registered with the SEC and the MSRB prior to engaging in municipal advisory activities.

Registration with the SEC. Any entity that became a municipal advisor on or after October 1, 2014 is required to register with the SEC under the SEC's final registration rules for municipal advisors, which are Exchange Act Rules 15Ba1-1 through 15Ba1-8 and Rule 15Bc4-1 (collectively, the "SEC Final Rule") and the final SEC forms, SEC Forms MA and MA-I.¹³

To register, municipal advisors (including sole proprietorships) should review the SEC Final Rule,¹⁴ and provide the information required on SEC Form MA to the SEC. Generally, the information that is required

¹³ Since October 1, 2010, it has been unlawful, under Section 15B of the Exchange Act for municipal advisors, including solicitor municipal advisors, to engage in municipal advisory activities, including undertaking a solicitation of a municipal entity or obligated person, prior to registering with the SEC as a municipal advisor. To enable municipal advisors to satisfy the October 1, 2010 registration requirement, in September 2010 the SEC adopted, and subsequently extended, an interim final temporary rule, Exchange Act Rule 15Ba2-6T, and Form MA-T. On September 20, 2013, the SEC adopted the SEC Final Rule. In the SEC Final Rule, the SEC provided a phased-in compliance period, beginning on July 1, 2014, for municipal advisors to comply with the requirement to register as municipal advisors using the final SEC registration forms under the SEC Final Rule. All municipal advisors are now required to register with the SEC on the final SEC registration forms under the SEC Final Rule. A municipal advisor that registered with the SEC under the temporary regime and continues to engage in municipal advisory activities, but has not registered with the SEC on the final SEC registration forms under the SEC Final Rule is in violation of federal securities law.

¹⁴ The SEC Final Rule is extensive, further defining and interpreting the term "municipal advisor," and many other important related terms, including "municipal entity" and "obligated person," interpreting certain statutory exemptions in the Exchange Act and providing for certain regulatory exemptions. Solicitor municipal advisors should ensure that they fully understand the applicable Exchange Act provisions, the SEC Final Rule and applicable MSRB rules. Such definitions are key to a municipal advisor's compliance efforts. For example, solicitor municipal advisors should be aware that under the SEC Final Rule and MSRB rules, the defined term "municipal entity" is not limited to issuers of municipal securities. It includes certain college savings plans, and entities that do not issue municipal securities, such as various types of state or local government-sponsored or government-established plans or pools of assets, such as public employee retirement systems, public employee benefit plans, public pension plans and local government investment pools. See Exchange Act Rule 15Ba1-1(g).

under SEC Form MA is applicable to all municipal advisors, although some questions are directed solely to solicitor municipal advisors. For example, SEC Form MA requires a solicitor municipal advisor to provide the approximate number of municipal entities and obligated persons solicited by the solicitor municipal advisor on behalf of third parties, the types of entities solicited, and the type of solicitation activities in which the entity is involved.¹⁵

As part of its registration, a municipal advisor also must file an SEC Form MA-I for each natural person associated with the municipal advisor and engaged in municipal advisory activities on the municipal advisor's behalf. SEC Form MA-I informational requirements include, but are not limited to: name, the employment history of the individual, any other business activities, residential history, criminal, civil and disciplinary actions involving the individual, financial disclosures related to bankruptcy, and similar matters. A municipal advisor is considered to have "filed" its application to the SEC upon its submission of a completed SEC Form MA, together with all required additional documents, including the required SEC Form(s) MA-I, to the SEC's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. When a municipal advisor's submitted SEC Form MA is accepted by the SEC, the municipal advisor will receive an SEC file number, which is the firm's Municipal Advisor Registration Number.

Registration with the MSRB, Rule A-12 and Form A-12. An entity that is required to register with the SEC as a municipal advisor also must register with the MSRB as a municipal advisor. The MSRB, like the SEC, requires that registration as a municipal advisor with the MSRB be completed *before* the firm (or any associated person of the firm) engages in any municipal advisory activity.¹⁶

The process and requirements for registering with the MSRB as a municipal advisor are set forth in Rule A-12 and the MSRB Registration Manual. To register, a municipal advisor must provide the information required on Form A-12 and file the completed form

¹⁵ See SEC Form MA: Application for Municipal Advisor Registration, Part I, Item 4, G and H.

¹⁶ Initially, the deadline to register as a municipal advisor with the MSRB was December 31, 2010, and the requirement to register applied to any person that engaged in municipal advisory activities on or after October 1, 2010. Since January 1, 2011, the MSRB has required a firm to register as a municipal advisor *before* engaging in municipal advisory activities.

electronically with the MSRB. As with the SEC Form MA, generally, the information that is required on Form A-12 is applicable to all municipal advisors, although some portions are specifically tailored to solicitor municipal advisors. For example, when listing the business activities in which the municipal advisor engages, solicitor municipal advisors must specify the type of solicitation in which they engage (either “Solicitation of Business-Investment Advisory” or “Solicitation of Business – Other than Investment Advisory,” or both, as applicable).¹⁷ Registration with the MSRB does not become effective until the municipal advisor is notified by the MSRB that its Form A-12 is complete and its initial registration fee and annual registration fee, discussed below, have been received and processed.

If an entity engages in municipal advisory activities before its registration with the MSRB is completed, the entity has violated Rule A-12. If a municipal advisor, including a solicitor municipal advisor, has not registered with both the SEC and the MSRB, it must do so immediately.

Although MSRB registration is required of municipal advisors (including sole proprietorships), unlike the SEC, the MSRB does not require a municipal advisor also to complete and submit to the MSRB a separate form for each associated person of the municipal advisor who is engaged in municipal advisory activities on behalf of the municipal advisor.

All municipal advisors, including solicitor municipal advisors, have an obligation to keep the Form A-12 information submitted to the MSRB updated and accurate. If any information in the Form A-12 becomes inaccurate or if the municipal advisor ceases to be engaged in municipal advisory activities, Rule A-12 mandates that the municipal advisor update the Form A-12 within 30 days. In addition, Rule A-12 requires municipal advisors to review, update as necessary, and affirm annually (within the first 17 business days of the calendar year) the information in their Form A-12.

¹⁷ These categories of solicitation activities correlate to the categories of solicitation activities reflected in SEC Form MA. See SEC Form MA, Part I, Item 4, L(7) and (8).

Resources for Registration and Rule A-12:

- [Registration of Municipal Advisors, Release No. 34-70462, 78 Federal Register \(FR\) 67467](#) (November 12, 2013) (see especially Section III.A.1.b.x., “Solicitation of a Municipal Entity or Obligated Person,” at 78 FR 67498 – 67503)
 - [SEC Registration of Municipal Advisors Frequently Asked Questions](#)
 - Exchange Act Rules 15Ba1-1 through 15Ba1-8 and Rule 15Bc4-1
 - [15Ba1-1](#)
 - [15Ba1-2](#)
 - [15Ba1-3](#)
 - [15Ba1-4](#)
 - [15Ba1-5](#)
 - [15Ba1-6](#)
 - [15Ba1-7](#)
 - [15Ba1-8](#)
 - [15Bc4-1](#)
 - [SEC Form MA](#) (Application for Municipal Advisor Registration; Annual Update of Municipal Advisor Registration; Amendment of a Prior Application for Registration)
 - [SEC Form MA-I](#) (Information Regarding Natural Persons Who Engage in Municipal Advisory Activities)
 - [MSRB Notice 2014-05](#)
 - [Rule A-12](#)
 - [MSRB Notice 2014-10](#)
 - [MSRB Registration Manual](#)
 - [Preparing to Submit MSRB Form A-12](#)
 - [FAQs on MSRB Registration: Rule A-12](#)
- **Municipal Advisor Fees and Assessments, Rules A-11 and A-12**

To register as a municipal advisor with the MSRB under Rule A-12, a municipal advisor must pay an initial registration fee of \$1,000. The initial registration fee is paid only once so long as the firm remains continuously registered with the MSRB. In addition, Rule A-12 requires a municipal advisor to pay the MSRB a recurring annual fee of \$1,000, due upon registration and thereafter by October 31 of each year.¹⁸

¹⁸ An exception exists for a municipal advisor that registers with the MSRB during September and pays the annual registration fee at that time. For such municipal advisors, the annual registration fee for the following fiscal year is waived due to the closeness in time between the municipal advisor’s registration date and the typical annual fee due date.

Under Rule A-11, each municipal advisor must pay the MSRB a recurring annual assessment for each associated person of the firm engaging in municipal advisory activities. The assessment is \$300 times the number of associated persons as evidenced by the number of Forms MA-I the municipal advisor has on file with the SEC as of January 31 of each year. The assessment is due by April 30 of each year.

Any municipal advisor that fails to pay the fees under Rules A-11 or A-12, as described above, within 30 days of the due date, must pay a monthly late fee of \$25 and a late fee on the overdue balance (computed according to the Prime Rate) until paid.

Resources for Rules A-11 and A-12:

- [MSRB Notice 2014-09](#)
 - [Rule A-11](#)
 - [MSRB Notice 2015-13](#)
 - [Rule A-12](#)
- **Professional Qualifications, Rules G-2, G-3 and A-16**

The MSRB amended its professional qualification rules (Rules G-2, on standards of professional qualification, and G-3, on professional qualification requirements) to establish professional qualification requirements for municipal advisors. Among other things, the amendments established two new qualification classifications for persons engaged in municipal advisory activities on behalf of municipal advisors: municipal advisor representatives – those individuals who engage in municipal advisory activities; and municipal advisor principals – those individuals who engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. Under the amendments, to qualify as a municipal advisor representative or, as a prerequisite to qualification as a municipal advisor principal, an individual first must take and pass a professional qualifications examination, the Municipal Advisor Representative Qualification Examination (Series 50).¹⁹

¹⁹ The MSRB is required to establish professional standards for municipal advisors and their associated persons under Section 15B(b)(2)(L)(iii) of the Exchange Act, and to establish competency tests for the associated persons of municipal advisors under Section

The MSRB established the Series 50 examination through the creation of a pilot examination program that, among other things, established a passing score for the Series 50 examination of 71 percent. On September 12, 2016, the Series 50 examination became permanently available and the MSRB announced the start of the one-year grace period. During the grace period, which began on September 12, 2016 and ends on September 12, 2017, a person may continue to engage in municipal advisory activities on behalf of a municipal advisor without having passed the Series 50 examination. However, after September 12, 2017, a person that has not passed the Series 50 examination cannot continue, or begin, to engage in municipal advisory activities on behalf of a municipal advisor.

A municipal advisor must pay \$265 per examination for each person associated with the municipal advisor who takes the Series 50 examination, which reflects a \$150 per examination fee a municipal advisor is required to pay under Rule A-16, as well as fees charged by the Financial Industry Regulatory Authority (FINRA) for the administration and delivery of the Series 50 examination.

The MSRB is also in the process of establishing a principal examination that all municipal advisor principals will be required to take and pass to be qualified as a municipal advisor principal under Rule G-3. While the formal principal examination is not yet available, all municipal advisors, including solicitor municipal advisors, should note that under Rule G-44, on supervisory and compliance obligations of municipal advisors, supervisory principals are required to have sufficient knowledge, experience and training to understand and effectively discharge their supervisory responsibilities.²⁰

Resources for Rules G-2, G-3 and A-16:

- [MSRB Notice 2016-16](#)
- [MSRB Notice 2015-04](#)
- [Rule G-2](#)
- [Rule G-3](#)
- [MSRB Notice 2015-05](#)
- [Rule A-16](#)
- [FAQs on Series 50 Exam](#)

15B(b)(2)(A)(iii) of the Exchange Act as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.

²⁰ See Rule G-44, Supplementary Material .04.

- [FAQs on Professional Qualifications](#)
- [Series 50 Exam – Municipal Advisor Representative Examination Content Outline](#)
- **Continuing Education, Proposed Amendments to Rule G-3**

In March 2017, the MSRB filed with the SEC proposed amendments to Rule G-3 to establish continuing education requirements for certain associated persons of a municipal advisor. The proposed amendments would require municipal advisors, including solicitor municipal advisors, to develop a continuing education program and require associated persons of municipal advisors who engage in municipal advisory activities, or directly engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, to participate in continuing education training. Municipal advisors would be required to annually complete a needs analysis that evaluates and prioritizes their applicable training needs based on firm size, organizational structure and the scope of business activity, develop a written training plan that is consistent with the needs analysis and document that training was provided to covered persons. The proposed amendment would permit municipal advisors that are also registered dealers to develop a single training plan that comprehensively details and satisfies the needs analysis conducted for both the firm's municipal advisory activities and dealer activities and allow the delivery of training that is consistent with and adheres to that comprehensive training plan.

Solicitor municipal advisors and other municipal advisors may follow the development of this proposed rule through the rulemaking process by subscribing to [MSRB email updates](#) and/or visiting the [SEC Filings](#) page on msrb.org.

Resources for Proposed Amendments to Rule G-3:

- [SR-MSRB-2017-02 Filing with the SEC Proposing Continuing Education Requirements for Municipal Advisors and Accompanying Recordkeeping Requirements](#)
- [SEC Filings page on msrb.org](#)
- [MSRB email updates subscription](#)

- **Supervisory and Compliance Obligations of Municipal Advisors, Rule G-44**

The MSRB adopted Rule G-44, which establishes the supervisory and compliance obligations of municipal advisors, including solicitor municipal advisors, and their associated persons. All municipal advisors, including solicitor municipal advisors, became subject to Rule G-44 (except paragraph (d) of the rule) on April 23, 2015. Rule G-44(d) on annual certifications became effective the following year, on April 23, 2016.

The compliance policies and supervisory procedures established by solicitor municipal advisors pursuant to Rule G-44 lay the foundation for and promote compliance with all other applicable securities laws and regulations, including applicable MSRB rules (collectively “applicable rules”). There are several key requirements of the rule.

Rule G-44(a) requires all municipal advisors, including solicitor municipal advisors, to establish, implement and maintain a system to supervise their municipal advisory activities, and those of their associated persons. The supervisory system must be reasonably designed to achieve compliance with all applicable rules, and, at a minimum, it must provide for the establishment, implementation, maintenance and enforcement of written supervisory procedures and the designation of one or more municipal advisory principals to be responsible for the supervision required. Municipal advisors may tailor their supervisory procedures to, among other things, their size, particular business model, structure, the nature and scope of their municipal advisory activities, the disciplinary and legal history of their associated persons, the likelihood that associated persons may be engaged in relevant outside business activities, and indicators of irregularity (*i.e.*, “red flags”). Rule G-44(a) also specifies that municipal advisors must promptly amend supervisory procedures to reflect changes in applicable rules and, as changes occur in the municipal advisor’s supervisory system, promptly communicate the procedures and amendments to the municipal advisor’s relevant associated persons.

Paragraph (b) of Rule G-44 requires municipal advisors, including solicitor municipal advisors, to implement processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures, which must be reviewed no less frequently than annually.

Under Rule G-44(c), municipal advisors, including solicitor municipal advisors, must designate a Chief Compliance Officer (CCO). The CCO serves as the primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts to comply with applicable rules. Rule G-44 specifically allows for a CCO to be a firm employee or a person external to the firm. If, however, the CCO is external to the firm, the CCO must have the appropriate competence, and the municipal advisor retains ultimate responsibility for its compliance obligations. This option to outsource the CCO role may be especially relevant to small municipal advisors.

Rule G-44(d) requires a municipal advisor's chief executive officer (or equivalent officer) to certify annually that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules. This annual certification must be kept as part of the municipal advisor's books and records, but does not need to be submitted to the MSRB.

Relationship to Other Rules. As each new applicable rule is adopted, or each existing applicable rule is amended, municipal advisors, including solicitor municipal advisors, are reminded that they have compliance and supervisory obligations under Rule G-44 to address those changes promptly, in addition to the more direct obligations that may be created by those rule changes. As a result, whenever such applicable rules, or amendments to existing applicable rules, are adopted, municipal advisors, including solicitor municipal advisors, should review their compliance policies and supervisory procedures and, as necessary, update such policies and procedures, to ensure that they are reasonably designed to achieve compliance with the new or modified obligations.

Resources for Rule G-44:

- [MSRB Notice 2014-19](#)
- [Rule G-44](#)
- [Considerations for Developing a Municipal Advisory Supervisory System and Compliance Program](#)

- **Conduct of Municipal Securities and Municipal Advisory Activities, Rule G-17**

The MSRB amended Rule G-17, regarding fair dealing, to require that, in the conduct of their municipal advisory activities, municipal advisors, including solicitor municipal advisors, and their associated persons must deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. (Previously, the rule applied only to dealers and their associated persons.) Rule G-17 became applicable to all municipal advisors, including solicitor municipal advisors, and their associated persons, on December 22, 2010.

Rule G-17 contains an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the SEC under the Exchange Act. Thus, all municipal advisors must refrain from engaging in certain conduct and must not misrepresent or omit the facts, risks, or other material information about municipal advisory activities undertaken. However, Rule G-17 does not merely prohibit deceptive conduct on the part of a municipal advisor. The rule also establishes a general duty of a municipal advisor to deal fairly with all persons, even in the absence of fraud.

Rule G-17 imposes a duty of fair dealing on solicitor municipal advisors when they are soliciting business from municipal entities and obligated persons on behalf of third parties. Again, municipal advisors are reminded that the term “municipal entity” also includes certain entities that do not issue municipal securities. Thus, in addition to owing the specific obligations discussed below to issuers of municipal securities, solicitor municipal advisors also owe such obligations to, for example, state and local government sponsored public pension plans and local government investment pools.

The duty of fair dealing includes, but is not limited to, a duty to disclose to the municipal entity or obligated person being solicited material facts about the solicitation, such as the name of the solicitor’s client; the type of business being solicited; the amount and source of all of the solicitor’s compensation; payments (including in-kind) made by the solicitor to another solicitor municipal advisor (including an affiliate, but not an employee) to facilitate the solicitation regardless of characterization; and any relationships of the solicitor with any employees or board members of the municipal entity or obligated person being solicited or any other persons affiliated with the municipal entity or obligated person or its officials who may have influence over the selection of the solicitor’s client.

Additionally, if a solicitor municipal advisor is engaged by its client to present information about a product or service offered by the third-party client to the municipal entity or obligated person, the solicitor municipal advisor must disclose all material risks and characteristics of the product or service. The solicitor municipal advisor must also advise the municipal entity or obligated person of any incentives received by the solicitor (that are not already disclosed as part of the solicitor municipal advisor's compensation from its client) to recommend the product or service, as well as any other conflicts of interest regarding the product or service, and must not make material misstatements or omissions when discussing the product or service.

Under the Exchange Act, municipal advisors and their associated persons are deemed to owe a fiduciary duty to their municipal entity clients.²¹ Similarly, Rule G-42 (which applies only to non-solicitor municipal advisors) follows the Exchange Act in deeming municipal advisors to owe a fiduciary duty, for purposes of Rule G-42, to such municipal entity clients. However, because a solicitor municipal advisor's clients are not the municipal entities that they solicit, but rather the third parties that retain or engage the solicitor municipal advisor to solicit such municipal entities, solicitor municipal advisors do not owe a fiduciary duty under the Exchange Act or MSRB rules to their clients (or the municipal entity) in connection with such activity. Nonetheless, as noted above, solicitor municipal advisors are subject to the fair dealing standards under Rule G-17 (including with respect to their clients and the entities that they solicit).

Resources for Rule G-17:

- [MSRB Notice 2010-59](#)
- [Rule G-17](#)
- **Investor and Municipal Advisory Client Education and Protection, Amended Rule G-10**

Under Rule G-10, municipal advisors, including solicitor municipal advisors, will be required to provide in writing certain information to their municipal advisory clients. For a solicitor municipal advisor, the

²¹ See Order Adopting SEC Final Rule, at n. 100 (noting that the fiduciary duty of a municipal advisor, as set forth in Section 15B(c)(1) of the Exchange Act, extends only to its municipal entity clients).

term “municipal advisory client” means the third party (*i.e.*, the dealer, municipal advisor, or investment adviser) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person. The solicitor municipal advisor must provide the following items of information:

- (i) a statement that it is registered with the SEC and the MSRB;
- (ii) the website address for the MSRB; and
- (iii) a statement as to the availability to the municipal advisory client of a municipal advisory client brochure that is posted on the website of the MSRB that describes the protections that may be provided by the MSRB rules and how to file a complaint with an appropriate regulatory authority.

The obligation to provide the information is recurring. The information must be provided promptly after entering into an agreement to undertake a solicitation of a municipal entity or obligated person, and no less than once each calendar year thereafter during that agreement establishing a municipal advisory relationship.

Although approved by the SEC, the amendments to Rule G-10 are not yet in effect. Amended Rule G-10 will become effective on October 13, 2017.

Resources for Rule G-10:

- [MSRB Notice 2017-03](#)
- [Amended Rule G-10 \(the amended rule will become effective on October 13, 2017\)](#)
- **Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance, MSRB Rule G-20**

The MSRB amended Rule G-20, regarding gifts and gratuities, to extend the restrictions regarding gift giving and the related recordkeeping requirements to all municipal advisors, including solicitor municipal advisors, and their associated persons. (Previously, the rule applied only to dealers and their associated persons.) All municipal advisors, including solicitor municipal advisors, became subject to the provisions of Rule G-20 as of May 6, 2016.

The rule is primarily designed to address improprieties and conflicts of interest that may arise from the giving of gifts by municipal

advisors, including solicitor municipal advisors, or their associated persons. Included in the rule is a key provision that prohibits municipal advisors and their associated persons from giving a gift or providing a gratuity of more than \$100 per person per year in relation to the municipal advisory activities of the gift recipient's employer ("the \$100 limit"). There are certain exceptions to the \$100 limit in the rule.

Resources for Rule G-20:

- [MSRB Notice 2015-21](#)
 - [Rule G-20](#)
 - [FAQs on MSRB's Rules Regarding Gifts, Gratuities and Non-Cash Compensation](#)
- **Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business, Rule G-37**

The MSRB amended Rule G-37, regarding political contributions and prohibitions on municipal securities business and municipal advisory business, to extend the core standards under Rule G-37 to municipal advisors, certain of their associated persons, their political contributions and the provision of municipal advisory business. (Previously, the rule applied only to dealers and certain of their associated persons.) All municipal advisors, including solicitor municipal advisors, became subject to Rule G-37 on August 17, 2016.

The rule is designed to address potential "pay-to-play" practices by municipal advisors consistent with the MSRB's existing regulation of dealers. Rule G-37 generally prohibits municipal advisors from engaging in municipal advisory business with a municipal entity within two years of certain contributions (made by the municipal advisor, certain associated persons of the municipal advisor called "municipal advisor professionals," or "MAPs" or a political action committee controlled by the municipal advisor or an MAP) to an official of such municipal entity. The rule also includes tailored prohibitions on soliciting and coordinating contributions or payments to certain officials of a municipal entity or certain political parties of states and localities, respectively. In addition, Rule G-37 prohibits municipal advisors from committing indirect violations of the rule, and generally requires municipal advisors to make certain quarterly disclosures to the MSRB for dissemination to the public. The rule also provides for certain exemptions from a temporary prohibition on engaging in municipal advisory business with a municipal entity.

As discussed above in the context of Rule D-11, when the term “municipal advisor” is used in MSRB rules, unless specified otherwise, the term includes the municipal advisor’s associated persons. Rule G-37 specifies that, when “municipal advisor” is used in Rule G-37, it does not include the municipal advisor’s associated persons. However, Rule G-37 is of concern to, and may adversely impact, both the municipal advisor and certain of the municipal advisor’s associated persons specifically referenced in the rule, such as MAPs and specifically defined “non-MAP executive officers.” As a result, municipal advisors should ensure that their associated persons thoroughly understand the rule.

The rule applies generally to all municipal advisor firms, including solicitor municipal advisor firms. However, the rule includes specific provisions tailored to certain solicitor municipal advisor firms that, under the rule, are defined as “municipal advisor third-party solicitors.”²² Under Rule G-37(b)(i)(C), the engagement of a municipal advisor third-party solicitor will have special implications for a dealer or municipal advisor that engages the municipal advisor third-party solicitor to solicit a municipal entity on its behalf.

Specifically, a contribution by the municipal advisor third-party solicitor or certain of its associated persons could subject the municipal advisor third-party solicitor to a temporary prohibition on engaging in municipal advisory business in relation to that municipal entity (*e.g.*, soliciting that municipal entity on behalf of any third-party dealer, municipal advisor or investment adviser). In addition, a contribution by the municipal advisor third-party solicitor or certain of its associated persons could also subject the client of the municipal advisor third-party solicitor (*i.e.*, the dealer client or municipal advisor client) to a temporary prohibition on engaging in municipal securities business or municipal advisory business with the solicited municipal

²² The term “municipal advisor third-party solicitor” as defined in Rule G-37(g)(x) is *not* coextensive with the term “solicitor municipal advisor” as used in this notice. For example, the term “municipal advisor third-party solicitor” does not include a municipal advisor that undertakes a solicitation of an obligated person. The generally narrower term, “municipal advisor third-party solicitor,” is used only in Rule G-37, and was specifically tailored in the context of that rule to exclude a subset of solicitor municipal advisors (those who solicit obligated persons) whose political contributions and related activities may arguably have less risk of *quid pro quo* corruption by virtue of the type of entities they solicit.

entity.²³ However, to trigger a temporary prohibition on engaging in municipal advisory business for a particular entity, Rule G-37 generally requires a nexus between the influence that may be exercised by an official of a municipal entity and the business in which the regulated entity (with which the contributor is associated) is engaged. Because a municipal advisor third-party solicitor, by definition, may solicit for several different types of business (*i.e.*, municipal securities business, municipal advisory business and investment advisory services), a municipal advisor third-party solicitor may be subject to a temporary prohibition on engaging in business with a particular entity (if a contribution that triggers a temporary prohibition is made) as to a wider range of officials (*i.e.*, officials with dealer selection influence, municipal advisor selection influence and investment adviser selection influence) than a non-solicitor municipal advisor.²⁴

²³ For example, if a solicitor municipal advisor makes a contribution to a defined “official of a municipal entity” that has the ability to hire dealers, municipal advisors and investment advisers to provide services to an issuer, a contribution to that official could subject the solicitor municipal advisor to a prohibition on engaging in municipal advisory business with that issuer for a period of two years (*i.e.*, the solicitor municipal advisor would be prohibited from providing certain advice to that issuer *and* soliciting that issuer on behalf of unaffiliated dealers, municipal advisors or investment advisers). In addition, as a result of that same contribution, the solicitor municipal advisor’s dealer clients and municipal advisor clients would also be prohibited from engaging in municipal securities business or municipal advisory business with that issuer.

However, the impact to the investment adviser clients of a solicitor municipal advisor’s contribution to an official must be analyzed differently. Rule G-37 does not apply to investment advisers in their capacity as such, and a solicitor municipal advisor’s investment adviser clients would not be prohibited from providing investment advisory services to the issuer under Rule G-37. However, investment advisers may be subject to other pay-to-play requirements and prohibitions under the rules of other federal securities regulators. See *generally* Rule 206(4)-5, Political Contributions by Certain Investment Advisers, promulgated pursuant to the Investment Advisors Act of 1940.

²⁴ For example, if a solicitor municipal advisor makes a contribution to a defined “official of a municipal entity” that has the ability to hire an investment adviser to provide investment advisory services to the state-sponsored public pension plan (but not the ability to hire a dealer or municipal advisor with respect to that same plan), a contribution from the solicitor municipal advisor to that official could subject the solicitor municipal advisor to a prohibition on engaging in municipal advisory business with that pension plan for a period of two years. Thus, the solicitor municipal advisor would be prohibited from providing certain advice to that pension plan *and* soliciting that pension plan on behalf of unaffiliated dealers, municipal advisors or investment advisers. This is true even though the official does not have the ability to award business to the solicitor municipal advisor, since in the case of solicitor municipal advisors, there is at least an appearance of *quid pro quo* corruption when a

Actions by a solicitor municipal advisor or its associated persons who are municipal advisor professionals under Rule G-37 may have adverse consequences for the firm and the firm's clients. Solicitor municipal advisors should carefully review all provisions of the rule, as well as any relevant applicable guidance issued under the rule, to ensure that they fully understand their obligations.

Compliance includes, among other things, the requirement to file Form G-37 with the MSRB, listing all municipal advisory business performed as well as the persons (*i.e.*, clients) on behalf of which the municipal advisor third-party solicitor solicited business. Municipal advisors, including solicitor municipal advisors, must file Form G-37 electronically with the MSRB each quarter (no later than by close of business on January 31, April 30, July 31 and October 31). Note that Rule G-37 explicitly allows municipal advisors to voluntarily disclose additional information to the MSRB on Form G-37 if the information is submitted otherwise in accordance with the disclosure provisions of the rule. See the instructions for filing Form G-37 for more guidance and information about filing Form G-37, including information about the time frame for reporting municipal advisory business (including solicitations and solicitation engagements). Absent an applicable exception, Form G-37 must be filed quarterly to indicate the firm's municipal advisory activities, even if neither the solicitor municipal advisor nor its associated persons have made political contributions during the quarter. If a firm has not filed a Form G-37, the instructions and form should be reviewed immediately and, if necessary, the form should be completed and submitted electronically to the MSRB.

Solicitor municipal advisors should also be aware that the MSRB has previously issued interpretive guidance applicable to dealers under Rule G-37. As the MSRB amended Rule G-37 to apply it to municipal advisors, the MSRB also announced that all existing interpretive guidance regarding the municipal securities business of dealers under Rule G-37 would apply to the analogous interpretive issues regarding the municipal advisory business of municipal advisors. Solicitor municipal advisors may wish to review the Rule G-37 interpretive guidance as well as the MSRB's filing with the SEC to amend Rule G-37

triggering contribution is made to an official with the ability to award business to the solicitor municipal advisor's client(s).

for more information on the potential application of the guidance in certain contexts.

Resources for Rule G-37:

- [MSRB Notice 2016-06](#)
 - [Rule G-37](#)
 - [SR-MSRB-2015-14, Filing with the SEC Proposing Changes to Rule G-37, Rule G-8, Rule G-9 and Forms G-37 and G-37x](#) (discussion includes the rule's application to solicitor municipal advisors)
 - [Instructions for Forms G-37, G-37x and G-38t](#)
 - [Rule G-37 Interpretive Questions and Answers](#)
 - [Summary of Ban on Business Provisions Under Rule G-37](#)
- **Recordkeeping and Preservation of Records, Rules G-8 and G-9**

Along with the adoption of certain rules applicable to municipal advisors, including solicitor municipal advisors, the MSRB also has established related recordkeeping obligations that apply to municipal advisors, including solicitor municipal advisors, under Rule G-8. Similarly, records preservation obligations that are specific to municipal advisors have been incorporated in Rule G-9.

Generally, recordkeeping obligations that relate to municipal advisory activities are found in Rule G-8(h). Rule G-8(h)(i) sets forth the general business records, as described in Exchange Act Rule 15Ba1-8(a)(1)-(8), that must be made and kept current by a municipal advisor, including any solicitor municipal advisor, relating to its municipal advisory activities.

Several subsections of Rule G-8(h) contain recordkeeping requirements correlating to specific MSRB rules that apply to municipal advisors, including solicitor municipal advisors. Specifically, Rule G-8(h)(ii) sets forth the records required to be made and kept current relating to Rule G-20 as it applies to municipal advisory activities, including those of solicitor municipal advisors. Similarly, Rule G-8(h)(iii) and Rule G-8(h)(v) set forth the records to be made and kept current relating to, respectively, Rule G-37 and Rule G-44, in connection with the municipal advisory activities of all municipal

advisors.²⁵ Finally, when amendments to Rule G-10 become effective on October 13, 2017, the recordkeeping requirements in Rule G-8(h)(vi), which relate to municipal advisory client complaints regulated under Rule G-10, will apply to all municipal advisors, including solicitor municipal advisors.²⁶

Record preservation obligations – the period that a record must be retained – are found in Rule G-9(h) regarding municipal advisors, including solicitor municipal advisors. Rule G-9 was amended to require every municipal advisor to preserve its books and records described in Rule G-8(h) for a period of not less than five years, except certain records specifically noted in Rule G-9, which must be retained for a period of at least six years.²⁷ In addition, Rule G-9 was amended to add Rule G-9(i), to provide for the retention of municipal advisor records related to the formation and cessation of its business; and Rule G-9(j), to extend certain provisions of the Exchange Act regarding records to non-resident municipal advisors. Rule G-9(k) was added to make clear that a municipal advisor may store records that must be retained on electronic storage media. In connection with the use of electronic media to deliver and receive information, the MSRB extended its guidance regarding the use of electronic media to municipal advisors, as relevant.²⁸

²⁵ Notably, the records requirements in Rule G-8(h)(iv), detailing the specific records to be made and kept in connection with Rule G-42, do not apply to solicitor municipal advisors because Rule G-42 does not apply to solicitor municipal advisors.

²⁶ In addition, Rule G-8 will include a new defined term, “municipal advisory client” in Rule G-8(e)(ii), an amended definition of “customer” to refer to municipal advisors in Rule G-8(e)(i), and new Supplementary Material .01, defining the term “electronic format.” Amended Rule G-8 will also include new Supplementary Material .02, which notes that a regulated entity also may be required to promptly report certain written customer or municipal advisory complaints to other appropriate regulatory authorities, including complaints alleging theft or misappropriation of funds or securities or of forgery.

²⁷ When the amendments to Rule G-10 become effective on October 13, 2017, a municipal advisor will be required to retain records of municipal advisory client complaints for at least six years under Rule G-9(h)(iii).

²⁸ See Rule G-32 -- Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1988). This guidance will be extended to municipal advisors effective October 13, 2017. See MSRB Notice 2017-03.

Resources for Rule G-8 and Rule G-9:

- [Rule G-8](#)
 - [Rule G-9](#)
 - [MSRB Notice 2015-21](#) (detailing amendments to Rule G-8 in connection with the amendments to Rule G-20)
 - [MSRB Notice 2016-06](#) (detailing extensive amendments to Rule G-8 and Rule G-9 in connection with the amendments to Rule G-37)
 - [MSRB Notice 2014-19](#) (detailing amendments to Rule G-8 and Rule G-9 in connection with the adoption of Rule G-44, and establishing retention periods of applicability to all municipal advisor records generally)
 - [MSRB Notice 2017-03](#) (detailing amendments to be incorporated in Rule G-8 and Rule G-9 when the amendments to Rule G-10 become effective)
- **Advertising by Municipal Advisors, Draft Rule G-40**

In February 2017, the MSRB sought public comment on a new draft rule on advertising by municipal advisors, including solicitor municipal advisors, and their associated persons. The draft rule, which is not effective and, as of the date of this notice, has not been filed with the SEC for approval, would address advertising by municipal advisors in a manner that would be comparable to the regulation of advertising by other regulated participants in the securities markets.²⁹

Draft Rule G-40, if filed with the SEC in substantially the form included in the Request for Comment, and if subsequently approved, would:

- Provide general provisions defining key terms, such as “advertisement,” “form letter,” and “municipal advisory client” and set forth the related general standards and content standards for advertisements;
- Provide the definition of “professional advertisements,” and define the standard for those advertisements; and
- Require the approval by a principal, in writing, before the first use of an advertisement.

Solicitor municipal advisors and other municipal advisors may follow the development of this draft rule through the rulemaking process by subscribing to [MSRB email updates](#) and/or visiting the [Requests for Comment](#) and [SEC Filings](#) page on msrb.org.

²⁹ If the MSRB determines to proceed with rulemaking after review of the comments received, the MSRB will file a proposed rule filing with the SEC, at which point commenters will have another opportunity to comment on the proposed requirements under the rule.

Resources for Draft Rule G-40:

- [MSRB Notice 2017-04](#) (describing draft Rule G-40 for municipal advisors and related amendments to Rule G-21 for dealers, and seeking comment on draft Rule G-40 and the draft amendments to Rule G-21)
- [Requests for Comment page on msrb.org](#)
- [SEC Filings page on msrb.org](#)
- [MSRB email updates subscription](#)

MSRB Rules Applicable to Solicitor Municipal Advisors³⁰

General Rules

General, or “G,” rules create specific responsibilities and standards for dealers effecting municipal securities transactions and for municipal advisors that engage in municipal advisory activities.

The following lists all the general MSRB rules applicable to solicitor municipal advisors:

- G-1: Separately Identifiable Department or Division of a Bank
- G-2: Standards of Professional Qualification
- G-3: Professional Qualification Requirements
- G-5: Disciplinary Actions by Appropriate Regulatory Agencies; Remedial Notices by Registered Securities Associations
- G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors
- G-9: Preservation of Records
- *G-10: Investor and Municipal Advisory Client Education and Protection
- G-17: Conduct of Municipal Securities and Municipal Advisory Activities
- G-20: Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance
- G-37: Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business
- G-44: Supervisory and Compliance Obligations of Municipal Advisors

* Rule G-10 will become effective on October 13, 2017.

Administrative Rules

Administrative, or “A,” rules set forth the structure, authority and membership of the MSRB and dealer and municipal advisor assessments and fees.

The following lists the MSRB administrative rules of key applicability to all municipal advisors, including solicitor municipal advisors:

- A-3: Membership on the Board
- A-7: Assessments
- A-8: Rulemaking Procedures
- A-11: Assessments for Municipal Advisor Professionals
- A-12: Registration

³⁰ Municipal advisors may download a PDF of the MSRB’s rule book, which includes all MSRB “G,” “A,” and “D” rules (discussed *infra*) [here](#). The PDF rule book is updated quarterly. The [MSRB Rules page](#) on the MSRB website is updated on an ongoing basis and always reflects current rules and upcoming changes.

- A-16: Examination Fees
- A-18: Mandatory Participation in Business Continuity and Disaster Recovery Testing

Definitional Rules

Definitional, or “D,” rules provide definitions for terms used in MSRB rules.

The following lists the MSRB definitions of key applicability to all municipal advisors, including solicitor municipal advisors:

- D-11: Associated Persons
- D-13: Municipal Advisory Activities
- D-14: Appropriate Regulatory Agency

Additional Resources for Municipal Advisors

The MSRB provides additional resources that may assist municipal advisors in their regulatory compliance and/or other municipal market efforts.

- [The Municipal Advisor's Introduction to MSRB Rules](#) – a brief introduction to the MSRB's rulemaking process
- [Preparing for Regulation: A Guide for Municipal Advisors](#) – a checklist and additional information to help newly registered municipal advisors begin to assess their readiness for regulatory oversight
- [Participating in the Rulemaking Process: A Guide for Municipal Advisors](#) – a resource to assist municipal advisors in actively participating in the rulemaking process
- [2016 Compliance Advisory for Municipal Advisors: A Guide for Municipal Advisors](#) – an advisory that highlights some of the key 2016 compliance risks for municipal advisors
- [Five Ways to Use EMMA[®]](#) – a short primer on ways brokers and financial advisors may use EMMA in support of their market activities
- [EMMA for Municipal Advisors](#) – slides from a past presentation on EMMA and municipal advisors
- [Educational Webinars](#) – free education and training webinars on municipal market topics, regulatory and compliance issues, and use of MSRB market transparency systems
- [MSRB Education Center](#) – a free and objective set of resources to educate investors, state and local governments, and others interested in learning about the municipal securities market
- [MuniEdProSM](#) – the MSRB's suite of interactive, online courses designed for municipal market participants