

Municipal Advisor Outsourcing of Compliance Functions

The Municipal Securities Rulemaking Board (MSRB) is providing this compliance resource to enhance understanding of provisions related to outsourcing compliance tasks, including the role of Chief Compliance Officer (CCO) under MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors. Rule G-44 imposes an obligation on municipal advisors to have in place and implement processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules, and shall conduct, no less frequently than annually, a review of the compliance policies and supervisory procedures.¹ Compliance processes complement written supervisory procedures, and the CCO is a primary counselor to the municipal advisor on its overall compliance program and the policies and procedures that the firm adopts to comply with applicable rules.

Rule G-44 provides a municipal advisor flexibility in establishing a reasonably designed supervisory system by allowing compliance tasks, including the role of CCO, to be outsourced. However, while a municipal advisor may outsource compliance functions, the municipal advisor retains ultimate responsibility for the firm's compliance obligations.² The MSRB understands that many municipal advisors, including sole practitioners, have opted to outsource certain compliance tasks, including the CCO role, to a third-party service provider. The MSRB is publishing this compliance resource to assist municipal advisors in understanding the unique and integral role a CCO has in the administration of a municipal advisor's compliance processes.

This compliance resource does not create new legal or regulatory requirements, or new interpretations of existing requirements for outsourcing compliance functions, and municipal advisors, enforcement agencies and others should not view this information

MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, is a primarily principles-based approach to supervision and compliance, which accommodates the broad differences among municipal advisors. The compliance process is dynamic, and these considerations are designed to illustrate one possible framework for developing a compliance program reasonably designed to achieve compliance with Rule G-44.

as doing so. Additionally, this compliance resource does not mandate a municipal advisor to implement any specific practice described in this resource that extends beyond the requirements of existing applicable rules, and implementation of any specific practice described in this resource does not create a safe harbor or obviate the obligation of each municipal advisor to develop supervisory controls that are reasonably designed to ensure that, in the conduct of its municipal advisory activities, the firm and its associated persons are in compliance with the applicable rules.

¹ See [Sample Template and Checklist for Municipal Advisors WSPs](http://www.msrb.org/~media/Files/Resources/MSRB-Sample-Template-and-Checklist-for-Municipal-Advisor-WSPs.ashx?a=en) (March 2018), available at <http://www.msrb.org/~media/Files/Resources/MSRB-Sample-Template-and-Checklist-for-Municipal-Advisor-WSPs.ashx?a=en>.

² MSRB Rule G-44 Supplementary Material .06.

In contemplating outsourcing the CCO responsibilities, a municipal advisor needs to be mindful that:

- While a municipal advisor is permitted to designate a competent third-party service provider as the firm's CCO, Rule G-44 specifically provides that the municipal advisor nevertheless retains ultimate responsibility for its compliance obligations, including having and implementing processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules;
- Working with an outsourced CCO is expected to be a highly collaborative function and Rule G-44 is intended to foster regular and significant interaction between senior management and the CCO regarding the municipal advisor's comprehensive compliance program; and
- To be designated the firm's CCO, the third-party service provider must have the requisite competence to:
 - ▶ Understand the specific services and activities that the municipal advisor engages in that must be addressed in the firm's written compliance policies and written supervisory procedures (WSPs);
 - ▶ Identify the applicable rules and standards of conduct pertaining to those services and activities the municipal advisor engages in;
 - ▶ Develop, or advise others who would develop, the municipal advisor's compliance policies and WSPs that are reasonably designed to achieve compliance with applicable rules and standards of conducted; and
 - ▶ Develop programs to test compliance with the municipal advisor's policies and procedures.³

In evaluating a third-party service provider for purposes of outsourcing compliance functions, the municipal advisor may want to consider:

- The scope of services the municipal advisor is contemplating; whether it intends to engage the third-party service provider for a discrete compliance task (e.g., drafting WSPs), for ongoing compliance tasks (e.g., to keep abreast of regulatory changes to maintain the WSPs consistent with Supplementary Material .05 of Rule G-44), or to take on the CCO role and functions contemplated by Rule G-44;
- Whether the third-party service provider has the time and skill to understand the specific services and activities that the municipal advisor engages in (e.g., understanding the types of advice that the firm provides, the types of clients that are serviced, and the types of associated persons that engage in municipal advisory activities on behalf of the firm);
- Whether the third-party service provider has the relevant experience conducting the compliance function(s) that the firm is considering delegating;
- Whether the third-party service provider is engaged by other municipal advisor firms for compliance services and whether speaking to any of those firms would be useful for the firm; and
- If a third-party service provider is serving as CCO for multiple firms, whether that provider has the capacity to effectively discharge its duty as CCO.

If a municipal advisor determines to outsource the CCO role, the municipal advisor may want to consider:

- What format the regular and significant interaction between the senior management of the municipal advisor and the outsourced CCO will take (e.g., emails, conference calls or in-person visits, or some combination thereof) to ensure a collaborative effort in developing and maintaining a comprehensive compliance program;

³ *Id.*

- How the municipal advisor plans to supervise the outsourced compliance functions to ensure the CCO is completing all stated tasks and objectives related to the municipal advisor's compliance processes;
- What process will the municipal advisor undertake to ensure that it reviews that WSPs provided by a third-party service provider to ensure, as part of its ultimate responsibility that the WSPs are sufficiently tailored to the firm's municipal advisory business and accurately reflect the supervisory and compliance procedures that the firm undertakes; and
- If the municipal advisor does not intend for the outsourced CCO to be an associated person of the firm or function as a municipal advisor principal as that term is defined in Rule G-3,⁴ what controls the municipal advisor plans to establish to ensure that the CCO does not directly engage in the management, direction or supervision of the municipal advisory activities of the firm and its associated persons.

Resources

[MSRB Rule G-44, Supervisory and Compliance Obligations of Municipal Advisors](#)

[MSRB Rule G-3, Professional Qualification Requirements](#)

[Sample Template and Checklist for Municipal Advisors WSPs](#)

⁴ MSRB Rule G-3 defines the term "municipal advisor principal" to mean a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. The term "Municipal Advisory Activities" is defined in 17 CFR 240.15Ba1-1(e)(1) to mean ... (1) Providing 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 financial products or issues, or (2) Solicitation of a municipal entity or obligated person."