



Duties and Obligations of Dealers and Municipal Advisors to Issuers of Municipal Securities

State and local government issuers rely on the municipal securities market to raise money to finance their capital projects. Whether they issue securities once a decade or many times a year, state and local government issuers generally hire a municipal advisor, an underwriter or both to assist with the offering. This document provides an overview of the duties and obligations of municipal advisors and dealers that are regulated by the Municipal Securities Rulemaking Board (MSRB), and summarizes the key responsibilities of these professionals under MSRB rules.¹

The MSRB is a self-regulatory organization for the municipal securities market and is authorized by federal law to write rules with respect to certain securities activities of brokers, dealers and municipal securities dealers (collectively, "dealers") and advisory activities of municipal advisors. The mission of the MSRB is to protect investors, municipal entities, obligated persons and the public interest, by promoting a fair and efficient municipal securities market.²

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Municipal Advisors and Dealers Must Register with the MSRB

Dealers and municipal advisors must register with the MSRB before engaging in certain municipal securities and advisory activities. To access the list of dealers and municipal advisors registered with the MSRB, click on the "[Registration Status](#)" link under the "Compliance Center" tab of MSRB.org. Additionally, non-bank dealers and municipal advisors generally are required to register with the U.S. Securities and Exchange Commission.

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Municipal Advisors and Dealers Have a General Duty of Fair Dealing

In the conduct of their municipal securities or municipal advisory activities, [MSRB Rule G-17](#) requires that dealers and municipal advisors deal fairly with all persons, including their state and local government clients, and prohibits dealers and municipal advisors from engaging in any deceptive, dishonest or unfair practice. For more information on the duty of fair dealing for dealers and municipal advisors, see "[What to Expect from Your Underwriter](#)" and "[What to Expect from Your Municipal Advisor](#)," respectively.

Underwriters and Municipal Advisors Must Steer Clear of Pay to Play

[MSRB Rule G-37](#) does not prohibit dealers and municipal advisors from making political contributions. However, it does restrict dealers and municipal advisors from engaging in municipal securities business or municipal advisory business, as applicable, with a municipal entity for two years after certain political contributions have been made to an official of that municipal entity.

In addition, Rule G-37 also subjects dealers and municipal advisors to certain prohibitions on soliciting and coordinating contributions and payments. For purposes of Rule G-37, municipal securities business

includes acting as an underwriter in a negotiated offering (but not a competitive offering), including when acting as a syndicate member but not as a selling group member. Additionally, private placements and other offerings (such as acting as primary distributor for a 529 savings plan), and remarketing agent services with respect to a negotiated primary offering also constitute municipal securities business.

Municipal advisory business includes: (i) providing advice to or on behalf of a client 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; and (ii) solicitation of a municipal entity or obligated person acting in such capacity.

Contributions include any gift, subscription, loan, advance or deposit of money or anything of value made to an official of a municipal entity: (i) for the purpose of influencing any election for federal, state or local office; (ii) for the payment of debt incurred in connection with any such election; or (iii) for transition or inaugural expenses incurred by the successful candidate for state or local office.

Contributions that can trigger a restriction are contributions by: the dealer or municipal advisor; certain persons associated with the dealer or municipal advisor called municipal finance professionals or municipal advisor professionals; dealer- or municipal

About the MSRB

The mission of the Municipal Securities Rulemaking Board (MSRB) is to protect investors, municipal entities, and the public interest by promoting a fair and efficient municipal securities market. As part of its mission to protect investors, the MSRB creates rules with specific obligations for municipal securities professionals which regulate their conduct with investors. The MSRB provides market transparency through its [Electronic Municipal Market Access \(EMMA®\) website](#), the official source for municipal securities data and documents. Also, the MSRB serves as an objective resource on the municipal market and conducts extensive education and outreach to market stakeholders.

finance professional-controlled political action committees; and certain solicitors called municipal third-party solicitors. An exception applies for contributions made by municipal finance professionals and municipal advisor professionals to an official for whom they are entitled to vote if their contributions to that official do not exceed \$250 per election.

Dealers and municipal advisors also must submit quarterly disclosures to the MSRB about their municipal securities or municipal advisory business and any related political contributions.

Bond Ballot Campaign Contributions are Subject to Disclosure

[MSRB Rule G-37](#) also governs contributions made to bond ballot campaigns. Accordingly, dealers and municipal advisors must publicly disclose to the MSRB detailed information about cash or in-kind contributions to bond ballot campaigns and any resulting municipal securities business. Note there is a *de minimis* exception from disclosure if the bond ballot contributor is entitled to vote on the ballot initiative and the contribution to the ballot campaign does not exceed in total \$250 per initiative.

Certain Payments Related to the Solicitation of Business are Prohibited

[MSRB Rule G-38](#) generally prohibits dealers from providing or agreeing to provide, directly or indirectly, payment to any unaffiliated person for soliciting municipal securities business on its behalf. For purposes of this rule, a solicitation is any direct or indirect communication with a municipal entity for the purposes of obtaining or retaining municipal securities business. The determination of whether a particular communication is a solicitation depends on the specific facts and circumstances.

There are Limitations on Gifts and Gratuities

[MSRB Rule G-20](#) prohibits dealers and municipal advisors from making certain gifts and gratuities. Generally, dealers and municipal advisors cannot give or provide, directly or indirectly, any thing or service of value, including gratuities, in excess of \$100 per year to a person, if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of

the payment or service (\$100 limit). Most importantly, this limit generally applies to gifts or gratuities to issuer personnel.

However, there are exclusions from the \$100 limit for certain gifts if those gifts do not give rise to any apparent or actual material conflict of interest. For example, there is an exclusion for normal business dealings. Occasional meals or tickets to theatrical, sporting events, and other entertainment hosted by dealers or municipal advisors and the sponsoring regulated entity of legitimate business functions that are recognized by the Internal Revenue Service are permitted as deductible business expenses, provided that they are not so frequent or extensive as to raise any question of propriety. There also are limited exclusions from the \$100 limit for various other gifts, including *de minimis* gifts or promotional gifts of nominal value that otherwise satisfy certain conditions.

Rule G-20 also prohibits a dealer or municipal advisor from seeking reimbursement from the offering proceeds of the municipal securities for certain entertainment costs or expenses. However, this prohibition does not apply to ordinary and reasonable expenses for meals hosted by the dealer or municipal advisor and directly related to the offering for which the dealer or municipal advisor was retained.

With some exceptions, Rule G-20 also generally limits a dealer or any of its associated persons from accepting or providing certain non-cash compensation in connection with the sale and distribution of a primary offering of municipal securities.

Various state and local laws applicable to gifts and gratuities in an issuer's jurisdiction may establish different standards, which may be more or less restrictive than Rule G-20.

Non-Solicitor Municipal Advisors Must Uphold Certain Standards of Conduct

In addition to the standard of fair dealing, municipal advisors must follow certain standards of conduct when providing advice to their clients. As a matter of federal securities law, municipal advisors owe a fiduciary duty to municipal entity clients when advising them concerning the issuance of municipal securities and certain other matters. In defining that fiduciary duty, MSRB rules provide that municipal advisors owe their municipal entity clients a duty of loyalty and a duty of care.

In conduit borrowings, municipal advisors owe a duty of care to their obligated person clients.

For all municipal advisory clients, [MSRB Rule G-42](#) requires municipal advisors to disclose material conflicts of interest and to document in writing the scope of their advisory relationship. In addition, Rule G-42 requires municipal advisors to conduct reasonable due diligence prior to making any recommendations to their clients.

Financial Professionals are Prohibited from Certain Role Switching

[MSRB Rule G-23](#) generally prohibits a dealer that has a financial advisory relationship with an issuer with respect to the issuance of municipal securities from acquiring, as a principal acting alone or as a syndicate member, directly or indirectly, all or any portion of the offering or act as a placement agent for the offering. Generally, a financial professional can only serve in one capacity with respect to an issuance of municipal securities — as either a municipal advisor or an underwriter.

Underwriters Must Adhere to the Retail Order Periods and Priority Orders Specified by the Issuer

Under [MSRB Rule G-11](#), before the offer of securities by the underwriting syndicate, the senior syndicate manager is required to provide the other syndicate members and selling group members, in writing, certain information about the offering, including, among other things, any of the issuer's terms and conditions on the offering, the issuer's retail order period requirements and priority provisions, as well

as procedures, if any, by which the priority provisions may be changed. If a retail order period is established, certain retail bond purchase orders generally must be given priority over other orders based on eligibility criteria established by the issuer.

Underwriters and Municipal Advisors are Generally Required to Obtain CUSIP Numbers for a New Issuance

[MSRB Rule G-34](#) requires the underwriter in a negotiated offering to apply for CUSIP numbers for the new issue no later than the time that pricing information for the new issue is finalized. This ensures sufficient time for CUSIP number assignment to occur prior to the formal award of the issue.

In a competitive offering, the municipal advisor must apply to obtain CUSIP numbers for the new offering by no later than one day after the dissemination of the notice of sale or other similar such document. In a competitive offering where CUSIP numbers have not been preassigned, the underwriter is required to apply for CUSIP numbers immediately after receiving notification of the award from the issuer.

The requirement to obtain CUSIP numbers also generally applies to placement agents in the private placement of municipal securities unless the private placement is a direct purchase by a bank or a non-broker-dealer control affiliate of a bank (or a consortium of such entities) or the purchasing entity meets certain other criteria (e.g., state revolving fund or bond bank), and the underwriter or municipal advisor reasonably believes the purchaser has the present intent to hold the municipal securities to maturity or earlier redemption or mandatory tender.

UNDERWRITERS MUST DETERMINE THAT AN ISSUER HAS COMMITTED TO PROVIDE CERTAIN INFORMATION TO THE MSRB

Underwriters also have responsibilities under other securities laws applicable to municipal securities offerings. For example, the U.S. Securities and Exchange Commission's Rule 15c2-12 generally prohibits an underwriter from purchasing or selling municipal securities unless the underwriter has determined that the issuer has committed through a written agreement or contract (i.e., continuing disclosure agreement or continuing disclosure undertaking) to provide certain updated information on a periodic basis to the MSRB. Consequently, issuers of municipal securities generally commit to submit annual disclosures with updated financial information and operating data to the MSRB's EMMA website.

Underwriters are Required to Report Certain Information about a New Issuance

[MSRB Rule G-32](#) requires underwriters of municipal securities to submit certain information about a new issue of municipal securities information to the New Issue Information Dissemination Service (NIIDS) of the Depository Trust and Clearing Corporation. Relatedly, program dealers and remarketing agents must submit information to the MSRB's Short-term Obligation Rate Transparency (SHORT) System for dissemination to the public.

Underwriters Must Post Certain Disclosures to EMMA for a New Issuance

[MSRB Rule G-32](#) requires underwriters to submit official statements, if available, and advance refunding documents and certain other new issue information for posting on the [MSRB's Electronic Municipal Market Assess \(EMMA®\) website](#) within certain time periods.

¹ Underwriters also have responsibilities under other securities laws applicable to municipal securities offerings. This summary does not describe all applicable provisions of rules and interpretations, nor does it include all exceptions from general requirements. 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 rules and interpretations, and related definitions, are available at <http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx>. In addition, other laws (including state and local rules) may be applicable to certain activities described herein. This document does not create new legal or regulatory requirements, or new interpretations of existing requirements and should not be interpreted by regulated entities or examining authorities as establishing new standards of conduct.

² The term "municipal entity" includes any state, political subdivision of a state, or municipal corporate instrumentality of a state, including any agency, authority, or instrumentality of the state, political subdivision, or municipal corporate instrumentality; any plan, program, or pool of assets sponsored or established by the state, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and any other issuer of municipal securities. Certain other terms used in this document, including "non-solicitor municipal advisor," "retail order period," "syndicate," "selling group," "municipal advisor," "non-cash compensation," "primary offering," "regulated entity," "bond ballot campaign," "municipal securities business," "municipal advisory business," "municipal advisor professional," "municipal finance professional," "contribution" and "solicitation," have specific definitions under MSRB rules, which, for the sake of conciseness, are omitted or not fully included herein.