
From: Robert Fisher
Sent: Wednesday, April 06, 2011 11:00 AM
To: Comment Letters
Subject: MSRB Notice 2011-16: Request for Comment on Gifts and Gratuities Rule for Municipal Advisors

Ladies and Gentlemen:

The thrust of proposed MSRB Rule G-20(a)(ii), the part of the rule that provides the base direction to municipal advisors, is entirely different from that part of the rule directed at brokers, dealers and municipal securities dealers (i.e. Rule G-20(a)(i)). Whereas G-20(a)(i) deals with payments related to the payee's municipal activities, G-20(a)(ii) deals with payments related to the payor's municipal activities, a 180° change in direction. It is difficult to see how a municipal advisor could conduct business at all and comply with the proposed rule as it is now written – purchase supplies, pay rent, consult a lawyer or another municipal advisor for compensation (without a specific contract being entered into prior to the consultation), because payment for all of these would be “in relation to the municipal advisory activities of the municipal advisor” (and could not really be described as “the sponsoring by the ... municipal advisor of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses”, which most likely refers to sponsored receptions or cocktail parties).

If the purpose of the amendments is help ensure that engagements of municipal advisors are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business, why not simply prohibit such gifts in Rule G-20(a)(ii), and provide a \$100 safe harbor for *de minimis* gifts (which would cover the odd working lunch or two)?

I do not plan on bribing anybody and I fully support all reasonable efforts to prevent any unscrupulous competitors from doing so, but I am concerned that, taken literally (and I believe strongly that rules should be written so as to be capable of literal interpretation), the proposed rule as written may be unworkable and may prevent all sorts of necessary payments that have nothing at all to do with bribery.

Yours sincerely,

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