

Q&A Summary: MSRB Compliance Workshop on Small Firm Municipal Advisor Supervision

The Municipal Securities Rulemaking Board (MSRB) is providing answers to questions addressed during the MSRB's Compliance Workshop: Small Firm Municipal Advisor Supervision conducted on May 24, 2018 to enhance understanding of the provisions of [MSRB Rule G-44](#), on supervisory and compliance obligations of municipal advisors. These questions and answers do not create new legal or regulatory requirements, or new interpretations of existing requirements, and should not be interpreted by municipal advisors and examining authorities as establishing new standards of conduct.

COMPLIANCE AND SUPERVISORY PROCESSES

1. What is a supervisory system?

A supervisory system is the framework put in place by a municipal advisor firm to review and monitor the activities of the firm and its associated persons. MSRB Rule G-44 requires a municipal advisor firm to establish, implement, and maintain a system to supervise the municipal advisory activities of the firm and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations.

2. What is the difference between compliance policies and written supervisory procedures?

Compliance policies generally describe the practices that associated persons of the firm need to adhere to in order to meet the standards of conduct established by the firm consistent with the applicable securities laws and regulations. Written supervisory procedures (WSPs) generally describe the practices that supervisory personnel follow in order to ensure that individuals meet the standards of conduct and the firm can evidence a supervisory system. WSPs should be tailored to the firm's particular municipal advisory activities and specifically address the process by which the firm supervises those activities. In effect, the WSPs are designed to inform supervisory personnel as to:

- (i) The conduct they need to supervise;
- (ii) The tasks to undertake in supervising the conduct;
- (iii) The frequency by which they undertake the applicable supervisory tasks; and
- (iv) How they indicate that the supervisory tasks were completed.

3. How can a small or single-person municipal advisor firm tailor its supervisory systems and compliance processes?

MSRB Rule G-44 adopts a principles-based approach to establishing a minimum standard for supervisory and compliance obligations for all municipal advisors. Regardless of firm size, effective oversight of a firm's municipal advisory activities is essential and Rule G-44 affords firms flexibility in designing a supervisory system that is appropriate for the particular firm, recognizing that a sole-proprietorship municipal advisor or a municipal advisor with few personnel can have a sufficient supervisory system.¹ A municipal advisor firm's compliance policies and WSPs should take into account the firm's size and the nature and scope of its municipal advisory activities, whether those policies and procedures were drafted by the firm or a vendor.

For example, in tailoring compliance policies and WSPs to the specific municipal advisory services and activities that the firm engages in, a firm may want to review its Form A-12 filed with the MSRB, which identifies the municipal advisory activities the firm engages in, as does SEC Form MA. If, for example, a municipal advisor firm does not engage in the business of soliciting municipal entities on behalf of an unaffiliated broker, dealer, municipal advisor or investment adviser, then the firm's compliance policies and WSPs would not have policies and procedures relating to such activities.

¹ See MSRB Rule G-44 Supplementary Material .03.

4. How does a sole practitioner supervise oneself?

MSRB Rule G-44 allows the designation of one person to be responsible for supervision, even if that means the individual is supervising oneself. Rule G-44 does not, however, contain specific prescriptions as to the procedures a sole proprietor should have in place for supervision. In adopting Rule G-44, the MSRB noted that “the appropriateness of supervisory procedures is affected by a firm’s size and [the MSRB] deliberately drafted the rule to give firms flexibility to tailor their supervisory systems accordingly, striking an appropriate balance between burdens on, and flexibility for, small municipal advisors.”²

WSPs should speak to the supervisory task that is undertaken to ensure that an individual engages in municipal advisory activities in a manner consistent with the firm’s compliance policies. For example, a non-solicitor municipal advisor firm may establish a supervisory checklist for reviewing the requisite disclosures made pursuant to MSRB Rule G-42. A sole practitioner could have the same procedure and review any such disclosures on a periodic basis and initial the checklist to evidence the review even though the supervisor was the individual that made the disclosures that are subject to the supervisory review.

5. Can a municipal advisor firm maintain its compliance policies and WSPs in a single document?

MSRB Rule G-44 requires a municipal advisor to maintain written compliance policies and WSPs reasonably designed to achieve compliance with applicable securities laws and regulations; such documents can be contained within a single manual.

6. Does MSRB Rule G-44 mandate that a municipal advisor firm review the emails of its associated persons?

No. MSRB Rule G-44 does not specifically require a municipal advisor firm to review the emails of its associated persons.³ Bear in mind, however, that in establishing WSPs to ensure compliance with federal securities laws and regulations, including MSRB rules, a firm may determine that the review of emails is a reasonably designed procedure. For example, under MSRB Rule G-8(h)(vi), a municipal advisor is to maintain a record of all written complaints received from municipal advisory clients or persons acting on their behalf. A municipal advisor firm may, therefore, determine that to comply with the obligation, it is reasonable to establish a supervisory procedure that requires a review of emails for complaints of municipal advisory clients or persons acting on behalf of municipal advisory clients.

ADDITIONAL RESOURCES

- [Sample Template and Checklist for Municipal Advisor WSPs](#)
- [Municipal Advisor Outsourcing of Compliance Functions](#)
- [Considerations for Developing a Municipal Advisory Supervisory System and Compliance Program](#)
- [Municipal Advisor Compliance Advisory \(June 2017\)](#)

² See Letter from Michael L. Post, Deputy General Counsel, Municipal Securities Rulemaking Board, to Secretary, Securities and Exchange Commission 3 (October 17, 2014). <http://msrb.org/~media/Files/SEC-Filings/2014/SR-MSRB-2014-06-Letter-to-SEC.ashx?la=en>.

³ Such supervisory obligation is required pursuant MSRB Rule G-27, on supervision, with respect to the obligations of brokers, dealers, and municipal securities dealers (“dealers”) to establish written supervisory procedures.