



# Considerations for Developing a Municipal Advisory Supervisory System and Compliance Program

## APPLICABLE MSRB RULE

[MSRB Rule G-44](#) establishes supervisory and compliance obligations of municipal advisors when engaging in municipal advisory activities. MSRB Rule G-44 sets forth basic requirements for municipal advisors to establish a supervisory system and compliance program. A municipal advisor is defined as a person registered or required to be registered as a municipal advisor under [Section 15B of the Securities Exchange Act of 1934](#).

## EFFECTIVE DATES

MSRB Rule G-44 is effective as of April 23, 2015, except for MSRB Rule G-44(d), on annual certification requirements, which is effective as of April 23, 2016.

## USE OF THIS DOCUMENT

This document is designed to support municipal advisors' development of effective policies and procedures for supervision and compliance, particularly for municipal advisors that are newly subject to regulatory oversight. Please note that this document does not address all of the requirements of MSRB Rule G-44 and other applicable MSRB or Securities and Exchange Commission (SEC) rules related to the supervision and compliance obligations of municipal advisors. This overview does not create a safe harbor with respect to potential deficiencies in a municipal advisor's supervisory system or compliance processes; rather, it is offered as a tool to assist municipal advisors in preparing policies and procedures. As required by MSRB Rule G-44(a)(i), written supervisory procedures must be updated promptly to reflect changes in applicable rules, including new or amended MSRB rules.

## CONSIDERATIONS FOR DEVELOPING A SUPERVISORY SYSTEM AND COMPLIANCE PROGRAM

A municipal advisor's supervisory system should include written supervisory procedures reasonably designed to achieve compliance with applicable laws and regulations, including MSRB rules. It is expected that municipal advisors' supervisory systems and compliance programs will not necessarily be the same and each municipal advisor's approach will be informed by numerous considerations, including but not limited to:

- Firm size;
- Organizational structure;
- Nature and scope of municipal advisory activities;
- Number of offices;
- Disciplinary and legal history of associated persons;
- Relevant outside business activities of associated persons; and
- Indicators of irregularities or misconduct.

To accommodate the diversity of municipal advisors, MSRB Rule G-44 affords flexibility to small municipal advisors, including those with only one associated person. The following outlines basic steps that can assist in the creation of a supervisory system and compliance processes.

**Designate Personnel:** A municipal advisor's supervisory system and compliance processes must be overseen by personnel who have ultimate responsibility for the supervisory and compliance obligations of the municipal advisor.

- MSRB Rule G-44(a)(ii) requires the designation of one or more municipal advisor principal(s) to carry out the firm's supervisory responsibilities.
  - ▶ A municipal advisor principal is defined as an individual who directly engages in the management, direction or supervision of the activities of the municipal advisor and its associated persons.

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- ▶ A municipal advisor principal must pass the MSRB's Municipal Advisor Representative Qualification Examination (Series 50) as required under MSRB Rule G-3 and any subsequent principal-level qualification examination developed by the MSRB.

MSRB Rule G-44(c) requires the municipal advisor to designate an individual to serve as the municipal advisor's chief compliance officer (CCO).<sup>1</sup>

- ▶ The CCO may be a principal or a non-employee of the municipal advisor to whom the role is outsourced. In both cases, the person designated as the CCO must have the requisite competency. In the case where the CCO function is outsourced, the municipal advisor retains ultimate responsibility for its compliance obligations.
- ▶ The CCO should understand the municipal advisory activities that are subject to the municipal advisor's compliance policies and supervisory procedures. Based on experience and consultation with others, the CCO must be able to identify applicable rules and standards of conduct pertaining to the services of the municipal advisor. Additionally, the CCO must be able to develop, or advise others who develop, the municipal advisor's policies and procedures, and programs to test for compliance with those policies and procedures. In the event that the CCO engages in the management or supervision of municipal advisory activities of the municipal advisor and that of its associated persons, the CCO would be required to pass the Series 50 exam as required under MSRB Rule G-3.

### Develop Written Supervisory Procedures and Compliance Policies:

MSRB Rule G-44(a)(i) and (b) collectively require municipal advisors to have written supervisory procedures and compliance policies reasonably designed to achieve compliance with all applicable rules. Municipal advisors must develop written policies and procedures to:

- Describe how the designated municipal advisor principal(s) will monitor and review the municipal

advisory activities of associated persons for compliance with those policies and procedures and applicable rules.

- Monitor regulatory developments, including the adoption of new or amended applicable rules.
- Promptly amend supervisory procedures to reflect applicable rule changes or other changes to the supervisory system.
- Communicate new or amended applicable MSRB rules to associated persons.
- Review and test supervisory procedures and compliance policies to ensure compliance with applicable rules.
- Periodically review, at least annually, the supervisory procedures and compliance policies to ensure they are reasonably designed to achieve compliance with applicable rules. When reviewing its policies and procedures, a municipal advisor should consider, at a minimum:
  - ▶ Any compliance matters that arose since the previous review;
  - ▶ Any changes in municipal advisory activities of the municipal advisor or its affiliates; and
  - ▶ Any changes in applicable rules that might suggest a need to revise the municipal advisor's written compliance policies or supervisory procedures.
- Modify supervisory procedures and compliance policies as a result of periodic reviews or any other changes to the regulatory environment or municipal advisory activities of the municipal advisor.
- Have the chief executive officer (CEO) or equivalent officer certify on an annual basis, beginning in April 23, 2016, that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable rules in accordance with MSRB Rule G-44(d). The certification should be maintained with the municipal advisor's records.

<sup>1</sup> Each municipal advisor firm should consider whether SEC Form MA and its instructions require the firm to amend its Form MA due to the designation of a CCO or any other change in the information regarding the firm's CCO required by the form.

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## Make General Business Records Required by the SEC and Records Concerning Compliance with MSRB Rule G-44:

Securities Exchange Act Rule 15Ba1-8(a)-(b)<sup>2</sup> (Books and Records to be Made and Maintained by Municipal Advisors) and MSRB Rule G-8(h) (Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors) detail the records required to be made as part of a municipal advisor's supervisory system and compliance processes. They are summarized below.

### SEC Recordkeeping Requirements

- Originals or copies of all written communications received, and originals or copies of all written communications sent, by a municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of the communications.
  - All check books, bank statements, general ledgers, cancelled checks and cash reconciliations of the municipal advisor.
  - A copy of each version of the municipal advisor's policies and procedures, if any, that are in effect; or at any time within the last five years were in effect, not including those in effect prior to July 1, 2014.
  - A copy of any document created by the municipal advisor that was material to making a recommendation to a municipal entity or obligated person or that memorializes the basis for that recommendation.
  - All written agreements (or copies thereof) entered into by the municipal advisor with any municipal entity, employee of a municipal entity, or an obligated person or otherwise relating to the business of such municipal advisor.
  - A record of the names of persons who are currently, or within the past five years were, associated with the municipal advisor, not including persons associated with the municipal advisor prior to July 1, 2014.
  - Books and records containing a list or other record of:
    - ▶ Names, titles, and business and residence addresses of all persons associated with the municipal advisor.
- ▶ All municipal entities or obligated persons with which the municipal advisor is engaging or has engaged in municipal advisory activities in the past five years, not including those prior to July 1, 2014.
  - ▶ The name and business address of each person to whom the municipal advisor provides or agrees to provide, directly or indirectly, payment to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf.
  - ▶ The name and business address of each person that provides or agrees to provide, directly or indirectly, payment to the municipal advisor to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf.
  - ▶ Written consents to service of process (notification of legal action) from each natural person who is associated with the municipal advisor and engages in municipal advisory activities solely on behalf of that municipal advisor.
- Partnership articles and any related amendments, articles of incorporation, charters, minute books, and stock certificate books of the municipal advisor and of any predecessor, excluding those that were only in effect prior to July 1, 2014, shall be maintained in the principal office of the municipal advisor and preserved until at least three years after termination of the business or withdrawal of registration as a municipal advisor.<sup>3</sup>
  - Each non-resident municipal advisor shall keep, maintain, and preserve, at a place within the United States, true, correct, complete, and current copies of books and records that such municipal advisor is required to make, maintain or preserve pursuant to any provisions of any rule or regulation of the SEC.

<sup>2</sup> 17 CFR 240.15Ba1-8(a)-(b).

<sup>3</sup> Before ceasing to conduct or discontinue business, a municipal advisor shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved and shall notify the SEC of where such books and records will be maintained.

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## MSRB Recordkeeping Requirements

- Records of all designations of persons responsible for supervision and as CCO.
- Records pertaining to the municipal advisor's written supervisory procedures and the reviews of its written supervisory procedures and compliance policies.
- Annual certifications as to compliance processes.
- Any certifications made by a bank as to substantially equivalent federal supervisory and compliance obligations and books and records requirements the bank is subject to pursuant to Rule G-44(e).

**Keep and Store Records:** Securities Exchange Act Rule 15Ba1-8(b)-(d)<sup>4</sup> and MSRB Rule G-9(h)-(k) on Preservation of Records detail the methods and retention periods for maintaining municipal advisor records.

- Pursuant to MSRB Rule G-9, municipal advisors must maintain and preserve books and records for a period of five years, with the exception of records pertaining to the designations of persons responsible for supervision and as CCO, which should be preserved for the period that each person is designated, plus at least six additional years following any change in such designation.
- Pursuant to Securities Exchange Act Rule 15Ba1-8, the enumerated books and records outlined above, with certain exceptions, must be maintained and preserved for not less than five years, the first two years in an easily accessible place.

## Records Preservation

- Records can be maintained and preserved for the required retention periods as paper documents or on electronic storage media or other mediums as specified under MSRB Rule G-9. The records must be easily accessible for the first two years; and thereafter, within a reasonable period of time.
- Pursuant to Securities Exchange Act Rule 15Ba1-8(d),<sup>5</sup> records must be arranged and indexed in a way that

permits easy location, access and retrieval of any particular record.

- ▶ If records are maintained in electronic storage media, the municipal advisor must establish and maintain procedures:
  - To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration or destruction;
  - To limit access to the records to properly authorized personnel and the SEC (including its staff and other representatives); and
  - To reasonably ensure that any reproduction of a non-electronic record on electronic storage media is complete, true and legible when retrieved.
- Please note a duplicate copy of all records must be stored separately during the required preservation period.

## OTHER CONSIDERATIONS IN DEVELOPING A SUPERVISORY SYSTEM AND COMPLIANCE PROGRAM

MSRB Rule G-44 follows a principles-based approach to supervision and compliance in order to accommodate the diversity of the municipal advisor population. However, other considerations municipal advisors might want to keep in mind involve creating a culture of compliance. Below are a few steps that can be taken to build a culture of compliance:

- Include the highest level of management in explaining the purpose and significance of compliance.
- Provide initial and ongoing training to all associated persons to ensure understanding of supervisory procedures and compliance policies.
- Circulate, in writing, modifications and updates to the municipal advisor's supervisory procedures to all associated persons and discuss the updates.

<sup>4</sup> 17 CFR 240.15Ba1-8(b)-(d).

<sup>5</sup> 17 CFR 240.15Ba1-8(d).

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