



MSRB Rules: Essentials for Issuers

State and local governments rely on the municipal securities market to raise money to finance projects for their citizens. Issuing bonds, whether done once a decade or many times a year, generally requires municipal governments to hire financial professionals to assist them. This document provides an overview of the obligations of municipal securities financial professionals in connection with [new issue offerings by state and local governments](#).

The Municipal Securities Rulemaking Board (MSRB) is an independent, self-regulatory rulemaking board for the municipal securities industry authorized by federal law to write rules with respect to municipal brokers, dealers and advisors. The mission of the MSRB is to protect investors, state and local governments and the public interest.

MSRB rules establish certain obligations these types of financial professionals must follow when working with state and local governments. While municipal securities dealers have long been subject to MSRB oversight, municipal advisors came under MSRB jurisdiction following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. Some MSRB rules have since been expanded to apply to advisors, including Rule G-17 on fair dealing. Further MSRB rulemaking with regard to municipal advisors is pending the Securities and Exchange Commission's adoption of a final municipal advisor registration rule that would more precisely outline which professionals are viewed as "municipal advisors" under the Dodd-Frank Act.

This document summarizes¹ the current key responsibilities of dealers underwriting municipal securities transactions and of municipal advisors providing advisory services to or in connection with state and local governments.

¹ Such summaries do not describe all provisions of such rules and interpretations, and the MSRB has adopted other rules and interpretations that may be relevant for these purposes. In addition, 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 is available at <http://www.msrb.org/Rules-and-Interpretations.aspx>.

Fair Dealing

In the conduct of their municipal securities or municipal advisory activities, all dealers and municipal advisors must deal fairly with state and local governments and cannot engage in any deceptive, dishonest or unfair practice. For more information on the duties of underwriters to their state and local government clients under MSRB Rule G-17, see "[What to Expect from Your Underwriter](#)."

Role Switching

Municipal securities dealers are prohibited from acting as a financial advisor to a state or local government on a new bond issue and subsequently switching roles to act as an underwriter on the same issue. The prohibition applies to both negotiated sale and competitive bid transactions. Private placements are treated as underwritings.

New Issue Obligations

Basic rules of practice for underwritings establish baseline requirements regarding key disclosures, manner of filling orders and settlement of underwriting syndicates. Among other things, if the issuer has established terms and conditions that the underwriters must meet, these conditions must be disclosed by the syndicate manager to syndicate members and, if such disclosure is prepared by the syndicate manager, a copy of the disclosure must be provided to the issuer.

If an underwriting syndicate is formed, provisions regarding the priority for accepting orders must be established. Unless otherwise agreed to with the state or local government, priority must be given to customer orders over orders for the account of syndicate members

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or their related accounts, to the extent feasible and consistent with the orderly distribution of securities.

Syndicate managers must establish a specific timeframe to allocate securities and disclose designations, with payment of designations. Underwriters also have specific requirements regarding the manner and timing of disclosure to syndicate members of syndicate expenses and certain order-related information.

New Issue Disclosures

To ensure full dissemination of the issuer's new issue disclosures to the marketplace, underwriters are required to submit official statements, advance refunding documents and new issue information to EMMA electronically. Municipal securities dealers must deliver copies of official statements to any new issue customers that request to receive paper copies.

A municipal securities dealer acting as financial advisor to a state or local government client that prepares the official statement on behalf of the client must make the official statement available to the underwriters in electronic format promptly after the client approves its distribution.

CUSIP Numbers

Unless the issuer has already obtained CUSIP numbers for a new issue of municipal securities, municipal securities dealers acting as an underwriter or financial advisor must obtain CUSIP numbers for the new issue. Underwriters must submit new issue securities information to the New Issue Information Dissemination Service (NIIDS) of the Depository Trust and Clearing Corporation. NIIDS is a centralized system for collecting and communicating new issue information through standardized electronic files disseminated in real-time to information vendors. Dealers acting as program dealers or remarketing agents must submit information and documents relating to auction rate securities and variable rate demand obligations to the MSRB's Short-term Obligation Rate Transparency (SHORT) System for dissemination to the public.

Gift Giving

Dealers are prohibited from giving, directly or indirectly, anything or any service of value, including gratuities, in excess of \$100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer, among other things.

Excepted from the \$100 annual limit are occasional gifts of meals or tickets to theatrical, sporting and other entertainments hosted by the dealer (i.e., if dealer personnel accompany the recipient to the meal, sporting or other event), legitimate business functions sponsored by the dealer that are recognized by the Internal Revenue Service as a deductible business expense or gifts of reminder advertising. However, these "gifts" must not be "so frequent or so extensive as to raise any question of propriety."

Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to state or local government personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of state or local government personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such state or local government personnel in relation to their municipal securities activities.

Political Contributions

"Pay-to-play" activities of dealers in the municipal securities market are limited by MSRB rules. Dealers are not prohibited from making political contributions, but they are restricted from engaging in municipal securities business with a state or local government for two years after certain political contributions have been made to an official of the state or local government.

Dealers are prohibited from soliciting or coordinating contributions when engaged in municipal securities business. Municipal securities business includes

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underwritings (including acting as a syndicate member but not as selling group member), excluding competitive underwritings where the bonds are sold based on the best bid (i.e., underwriters engaged through a request for proposal process are not viewed as engaging in a competitive underwriting). Private placements and other agency offerings (such as acting as primary distributor for a 529 college savings plan), financial advisory services with respect to a primary offering (if not selected on a competitive bid basis) and remarketing agent services with respect to a primary offering (if not selected on a competitive bid basis) also constitute municipal securities business.

Dealers also must make quarterly public disclosures to the MSRB of their contributions and of the municipal securities business in which they engage.

“Official of an issuer” includes any person who was, at the time of the contribution, an incumbent, a candidate, or a successful candidate for elective office of the issuer directly or indirectly responsible for, or having influence over the outcome of, hiring a dealer for municipal securities business by the issuer, and elective office of a state or political subdivision with authority to appoint any person who otherwise qualifies as an official of an issuer (e.g., a governor who appoints the head of an authority that issues bonds). Contribution includes any gift, subscription, loan, advance or deposit of money or anything of value made: 1) for the purpose of influencing any election for federal, state or local office; 2) for the payment of debt incurred in connection with any such election, or 3) for transition or inaugural expenses incurred by the successful candidate for state or local office.

Contributions that can trigger a ban are contributions to officials of an issuer by the dealer; contributions by municipal finance professionals (“MFPs”) of the dealer, except contributions to issuer officials for whom the MFP can vote that do not exceed \$250 per election; and contributions by dealer- or MFP-controlled political action committees. In some cases, a contribution made by a person prior to becoming an MFP can trigger a ban on business under the rule’s look-back provisions.

“Municipal finance professional” includes any associated person of the dealer who primarily engages in municipal securities representative activities, such as underwriting, trading, sales (other than sales to natural persons), financial advisory services, research or investment advice or related communications with public investors; solicits municipal securities business, including an associated person of an affiliate of the dealer; and certain supervisors of MFPs, up to and including the chief executive officer.

Solicitation of Business

A dealer cannot provide or agree to provide, directly or indirectly, payment to any unaffiliated person for soliciting municipal securities business (as defined in Rule G-37) on its behalf. A solicitation is any direct or indirect communication with a state or local government for the purposes of obtaining or retaining municipal securities business.

The determination of whether a particular communication is a solicitation for purposes of Rules G-37 and G-38 is dependent on the specific facts and circumstances, with any communication made under circumstances reasonably calculated to obtain or retain municipal securities business for the dealer considered a solicitation unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining municipal securities business.

A payment, for purposes of Rules G-37 and G-38, includes anything of value and can, depending on the facts and circumstances, include quid pro quo arrangements whereby a non-affiliated professional solicits municipal securities business for a dealer in exchange for being hired by the dealer to provide unrelated services.



The complete text of MSRB rules and interpretations referenced above is available at <http://www.msrb.org/Rules-and-Interpretations.aspx>.