

PREPARE | PARTICIPATE | PUT INTO PRACTICE

Preparing for Regulation

A GUIDE FOR
MUNICIPAL ADVISORS



Produced by the
Municipal Securities Rulemaking Board

Preparing for Regulation

The Municipal Securities Rulemaking Board (MSRB) is providing a checklist and additional information to help newly registered municipal advisors begin to assess their readiness for regulatory oversight. The MSRB recognizes that many municipal advisors also act as municipal securities dealers, which is a class of financial professionals that has been regulated by the MSRB since 1975. However, Congress determined that all municipal advisors, as defined by the Securities and Exchange Commission (SEC), should be subject to federal regulatory oversight, and designated the MSRB as the primary regulator responsible for implementing new rules and standards. Congress also established a federal fiduciary duty for municipal advisors, obligating them to put their municipal entity clients' interests before their own.

As the MSRB puts in place additional rules of conduct for municipal advisors, this guide is intended primarily to serve as a starting point for municipal advisor professionals who, while experienced in their field, may be unfamiliar with the development of a federal regulatory regime. The MSRB will continue its outreach to municipal advisors as it develops rules and standards, and will provide extensive opportunities for municipal advisors to ask questions, provide input and participate in the rulemaking process.

DEFINING "MUNICIPAL ADVISOR"

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) broadly defines municipal advisors as including financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders and certain swap advisors that provide municipal advisory services. The Securities and Exchange Commission (SEC) issued a [final rule in September 2013](#) that provides guidance for determining whether a firm or professional is engaging in municipal advisory activities requiring registration with the SEC and the MSRB. The MSRB does not provide legal advice on SEC rules. Possible municipal advisors who want to verify whether they are subject to registration requirements and MSRB oversight should review the [SEC's final rule](#) and [related fact sheet](#) and consult their legal professionals. Municipal market participants also should consult their legal professionals to determine whether they are subject to the registration requirements of other regulatory agencies or organizations.

Municipal Advisor Checklist

- ✓ **STEP 1: Understand the Importance of Registration**
Learn about what it means to register with the MSRB.page 4
- ✓ **STEP 2: Learn about the MSRB**
Get to know the primary regulator of the municipal securities marketpage 8
- ✓ **STEP 3: Learn about Being Regulated**
Learn about the responsibilities and benefits of being a regulated professional.page 11
- ✓ **STEP 4: Review Existing Business Practices**
Assess firm policies and procedures.page 16
- ✓ **STEP 5: Access Available Resources**
Take advantage of information and educational resources available for registered municipal advisors. . . .page 18
- ✓ **STEP 6: Stay Informed**
Stay up to date with regulatory notices, news and other information from the MSRBpage 19



STEP 1

Understand the Importance of Registration

Municipal advisory firms and sole proprietorships are required to register with the MSRB, the self-regulatory organization for the municipal market. They must first register with the Securities and Exchange Commission (SEC), the federal agency that conducts examinations and enforces MSRB rules for municipal advisors. Municipal advisors are subject to rules designed to promote a fair, transparent and efficient municipal securities market, and requiring registration with the SEC and MSRB is the first step in ensuring an effective regulatory process. Registration also establishes an official communication channel for the MSRB to contact firms and individuals in the municipal advisory business. This communication is essential to inform municipal advisors about their regulatory obligations and opportunities to participate in the rulemaking process. The MSRB also encourages state and local governments and other municipal entities to verify the registration of their municipal advisor with the MSRB.

Compliance with Rules

Rulemaking in the municipal securities market sets the foundation for ensuring a fair and efficient market. MSRB rules for municipal advisors help prevent fraud and other unfair practices. These rules are approved by the SEC and have the force and effect of federal law. The [full list and text of MSRB rules](#) is available on the MSRB's website at www.msrb.org. To view only rules that apply to advisors, click the "Rules for" tab and select the

"Municipal Advisor" role from the drop-down menu. Note that some of the listed rules currently apply to all municipal advisors, whereas others apply only to municipal securities dealers that provide financial advisory services.

MSRB rules are categorized by rule type. General, or "G" rules, create responsibilities and standards for dealers effecting municipal securities transactions and for municipal advisors that engage in municipal advisory

REGISTERING AS A MUNICIPAL ADVISOR

Municipal advisors that have not yet registered with the MSRB can begin the process by first registering with the Securities and Exchange Commission (SEC). Following the passage of the Dodd-Frank Act, the SEC implemented a temporary registration regime for municipal advisors. Beginning in July 2014, the SEC plans to transition from this temporary registration regime to a permanent regime, with transition dates phased across four consecutive months. Firms registering with the SEC either under the temporary or permanent regime must also register with the MSRB. Each municipal advisor must have an SEC municipal advisor registration number in order to register with the MSRB.

For more information on registering with the SEC through the temporary Form MA-T, or permanent Forms MA or MA-I, visit the SEC website at www.sec.gov.

Registration with the MSRB is performed online through MSRB Gateway, the single, secure access point for all MSRB systems. To begin the registration process as a municipal advisor, go to www.msrb.org and click "Register here." [Additional help with registration is available here.](#)

activities. Administrative, or “A” rules, set forth the structure, authority and membership of the MSRB and assessments and fees. Definitional, or “D” rules, provide definitions for terms used in MSRB rules.

For more information on the principles that support municipal securities regulations, see *Step 3: Learn about Being Regulated* on page 11.

Official Communication

The MSRB’s online registration process requires municipal advisors to provide various contact information, including designating an email contact to serve as the primary contact person for purposes of electronic communications with the MSRB. This requirement provides for an efficient and reliable means of official communication between the MSRB and regulated entities, and allows the MSRB to alert municipal advisors to time-sensitive developments, rule changes, notices and other information. Firms must promptly update this information if it changes and verify it on an annual basis.

Registration Verification

Part of the MSRB’s mission includes protecting state and local governments and other municipal entities that may interact with municipal advisors. The MSRB encourages municipal entities that retain municipal advisory firms to verify the firm’s registration status with the MSRB and the SEC. The MSRB’s website includes a [list of all municipal advisors registered with the MSRB](#).

The MSRB cautions municipal entities against working with unregistered firms and professionals that provide municipal advisory services. Unregistered municipal advisors are in violation of federal law in conducting municipal advisory business. The MSRB’s policy is to report any unregistered municipal advisors to the SEC for appropriate action.

Fees

The MSRB’s operations, including rulemaking, market transparency initiatives and education and outreach, are not funded by the federal government. The MSRB assesses fees on

municipal securities dealers and municipal advisors. As part of the registration process, each firm the MSRB regulates, whether the firm is a municipal securities dealer, municipal advisor or both, is required to pay the MSRB a one-time initial fee and its first year’s annual fee. Municipal advisors and municipal securities dealers also must pay an annual fee for each subsequent year in which they remain registered with the MSRB and continue to be subject to the MSRB’s jurisdiction. [Learn more about municipal advisor annual and initial fees on the MSRB’s website](#).

In addition to annual and initial fees, which fund less than 5 percent of the MSRB’s activities, municipal securities dealers are assessed other types of fees. The MSRB is working to establish appropriate and equitable assessments on municipal advisors, with input from the municipal advisory community and other market stakeholders, to fairly distribute assessments across all regulated entities and ensure adequate funding of the MSRB.

REPORT UNREGISTERED MUNICIPAL ADVISORS

Registration and regulation protect the integrity of the financial markets. If the MSRB becomes aware of any unregistered firm engaging in municipal advisory activities, it refers the matter to the appropriate regulatory authority for possible investigation and discipline. To report an unregistered municipal advisor to the MSRB, [file a complaint online](#). Complaints may be made anonymously.



STEP 2

Learn about the MSRB

The MSRB is the self-regulatory organization charged by Congress with regulating the activities of municipal securities dealers and municipal advisors to promote a fair and efficient municipal securities market. The MSRB is governed by a 21-member Board of Directors that includes a majority of public (i.e., non-regulated) members, as well as members from regulated firms, including municipal advisors and municipal securities dealers. Board members serve three-year terms and new members are selected by the Board through a thorough application and review process following a public call for applicants. Informed by insights from actual market participants, the MSRB protects investors, state and local governments and other municipal entities, and the public interest. The MSRB fulfills this mission in a number of ways, including:

- Regulating municipal securities dealers and municipal advisors
- Operating market transparency systems
- Engaging in education, outreach and market leadership

WHAT IS AN SRO?

In the United States, financial securities regulation is accomplished through a combination of federal and state oversight and self-regulatory organizations (SROs). The MSRB is the SRO for the municipal securities market. SROs complement federal regulation by ensuring that industry expertise and experience inform the development of rules and standards. The MSRB's rulemaking and other activities benefit from the insight of actual participants in the municipal marketplace. The MSRB Board of Directors is a majority-public board that includes members selected from the non-regulated public at large and regulated municipal advisors and municipal securities dealers. This provides diverse perspectives on the public interest and the practical realities of implementing regulatory goals. In addition, the MSRB engages in an extensive notice and comment process in connection with virtually all of its rulemaking initiatives, allowing all municipal market stakeholders to submit their feedback on proposed rules for MSRB consideration prior to adoption.

The SEC is charged with overseeing the activities of the MSRB and most other securities industry SROs. The SEC reviews, approves and enforces the MSRB's rules, which have the force and effect of federal law. The SEC and other regulatory authorities examine MSRB-regulated entities for compliance with MSRB rules and enforce the rules. The MSRB does not perform these functions.

The MSRB develops rules and standards of professional qualification for the municipal securities dealers and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its Electronic Municipal Market Access (EMMA®) website, at emma.msrb.org. The EMMA website is the official repository for trade data and disclosure information on virtually all municipal securities. The MSRB also serves as an objective resource for information on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is subject to oversight by the Securities and Exchange Commission.

Participation by regulated firms and professionals in the regulatory process is central to achieving the MSRB's goal of a fair and efficient market. Municipal advisors and other market participants have a number of opportunities to provide input, including commenting on MSRB rule concepts and proposals and serving on the Board of Directors. Learn more about the methods and value of participation in a self-regulatory organization on page 13.



STEP 3

Learn about Being Regulated

Firms and professionals in regulated securities industries are governed by rules designed to establish standards for their business practices, to promote fair dealing and to protect against fraud and other illegal conduct. As required by Dodd-Frank, regulatory standards protect state and local governments and other municipal entities that engage the services of a municipal advisor, as well as municipal securities investors. Regulation also serves to promote fair competition and protect the municipal market as a whole. As the MSRB implements its framework for municipal advisor regulation, municipal advisors are expected to:

- Understand and comply with applicable MSRB rules
- Meet professional qualification standards as set by the MSRB
- Establish adequate business policies and procedures
- Prepare for examinations from enforcement agencies and regulatory organizations

Regulatory Principles

It is important for newly registered municipal advisors to begin to understand the principles that underlie municipal securities regulations. The Dodd-Frank Act established a federal fiduciary duty for municipal advisors, which among other things, subjects them to a duty of loyalty and duty of care to their municipal entity clients and obligates them to put their clients' interests above their own. The MSRB is responsible for developing additional standards for municipal advisors. A cornerstone of the MSRB's regulatory framework that is currently in effect for municipal advisors is [MSRB Rule G-17](#) on fair dealing, which requires all MSRB-regulated entities, including municipal advisors, to act fairly and not engage in any deceptive or dishonest practices.

As the MSRB puts in place its body of municipal advisor rules, certain general tenets of municipal securities regulation are likely to play a significant role in the regulatory obligations of municipal advisors, such as:

- **Supervision:** Adequate internal policies and procedures to supervise the activities of regulated firms and their employees is a critical aspect of preserving market integrity. As the MSRB considers rules

mandating specific supervisory duties, municipal advisors should be assessing practices for consistency with good supervision to help ensure that the firm and its professionals meet their existing federal fiduciary duty and MSRB fair practice duty.

- **Conflicts of Interest:** Disclosure of conflicts of interest enables market participants to assess the relationships among financial and other professionals and evaluate the impartiality of any advice provided by a regulated firm and its employees. As municipal advisors prepare to transition to a regulatory regime, they should be assessing conflicts disclosure practices for consistency with generally understood fiduciary principles.
- **Gifts and Gratuities:** Personal gifts to employees of state or local governments and to employees of other market participants may serve to improperly influence those employees' decisions. As the MSRB considers rules potentially extending its existing gift rule to non-dealer municipal advisors, municipal advisors should prepare to comply with any restrictions and consider whether gifts intended to influence clients and other

market participants could be viewed as inconsistent with generally understood fiduciary principles.

- **Political Contributions:** One form of conflict of interest in the municipal market can arise if financial professionals seek to influence the award of business by state and local government officials by making political contributions to those officials or soliciting contributions on their behalf. MSRB rules seek to address the perception and practice of "pay-to-play" in the municipal securities business. As the MSRB considers rules specifically prohibiting pay-to-play practices for non-dealer municipal advisors, municipal advisors should be assessing whether they engage in activities such as quid pro quo arrangements that could be covered by generally understood fiduciary principles.
- **Compensation:** The MSRB's fair practice rule, Rule G-17, has been interpreted to prohibit regulated firms and individuals from charging excessive compensation. Rule G-17 currently applies to municipal advisors, and municipal advisors should take appropriate measures for assuring compliance with this principle.

- **Books and Records:** Maintaining sufficient books and records allows regulated firms to document the activities of the firm and its employees and will be an essential component of examination and enforcement activities related to current and future rules. As the MSRB considers rules mandating specific recordkeeping requirements, municipal advisors should be assessing practices to determine if they appropriately document their municipal advisory activities, both with respect to their business activities and their regulatory compliance.

To understand how these principles have been codified for municipal securities dealers, consult the [MSRB rule book](#) online. [Regulatory notices published by the MSRB on its website](#) provide current information on upcoming and currently effective rules.

Participation in Rulemaking

Municipal advisor participation in the rulemaking process helps ensure that rules for municipal advisors reflect current industry practices and market activities. As the MSRB undertakes further rulemaking relating to municipal advisors, refer to the [Municipal Advisors](#) page of the MSRB's

website for news and information on MSRB regulatory and other developments that may affect all municipal advisors.

The MSRB publishes electronic notices designed to keep the rulemaking process transparent and market participants informed about regulatory developments, including requests for comment on rule proposals. These notices are provided by email to the primary contact for all registered entities and other subscribers. Learn more about subscribing to additional MSRB email updates on page 19.

The MSRB considers reasonable regulatory alternatives to its rule proposals. The MSRB also assesses the costs and benefits of its proposals to evaluate potential burdens on competition in light of each proposal's intended purpose and expected benefits to the fairness, transparency and efficiency of the municipal market. Municipal advisors are encouraged to review any proposed MSRB rules and submit comments. Comments received are posted on the MSRB's website and are part of the record in any rule filing submission to the SEC.

The MSRB will provide additional education and timely information on participating in the rulemaking process as rules for municipal advisors are developed.

Professional Qualifications

The MSRB is charged by Congress with establishing minimum professional qualifications for municipal advisors. The development of professional qualification standards to establish the competency of municipal advisors is a process that relies on the input of practicing municipal advisors. Any applicable professional qualification standards, related resources and information on how to participate in the future development of professional qualification standards are available on the MSRB's website.

Policies and Procedures

Policies and procedures are the foundation for helping ensure that individuals engaged in municipal advisory activities are acting in accordance with MSRB rules and federal securities laws. See page 16 for more information.

Regulatory Inspections

Municipal advisors may be examined by one or more regulatory authorities to determine if they are in compliance with currently applicable MSRB rules and federal securities laws. Municipal advisors should be prepared for future inspections by reviewing applicable MSRB rules and law, and ensuring that they are in compliance. Regulatory authorities that conduct examinations may refer any findings to their enforcement divisions for further action.

The [SEC's Office of Compliance, Inspections and Examinations](#) provides information about its examination process for municipal securities dealers and other regulated entities and methods used to resolve problems found during inspections. This information, which the SEC provides to firms under examination, can help municipal advisors better understand the objectives of regulatory inspections.

If rule violations are established as a result of an inspection, penalties can include fines, restitution and suspension or prohibition from engaging in municipal advisory activities or other securities business. Matters may be referred to law enforcement agencies for civil or criminal charges.



STEP 4

Review Existing Business Practices ahead of Rulemaking

One aspect of regulatory oversight is the development of uniform business practices and consistent professional conduct across an industry. For newly registered municipal advisors, assessing existing business policies and procedures will be useful in preparing to make any necessary changes in response to regulatory developments and for possible examinations by enforcement authorities. Areas to consider in advance of future rulemaking include:

- **Supervisory Procedures:** Has your firm prepared and implemented adequate written procedures for supervising the activities of the firm and its employees?
- **Conflicts of Interest:** Are policies in place for identifying, addressing and disclosing whether certain business relationships create conflicts of interest?
- **Gifts and Entertainment:** Does your firm have the ability to monitor entertainment expenses, particularly when entertaining public employees, to ensure that these expenses are allowable by local law and reasonable? Can your firm monitor any gifts provided on behalf of your firm to any public employee?
- **Political Contributions:** Does your firm have the ability to monitor the political contributions made by all employees?
- **Books and Records:** Does your firm prepare and maintain adequate books and records? Does your firm conduct internal reviews of books and records?
- **Business Communications:** Does your firm have policies in place and the technical capability to capture and retain all relevant business communications, including advertising?
- **Compensation and Contracts:** Does your firm have policies and procedures in place to monitor compensation on individual transactions and ensure that compensation is fair and reasonable according to [MSRB Rule G-17](#) on fair dealing? Are policies in place applicable to contracts with clients?
- **Training:** Does your firm continue to evaluate and update policies, procedures and practices to reflect current industry and regulatory developments? If so, is ongoing training made available for the relevant staff on existing policies and procedures?

Municipal advisors may also consider the recommendations of professional associations. After assessing existing policies and procedures, municipal advisors may begin to identify possible changes in preparation for future rulemaking and examinations.



STEP 5

Access Available Resources

The MSRB provides educational resources for municipal advisors, state and local governments, investors and other municipal securities market participants to advance understanding of the municipal market. Municipal advisors can access a growing library of information and resources specifically for municipal advisors on the [Municipal Advisors](#) page of the MSRB's website at www.msrb.org.

The MSRB holds periodic education and training events in cities across the country for municipal market participants, including municipal advisors. The MSRB makes some of these events available to a nationwide audience via webcast and hosts educational webinars. [Learn more about upcoming events and webinars on the MSRB's website.](#)

Municipal advisors can also point their clients to the MSRB's resources for state and local governments. The online [State and Local Government Toolkit](#) includes information about using the [MSRB's Electronic Municipal Market Access \(EMMA®\) website](#), evaluating trade data, meeting continuing disclosure obligations and working with financial professionals.



STEP 6

Stay Informed

In addition to the electronic communications the MSRB sends to a registered organization's primary contact, optional MSRB email updates are a helpful way to stay informed about rule proposals and additional topics of interest, such as resources for state and local governments and updates on the EMMA website. Subscribers to MSRB email updates can elect to receive updates on a daily or weekly basis, or may sign up to receive the MSRB Monthly Update, a monthly roundup of MSRB news. Sign up on the MSRB's website by clicking "[Email Updates](#)" at the top of the page.



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