

Understanding MSRB Rules Regarding Gifts, Gratuities and Non-Cash Compensation

The Municipal Securities Rulemaking Board (MSRB) is providing this resource for brokers, dealers and municipal securities dealers (collectively “dealers”) and municipal advisors (collectively, together with dealers, “regulated entities”) to enhance understanding of [MSRB Rule G-20](#), on gifts, gratuities and non-cash compensation, and assist regulated entities in their continuing compliance efforts.

This resource highlights key rule provisions and provides answers to Frequently Asked Questions (FAQs), related scenarios and sample supervisory considerations to enhance understanding of certain MSRB rules; it does not create new legal or regulatory requirements or new interpretations of existing requirements and should not be interpreted by regulated entities or examining authorities as establishing new standards of conduct.¹ This resource adds to and supersedes FAQs on MSRB Rules Regarding Gifts, Gratuities and Non-Cash Compensation, originally published in December 2016.²

FREQUENTLY ASKED QUESTIONS ON MSRB RULE G-20

1. What is the purpose of Rule G-20?

The purpose of Rule G-20 is to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process. The rule protects against improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal securities or municipal advisory activities of the recipients’ employers.

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2. What is the \$100 limit under the Rule?

Under Rule G-20(c) no regulated entity nor any of its associated persons may, directly or indirectly, give or provide—or permit to be given or provided—any thing or service of value, including gratuities, in excess of \$100 per year to a person (other than to an employee or partner of such regulated entity), if such payments are in relation

to the regulated entity activities of the employer of the recipient of the payment or service.

For the purposes of Rule G-20(c), “employer” includes a principal for whom the recipient of a payment or service is acting as an agent or as a representative.

3. Must a regulated entity aggregate all gifts that are subject to the \$100 limit given by the regulated entity and its associated persons to a particular recipient?

Yes, Supplementary Material .02 of Rule G-20 requires a regulated entity to aggregate all gifts given by the regulated entity and its associated persons to a particular recipient over the course of a year that are not excluded from the \$100 limit. Regulated entities must consistently aggregate all gifts annually on a calendar year basis, fiscal year basis, or rolling basis beginning with the first gift to any particular recipient.

¹ This resource should be read in conjunction with applicable MSRB rules and interpretations (e.g., MSRB Rule G-20, on gifts, gratuities, non-cash compensation and expense of issuance, MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities, MSRB Rule G-27, on supervision, MSRB Rule G-44 on supervisory and compliance obligations of municipal advisors, and MSRB Rule G-42, on duties on non-solicitor municipal advisors), as the resource does not provide an exhaustive list of considerations for ensuring compliance with the applicable rule(s). The complete text of all MSRB rules and interpretations is available at <http://MSRB.org/Rules-and-Interpretations/MSRB-Rules.aspx>.

² New questions and answers added in June 2019 are noted. In addition, certain FAQs originally published in December 2016 were modified at this time in non-substantive respects and formatted differently for this updated resource.

4. Are there exclusions from the \$100 limit?

Yes, there are exclusions from the \$100 limit.

The exclusions from the \$100 limit identified in Rule G-20(d) relate to “normal business dealings,” transaction-commemorative gifts, de minimis gifts, promotional gifts, bereavement gifts and personal gifts. Importantly, such gifts are only excluded provided that such gifts do not otherwise give rise to any apparent or actual material conflict of interest.

5. Rule G-20(d) provides an exclusion for promotional items that are of nominal value and display the regulated entity’s business or other corporate logo. What is a nominal value?

A promotional item is of nominal value if the value of the item is substantially below the \$100 limit.

6. What factors should a regulated entity consider when determining whether a gift falls within the personal gift exclusion in Rule G-20?

Under Rule G-20(d)(vi), personal gifts given upon the occurrence of infrequent life events, such as a wedding or birth of a child, are not subject to the \$100 limit so long as the gift(s) do not otherwise give rise to any apparent or actual material conflict of interest.

Supplementary Material .04 provides certain factors that should be considered when determining whether a gift is personal and not in relation to the activities of the recipient’s employer. Those factors include:

- The nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient; and
- Whether the associated person, or the regulated entity with which he or she is associated, paid for the gift.

When a regulated entity pays for the cost of a gift, either directly or indirectly, the gift will be presumed to be given in relation to the municipal securities or municipal advisory activities of the recipient’s employer and will not be subject to the exclusion for personal gifts.

7. What types of gifts would generally qualify as a normal business dealing and would, therefore, be excluded from the general limitation on gifts and gratuities?

Under Rule G-20(d), certain types of entertainment may qualify for exclusion as “normal business dealings,” so long as such gifts do not give rise to apparent or actual conflicts of interest and are not so frequent or extensive as to raise any question of propriety. These include:

- an occasional meal hosted by the regulated entity or its associated person;
- an occasional ticket to theatrical, sporting or other entertainment that is hosted by the regulated entity or its associated persons; and
- the regulated entity sponsoring a legitimate business function that would be recognized by the IRS as a deductible business expense.

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8. Should regulated entities monitor expenses to assess whether meals or occasional gifts of theatrical, sporting or other entertainments hosted by the hosting entity or its associated persons are so frequent or extensive as to raise any question of propriety and, therefore, would not be excluded from the general limitation on gifts and gratuities?

Yes. Dealers and municipal advisors are responsible for ensuring that their supervisory policies and procedures are reasonably designed to ensure compliance with applicable rules and regulations under MSRB Rule G-27, on supervision, and MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, as applicable, to ensure compliance.³ Accordingly, dealers and municipal advisors should have supervisory procedures that are reasonably designed to ensure compliance with Rule G-20, which would generally include procedures to ensure that the exclusion for certain gifts is properly applied. For example, the exclusion for “normal business dealings” is not applicable if the gift gives rise to any apparent or material conflict of interest or if the normal business dealings are so frequent or so extensive as to raise any question of propriety.

(June 2019)

³ Rule G-27, on supervision, provides, in part, that “[e]ach dealer shall establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Board rules.” Rule G-44, on supervisory and compliance obligations of municipal advisors, provides, in part, that “[e]ach municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules.”

9. Are there other MSRB rules that a regulated entity should consider when thinking about gift giving?

Yes, a regulated entity and its associated persons are subject to all applicable MSRB rules. When considering gifts, a regulated entity particularly may want to review the MSRB's other fair practice rules, including the MSRB's fundamental fair dealing rule, MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities.

10. What if a regulated entity's state has stricter rules related to giving gifts or gratuities than the limitations in Rule G-20?

Supplementary Material .05, on the applicability of state or other laws, reminds regulated entities that a regulated entity and its associated persons may be subject to other duties, restrictions or obligations under state or other laws related to gift giving. Rule G-20 does not supersede any more restrictive provision of state or other laws applicable to the activities of a regulated entity or its associated persons.

SCENARIOS ILLUSTRATING THE NORMAL BUSINESS DEALINGS EXCLUSION

These scenarios are for illustrative purposes and are meant to provide context for evaluating when business entertainment may give rise to an apparent or actual material conflict of interest and/or the nature of the business entertainment would, because it is so frequent or extensive, raise a question of propriety.⁴

Scenario 1:

An associated person of a municipal advisor ("municipal advisor associated person") is out of town attending meetings with a municipal entity client regarding facilitating a request for proposal (RFP) for underwriting services needed for an upcoming bond offering the municipal entity client is contemplating.

The municipal advisor reaches out to a professional colleague, an associated person of a dealer ("dealer associated person") who is a local, to see if the dealer associated person could arrange a day of golfing at an exclusive members-only national golf club. Since the dealer associated person is a member of this exclusive club, the dealer associated person manages to secure a tee time and hosts the municipal advisor associated person for a round of golf. While golfing, the two discuss the impending RFP.

Analysis:

- Prior to hosting the round of golf, the dealer associated person should disclose the entertainment to the dealer firm because this type of business entertainment may be extensive and inconsistent with the exclusion under Rule G-20(d)(i), which provides that gifts, to be excluded from the general limitation under the normal business dealings exclusion, shall not be so frequent or extensive as to raise any question of propriety.
- In light of the receipt of the gift from a dealer associated person during a period when the firm is engaged by a municipal entity to provide municipal advisory services,⁵ the municipal advisor associated person should disclose the receipt of the golf outing to the municipal advisor firm because it may trigger a disclosure obligation for the firm under Rule G-42, on duties of non-solicitor municipal advisors.
- The municipal advisor associated person's request for this business entertainment from the dealer associated person could raise concern, under Rule G-17, because the conduct of the municipal advisor associated person could potentially constitute aiding and abetting or "causing" a dealer to potentially violate Rule G-20 due to the dealer's associated person giving or providing, or permitting to be given or provided, a thing or service of value in excess of \$100 per year to a person in relation to the municipal securities or municipal advisory activities of the employer of the recipient, unless an exception is applicable.⁶

⁴ While the scenarios may present a fact pattern that, for illustration purposes only, has a focus on an associated person of a municipal advisor, the scenarios have equal application under Rule G-20 for associated persons of dealers.

⁵ Rule G-42(b), on disclosures of conflicts of interest and other information, requires full and fair disclosure to a municipal entity or obligated person client of, among other things, any actual or potential conflict of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the applicable standards of conduct of Rule G-42(a). See also G-42(c)(ii).

⁶ Rule G-17, on conduct of municipal securities and municipal advisory activities, provides that "[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice."

Scenario 2:

An associated person of a municipal advisor and an associated person of a dealer routinely go to lunch twice a month. These two individuals have become business acquaintances because both the municipal advisor firm and the dealer have frequently been engaged by a local municipality in several prior bond offerings. The associated person of the municipal advisor pays for the lunch; the cost of the portion of the lunch attributable to the associated person of the dealer is, on most occasions, approximately \$35.00, inclusive of the tip.

Analysis:

- An associated person of a municipal advisor taking an associated person of a dealer to lunch on a frequent basis may cause the lunches to fall outside the normal business dealings exclusion, even though the associated person of the municipal advisor is hosting the lunch and each lunch is under \$100, as the frequency may be so extensive as to raise a question of propriety.
- If the hosted lunches with the associated person of a dealer are so frequent or extensive as to raise a question of propriety, the conduct could trigger an obligation for the municipal advisor firm to disclose a potential conflict of interest under Rule G-42, on duties of non-solicitor municipal advisors.⁷

COMPLIANCE CONSIDERATIONS

These sample considerations are designed to assist regulated entities in assessing compliance controls for compliance with Rule G-20.⁸ Recognizing that one

firm's approach to compliance may not necessarily be appropriate or reasonable for another firm, regulated entities should consider their own business model, practices and activities in utilizing this resource.

- Consider tracking business entertainment that the firm or its associated persons hosts that may qualify for the normal business dealings exclusion to monitor for entertainment that is so frequent or extensive to cause the particular entertainment to fall outside the exclusion for normal business dealings.
- Consider tracking business entertainment that the firm or its associated persons hosts that may qualify as normal business dealings to monitor the timing of meals or entertainment given to determine if the entertainment occurs when the firm is working on an impending bond issuance (or, if applicable, at any time when the firm has determined that business entertainment should be prohibited), to ensure the timing of the gift would not raise a question of propriety.
- Consider tracking gifts that the firm or its associated persons gives that are below \$100 in order to aggregate the value of such gifts to ensure the value of the gifts given to any particular recipient in any given year does not exceed \$100.
- Consider requiring pre-approval of gifts, or certain gifts, that may typically qualify as normal business dealings, to provide the firm an opportunity to review and assess whether the intended meal or entertainment could give rise to a question of propriety or give rise to any apparent or actual material conflict of interest.

⁷ Rule G-42(b). See also G-42(c)(ii).

⁸ As noted, this resource does not address all regulatory obligations applicable to municipal advisors or dealers pursuant to each MSRB rule or pursuant to other laws.

About the MSRB

The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating the municipal securities firms, banks 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, the official repository for information on all municipal bonds. The MSRB also serves as an objective resource on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is a self-regulatory organization governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is overseen by the Securities and Exchange Commission and Congress.