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[Rule G-17](#), Rule G-46

Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on new draft Rule G-46 that would codify interpretive guidance previously issued in 2017. That guidance relates to the obligations of “solicitor municipal advisors” under MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities (the “G-17 Excerpt for Solicitor Municipal Advisors”) and was originally included in a larger notice regarding the application of MSRB rules to solicitor municipal advisors.¹ In addition to codifying the general substance of the G-17 Excerpt for Solicitor Municipal Advisors, the draft rule also would add additional requirements that would better align some of the obligations imposed on solicitor municipal advisors with those applicable to non-solicitor municipal advisors under Rule G-42, on duties of non-solicitor municipal advisors, and to underwriters under Rule G-17, on conduct of municipal securities and municipal advisor activities. The proposed codification of this guidance is a next step in the MSRB’s ongoing review of the catalogue of interpretive guidance in its rule book, as announced in [MSRB Notice 2021-02](#). The MSRB invites all interested parties to submit comments in response to this request for comment, along with any other information they believe would be useful.

Comments should be submitted no later than June 17, 2021 and may be submitted in electronic or paper form.

[Comments may be submitted electronically by clicking here.](#)

Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities

¹ See [MSRB Notice 2017-08](#), Application of MSRB Rules to Solicitor Municipal Advisors (May 4, 2017).



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Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.²

Background

In 2017, the MSRB published Notice 2017-08 on the application of MSRB rules to municipal advisors that undertake the solicitation of a municipal entity or obligated person ("solicitor municipal advisors").³ Notice 2017-08 was intended to promote understanding of the regulatory framework applicable to solicitor municipal advisors' activities as well as their obligations under MSRB rules when soliciting obligated persons and municipal entities (collectively, "solicited entities"). Among other things, the notice summarized several key MSRB rules applicable to solicitor municipal advisors, including obligations owed by solicitor municipal advisors to solicited entities under MSRB Rule G-17. Those obligations stemmed from basic principles of fair dealing and drew some parallels to obligations owed by non-solicitor municipal advisors under MSRB Rule G-42, by underwriters pursuant to interpretive guidance issued under MSRB Rule G-17 (the "G-17 Underwriter's Guidance") and by certain solicitors under the U.S. Securities and Exchange

² Comments generally are posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

³ For purposes of this notice and draft Rule G-46, the term "solicitor municipal advisor" means a municipal advisor within the meaning of Section 15B(e)(4) of the Exchange Act of 1934 (the "Act"), 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(i) of the Act and the rules and regulations thereunder.

Generally, this means a communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer (collectively, "dealers") or municipal advisor, or investment adviser that does not control, is not controlled by, or is not under common control with the person undertaking the solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a dealer or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity. The term does not include advertising by a dealer, municipal advisor, or investment adviser, or solicitation of an obligated person, if such obligated person is not acting in the capacity of an obligated person or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to municipal financial products. See Section 15B(e)(9) of the Act and 17 CFR 240.15Ba1-1(n).

Commission (“SEC”)’s cash solicitation rule, under the Investment Adviser’s Act of 1940.⁴

Since the publication of Notice 2017-08, the MSRB undertook a retrospective review of the G-17 Underwriter’s Guidance. Additionally, in 2020, the SEC amended its advertising rule for investment advisers and created a merged marketing rule (the “IA Marketing Rule” or “IA Rule 206(4)-1”) that replaces the previous advertising and cash solicitation rules for investment advisers.⁵

Rule G-42. Rule G-42 generally sets forth the core standards of conduct for non-solicitor municipal advisors, requires them to evidence each of their municipal advisory relationships in writing and to disclose to their clients all material conflicts of interest. Additionally, Rule G-42 contains provisions pertaining to recommendations and the review of recommendations of other parties and expressly prohibits such municipal advisors from engaging in certain specified conduct, including but not limited to making payments to unaffiliated persons for the purpose of obtaining or retaining an engagement to perform municipal advisory activities unless such person is a registered municipal advisor. Rule G-42 applies only to non-solicitor municipal advisors acting in their capacity as such. Generally, this means municipal advisors that provide certain advice to or on behalf of a municipal entity or obligated person as contemplated in Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder. According to MSRB data, at least some municipal advisors that engage in non-solicitor municipal advisory activity pursuant to Rule G-42 also engage in activity that would subject them to draft Rule G-46, if adopted.

G-17 Underwriter’s Guidance. Among other things, the G-17 Underwriter’s Guidance sets forth basic standards for underwriters in their dealings with issuers of municipal securities, requires certain disclosures regarding an underwriter’s role, compensation and conflicts of interest, specifies the

⁴ See Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012). As part of its retrospective rule review, the MSRB recently undertook a review of the G-17 Underwriter’s Guidance and made certain amendments to that guidance. See [MSRB Notice 2019-20](#), SEC Approves Amendments to Underwriters’ Fair Dealing Obligations to Issuers Under Rule G-17 (Nov. 8, 2019). The compliance date for the G-17 Underwriter’s Guidance, as amended, is March 31, 2021.

⁵ See Investment Adviser Marketing, [SEC Release No. IA-5653](#) (December 22, 2020). The effective date of the IA Marketing Rule is 60 days after publication in the *Federal Register*, with an 18-month transition period between the IA Marketing Rule’s effective date and its compliance date. The IA Marketing Rule was published in the *Federal Register* on March 5, 2021. See 86 FR 13024 (March 5, 2021).

timing and manner of such disclosures, and describes the applicable standard regarding representations made to issuers. The MSRB recently completed a retrospective review of the G-17 Underwriter's Guidance and, in 2019, amended and restated it.⁶ The compliance date for the amended and restated G-17 Underwriter's Guidance is March 31, 2021. According to MSRB data, at least some municipal advisors that also engage in underwriting activity as a dealer and are subject to the G-17 Underwriter's Guidance also engage in activity that would subject them to draft Rule G-46, if adopted.

Paid Solicitations Under the Investment Adviser's Act. In relevant part, and subject to certain exemptions, the IA Marketing Rule permits an investment adviser to use paid testimonials and endorsements in its advertisements if the investment adviser discloses, or reasonably believes that the person giving the testimonial or endorsement (the "promoter") discloses: certain clear and prominent disclosures pertaining to the testimonial or endorsement; the material terms of the compensation arrangement; and certain material conflicts of interest on the part of the promoter.⁷ The rule also requires the investment adviser to have a reasonable basis for believing that the testimonial or endorsement complies with the requirements of the IA Marketing Rule and, subject to exemptions, requires the investment adviser to have a written agreement with the promoter. Additionally, as advertisements, paid testimonials and endorsements must comply with the rule's general prohibitions applicable to advertisements. While the MSRB does not have specific data that correlates to the defined terms used in the IA Marketing Rule, the MSRB believes that at least some promoters under the IA Marketing Rule would also be subject to draft Rule G-46, if adopted.

⁶ See MSRB Notice 2019-20, SEC Approves Amendments to Underwriters' Fair Dealing Obligations to Issuers Under Rule G-17 (November 8, 2019).

⁷ For purposes of the rule, an endorsement is a statement by a person other than a current client or investor in a private fund advised by the investment adviser that: (i) indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons; (ii) directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or (iii) refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser. See IA Rule 206(4)-1(e)(5).

A testimonial is a statement by a current client or investor in a private fund advised by the investment adviser: (i) about the client or investor's experience with the investment adviser or its supervised persons; (ii) that directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or (iii) that refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser. See IA Rule 206(4)-1(e)(17).

The MSRB believes that this retrospective review of the G-17 Excerpt for Solicitor Municipal Advisors presents an opportunity to promote more regulatory consistency between solicitor municipal advisors and these other regulated entities, while simultaneously removing certain obligations for solicitor municipal advisors that may impose a burden not reasonably justified by their potential benefits. The MSRB also believes that, because the content of the G-17 Excerpt for Municipal Advisors was initially included in a larger notice that discussed myriad other regulatory obligations, codification of the applicable substantive standards would promote clearer regulatory obligations for solicitor municipal advisors.

Draft Rule G-46

As discussed above, new draft Rule G-46 would codify key substantive requirements of the G-17 Excerpt for Solicitor Municipal Advisors. Additionally, it would remove certain obligations that, in retrospect, the MSRB believes may impose more burdens than benefits. Finally, it would incorporate certain additional changes that would better align the standards applicable to solicitor municipal advisors with those applicable to other regulated entities.

Codification of the G-17 Excerpt for Solicitor Municipal Advisors

The G-17 Excerpt for Solicitor Municipal Advisors generally reminded solicitor municipal advisors of their Rule G-17 obligation to deal fairly with all persons in the conduct of their municipal advisory activities and that this duty includes an obligation to not engage in any deceptive, dishonest, or unfair practice. The excerpt further explained that this fair dealing obligation includes the obligation not to misrepresent or omit facts or other material information.

Additionally, it stated that solicitor municipal advisors have an affirmative duty to disclose to the municipal entity or obligated person being solicited all material facts about the solicitation and specified certain facts that, in the MSRB's view, are material. Generally, this included the obligation to disclose information regarding the solicitor municipal advisor's compensation, certain payments made by the solicitor municipal advisor and information about select relationships with the solicited entity. It also included the obligation to disclose certain information relevant to a solicited entity's consideration of products or services offered by a third-party client of the solicitor municipal advisor, but presented by the solicitor municipal advisor. Finally, the G-17 Excerpt for Solicitor Municipal Advisors reminded solicitor municipal advisors that because a solicitor municipal advisor's clients are not the municipal

entities that they solicit, but rather the third parties that retain or engage the solicitor municipal advisor to solicit such municipal entities, solicitor municipal advisors do not owe a fiduciary duty under the Act or MSRB rules to their clients (or the municipal entity) in connection with such activity. However, as noted above, they are subject to the fair dealing standards under Rule G-17 including with respect to their clients and the entities that they solicit.

Draft Rule G-46 would codify the key principles expressed in the G-17 Excerpt for Solicitor Municipal Advisors but omits a general statement of a solicitor municipal advisor's fair dealing obligations as those obligations would continue to remain applicable under Rule G-17. Additionally, draft Rule G-46 makes certain changes to the description of some of the duties currently described in the G-17 Excerpt for Solicitor Municipal Advisors to provide limited, more prescriptive guidance that may promote clearer regulatory expectations. For example, rather than requiring disclosure of the amount and source of "all of" the solicitor's compensation, draft Rule G-46 more specifically requires the disclosure of certain specified information pertaining to a solicitor municipal advisor's compensation.

Finally, draft Rule G-46 omits provisions pertaining to the obligations of a solicitor municipal advisor when it is engaged by a client to present information about a product or service offered by such client, as well as payments made to other solicitor municipal advisors to facilitate a solicitation. At this time, the MSRB believes that a solicitor municipal advisor's client, rather than the solicitor municipal advisor, is in the best position to identify and provide such product and service disclosures. Additionally, the MSRB is not aware of any sub-contractor solicitation arrangements. However, while draft Rule G-46 currently does not include such provisions, the MSRB seeks comment as to whether such provisions should be codified in any potential finalized rule.

New Draft Requirements

The substantively new components under draft Rule G-46 generally would:

- add a new requirement for solicitor municipal advisors to document their relationships in writing;
- describe standards regarding solicitor municipal advisor representations to solicited entities;
- add new role, compensation and conflict of interest disclosures to the set of disclosures solicitor municipal advisors must make to solicited entities; and

- set forth standards regarding the timing and manner of the required disclosures.

The draft rule also would require solicitor municipal advisors to keep certain records demonstrating their compliance with the obligations set forth in draft Rule G-46. These new components are designed to aid solicitor municipal advisors and the entities charged with examining and enforcing such standards in their understanding of the MSRB's compliance expectations. Further, they would better align some of the obligations imposed on solicitor municipal advisors with those applicable under other relevant regimes.

Documentation of the Solicitor Relationship. Draft Rule G-46 would require a solicitor municipal advisor to evidence each of its solicitor relationships by a writing or writings created and delivered to the solicitor client prior to, upon or promptly after the establishment of the solicitor relationship. The writing(s) would be required to be dated and include, at a minimum: a description of the solicitation activities to be engaged in by the solicitor municipal advisor on behalf of such client (including the scope of the agreed-upon activities); the compensation to be received by the solicitor municipal advisor; and the term of the engagement. Additionally, the description of the solicitation activities would be required to include an affirmative statement that the scope of the solicitation is anticipated to include the solicitation of municipal entities and/or obligated persons.⁸

The obligation to document the relationship is generally consistent with a non-solicitor municipal advisor's obligation to document its municipal advisory relationship with a client under Rule G-42(c) and draws on an investment adviser's oversight obligation to enter into a written agreement with a promoter under the IA Marketing Rule. Notably, unlike Rule G-42(c), draft Rule G-46 does not specifically require the writing(s) evidencing the relationship to include information pertaining to the solicitor municipal advisor's conflicts of interest, nor does it require disclosure regarding legal and disciplinary events. However, below, the MSRB seeks comment as to

⁸ The MSRB understands that a solicitor may be asked to solicit a broad range of entities on behalf of a third-party client of the solicitor. These entities may include municipal entities, obligated persons and corporate entities that are not obligated persons. While the solicitation of municipal entities and obligated persons generally would require compliance with draft Rule G-46 (to the extent the solicitation would make the solicitor a "municipal advisor"), the solicitation of a corporate entity that is not an obligated person ordinarily would not require such compliance. In order to promote certainty as to the applicable regulatory scheme for any engagement, the MSRB believes that it is imperative for any engagement to be documented in a writing that clearly indicates whether the solicitation of municipal entities and/or obligated persons is anticipated.

whether such information should be required to be included in the writing(s) or whether such disclosures should otherwise be required to be provided to a solicitor client. Additionally, the MSRB seeks comment as to the scope of engagements that are typically included in solicitor municipal advisors' engagement documentation today.

Representations to Solicited Entities. Draft Rule G-46 specifically would require solicitor municipal advisors to have a reasonable basis for the representations and other material information conveyed to solicited entities and would expressly require solicitor municipal advisors to refrain from making representations that they know or should know are inaccurate or misleading. Supplementary Material .01 expounds on these obligations and sets forth examples as an aid to understanding the MSRB's intent.

These obligations resemble an underwriter's obligations regarding representations to issuers under the G-17 Underwriter's Guidance as well as a non-solicitor's obligations under Rule G-42(e) and Rule G-42, Supplementary Material .01. However, the relevant obligations under draft Rule G-46 are designed to be more tailored to the activities in which a solicitor municipal advisor engages. They also draw some parallels to an investment adviser's obligation under the IA Marketing Rule to ensure that its advertisements do not include: untrue statements of material fact or material statements of fact that the investment adviser does not have a reasonable basis for believing.

Specific Role Disclosures. Solicitor municipal advisors would be required to disclose the following statements to a solicited entity:

- a solicitor municipal advisor is required to deal fairly at all times with both solicited entities and the solicitor municipal advisor's clients; and
- a solicitor municipal advisor's primary role is to solicit the solicited entity on behalf of certain third-party regulated entities and the solicitor municipal advisor will be compensated for its solicitation services by the solicitor municipal advisor's client.⁹

These obligations resemble an underwriter's obligation to make certain disclosures concerning the underwriter's role under the G-17 Underwriter's Guidance but are designed to be more tailored to the activities in which a solicitor municipal advisor engages. As a result, draft Rule G-46 does not require the disclosure of certain other role-based disclosures required of an

⁹ While the draft rule text uses the defined term "solicitor municipal advisor," to facilitate a more plain-language disclosure, the MSRB expects that solicitor municipal advisors will insert their name in place of the term solicitor municipal advisor.

underwriter under G-17 Underwriter's Guidance. Notably, unlike the G-17 Underwriter's Guidance, draft Rule G-46 does not require any specific disclosures regarding the applicability of a fiduciary duty to the relationship. However, below, the MSRB specifically seeks comment as to whether such a statement would or would not be helpful to the municipal entities and obligated persons solicited by a solicitor municipal advisor.

Specific Compensation Disclosures. Solicitor municipal advisors would be required to disclose to a solicited entity the material terms of the solicitor municipal advisor's compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor for such solicitation.

This requirement resembles the obligation, under the IA Marketing Rule, for an investment adviser (or its promoter) to make similar disclosures in connection with certain endorsements and testimonials. Below, the MSRB seeks comment as to whether any other elements under the IA Marketing Rule should be incorporated into draft Rule G-46 and whether the applicable requirements of these rules would be sufficiently harmonized if draft Rule G-46 were to be adopted.

Conflicts of Interest. The G-17 Excerpt for Solicitor Municipal Advisors specified that solicitor municipal advisors must disclose any material relationships of the solicitor municipal advisor with any employees or board members of the solicited entity or any other persons affiliated with the solicited entity or their officials who may have influence over the selection of the solicitor client. The MSRB believes that this is one example of a material conflict of interest and that there could be other material conflicts of interest that should be disclosed to a solicited entity. Accordingly, draft Rule G-46 expressly would require solicitor municipal advisors to disclose any material conflicts of interest.

This obligation is comparable to a non-solicitor municipal advisor's obligation under Rule G-42 to disclose to its clients all material conflicts of interest. Below, the MSRB seeks comment as to whether this is an appropriate requirement considering the activities in which a solicitor municipal advisor engages.

Solicitor Client Disclosures. Draft Rule G-46 would require a solicitor municipal advisor to explain to a solicited entity: (a) the type of information that is generally available on a Form MA (in the case of a municipal advisor client) or Form ADV (in the case of an investment adviser client) and (b) how the solicited entity can obtain a copy of the solicitor client's Form MA or Form ADV, as applicable.

These requirements are designed to help ensure that—at any early stage—solicited entities are directed to important written information about the entities the solicitor municipal advisor represents—including, but not limited to, information about the disciplinary history of the solicitor municipal advisor’s clients. However, it does not require solicitor municipal advisors to obtain a copy of these documents and provide them to their solicited entities, nor does it require solicitor municipal advisors to disclose any specific information about their client that is included in such forms.¹⁰

Timing and Manner of Disclosures. Draft Rule G-46 would require disclosures to be made in writing to an official of the solicited entity that the solicitor municipal advisor reasonably believes has the authority to bind the solicited entity by contract and that, to the knowledge of the solicitor municipal advisor, is not a party to a disclosed conflict. The disclosures would be required to be delivered at the time of the first solicitation of the solicited entity for that specific solicitor client. In the event that a solicitor municipal advisor makes multiple solicitations of a solicited entity on behalf of the same client for the same type of services over the course of more than one calendar year, the disclosures must be provided annually thereafter until the solicitor municipal advisor ceases to make such solicitations of such solicited entity. To the extent that any additional conflicts that require disclosure arise before a solicitation is complete, such conflicts would be required to be disclosed as they arise.¹¹

These obligations are comparable to those applicable to underwriters with respect to the delivery of their required disclosures to issuers pursuant to the G-17 Underwriter’s Guidance. However, the timing of the delivery of such disclosures is tailored to the activities in which solicitor municipal advisors engage. Notably, unlike the G-17 Underwriter’s Guidance, draft Rule G-46 would not require solicitor municipal advisors to attempt to receive written acknowledgement of the disclosures, although as described below, solicitor municipal advisors would be required to keep such disclosures along with evidence that they were delivered (*e.g.*, automatic email delivery receipt) for

¹⁰ However, solicitor municipal advisors should be mindful of their general fair dealing obligations under Rule G-17 and of their obligations related to their representations under draft Rule G-46(b). If a solicitor municipal advisor makes a representation that it knows or should know is inaccurate based on a review of its client’s Form MA or Form ADV, that solicitor municipal advisor may be in violation of Rule G-46.

¹¹ The MSRB previously extended to municipal advisors existing interpretive guidance regarding the use of electronic media to deliver and receive information under MSRB rules. As a result, disclosures required by draft Rule G-46 may be delivered electronically to the extent such delivery is consistent with that guidance. See Notice Regarding Electronic Delivery and Receipt of Information by Municipal Advisors (Oct. 13, 2017).

books and records purposes. Below, the MSRB seeks comment as to whether the disclosures required by draft Rule G-46 should be permitted to be provided orally, as long as the solicitor municipal advisor can establish that the disclosures were otherwise provided in the manner required by draft Rule G-46.

Definitions. Draft Rule G-46 would set forth four new definitions for the following terms used in the draft rule: “solicitor client,” “compensation,” “solicitor municipal advisor,” and “solicited entity.”

The term, “solicitor client” generally would mean the municipal advisor or investment adviser on behalf of whom the solicitor municipal advisor undertakes a solicitation within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

The term, “compensation” would be defined to mean any cash, in-kind or non-cash remuneration.

As noted above, the term, “solicitor municipal advisor” would be defined to mean a municipal advisor within the meaning of Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(i) of the Act and the rules and regulations thereunder. Notably, the term “solicitor municipal advisor” is defined differently from the defined term, “municipal advisor third-party solicitor,” which is used in MSRB Rule G-37. Unlike the term “municipal advisor third-party solicitor,” the term “solicitor municipal advisor” includes certain solicitations of both municipal entities *and obligated persons*. Importantly, as discussed in Supplementary Material .02, a municipal advisor may be, simultaneously, both a solicitor municipal advisor for purposes of Rule G-46 and a non-solicitor municipal advisor for purposes of Rule G-42. For example, a municipal advisor may provide “advice” as defined in Rule G-42 to a municipal entity (the “advisory engagement”) and separately may act as a solicitor municipal advisor with respect to another municipal entity as contemplated in draft Rule G-46 (the “solicitor municipal advisor engagement”). As a result, the municipal advisor would be subject to Rule G-42 with respect to the advisory engagement and would be subject to Rule G-46 with respect to the solicitor municipal advisor engagement.

Finally, the term “solicited entity” would be defined to mean any municipal entity (as defined in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder) or obligated person (as defined in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder) that the solicitor municipal advisor has solicited, is

soliciting or intends to solicit within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

Recordkeeping. Recordkeeping is an important component of a solicitor municipal advisor's effective supervisory system consistent with MSRB Rule G-44, on supervisory and compliance obligations for municipal advisors. To that end, draft Rule G-46 would require solicitor municipal advisors to retain for a period of not less than five years a copy of each writing or writings required by Rule G-46(a) (documenting the relationship between the solicitor municipal advisor and the solicitor client), documentation substantiating the solicitor municipal advisor's reasonable basis belief regarding its representations as described in Rule G-46(b), and evidence that the disclosures required by Rule G-46(c) were made in the manner described in the draft rule.

Summary of Draft Rule G-46

In summary, draft Rule G-46 would require solicitor municipal advisors to evidence each of their solicitor relationships by a writing or writings that include certain minimum content set forth in the draft rule. It also would require solicitor municipal advisors to have a reasonable basis for their representations and to refrain from making representations that they know or should know are inaccurate or misleading. Further, the draft rule would require solicitor municipal advisors to disclose to any solicited entity all material facts about the solicitation, including: (i) certain information regarding the role and compensation of the solicitor municipal advisor; (ii) any material conflicts of interest of the solicitor municipal advisor; and (iii) information about how the solicited entity can obtain the solicitor client's Form MA or Form ADV, as applicable. Draft Rule G-46 generally also would require that all disclosures must be made in writing and must be delivered to an official of the solicited entity by no later than the first solicitation of the municipal entity for a specified solicitor client. Finally, the draft rule would require solicitor municipal advisors to retain certain documentation as evidence of compliance with the requirements of the rule.

Archival of the G-17 Excerpt for Solicitor Municipal Advisors

Because draft Rule G-46 would codify the substance of the G-17 Excerpt for Solicitor Municipal Advisors, as modified by the additional content discussed in this Request for Comment, upon adoption of any final rule, the MSRB

would retire and archive the excerpt that currently appears behind Rule G-17 in the MSRB rule book.¹²

Economic Analysis

The purpose of draft Rule G-46 would be to codify guidance on the obligations of solicitor municipal advisors currently outlined in an excerpt under Rule G-17. Further, the draft rule would better align the duty and obligations of solicitor municipal advisors to those for underwriters under Rule G-17, for non-solicitor municipal advisors under Rule G-42, and for solicitors that undertake certain solicitations on behalf of investment advisers under the SEC’s investment adviser regime.

A. The need for Draft Rule G-46

Before the enactment of the Dodd-Frank Act of 2010, municipal advisors were mostly unregulated.¹³ In the succeeding years after the enactment of the new federal law, the MSRB established a regulatory framework for municipal advisors that included several new rules. As part of this new framework, the MSRB prescribed the duties for all municipal advisors, which were divided into “solicitor” and “non-solicitor” municipal advisors. The MSRB first amended Rule G-17 in December 2010 to include the conduct of municipal advisory activities, municipal advisors, including solicitor municipal advisors, and their associated persons, which articulated that municipal advisors must deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice.¹⁴ The duties of non-solicitor municipal advisors were subsequently outlined in 2016 with Rule G-42. In 2017, the MSRB published Notice 2017-18 which largely summarized already effective, or recently approved, but not yet operative, regulatory obligations. However, it also included the G-17 Excerpt for Solicitor Municipal Advisors.

¹² While the G-17 Excerpt for Solicitor Municipal Advisors would be removed from the MSRB rule book, the excerpt could continue to be accessed, for historical purposes only, at the MSRB’s Archived Interpretive Guidance page.

¹³ Prior to 2010, municipal advisors were subject to a patchwork of state and local laws. In support of SEC regulation, the MSRB wrote: “despite a thin patchwork of state and local laws, the majority of financial advisors is unregulated and operates in the public sphere without any legal standards or regulatory accountability.” Municipal Securities Rulemaking Board, *Unregulated Municipal Market Participants – A Case for Reform*, April 2009.

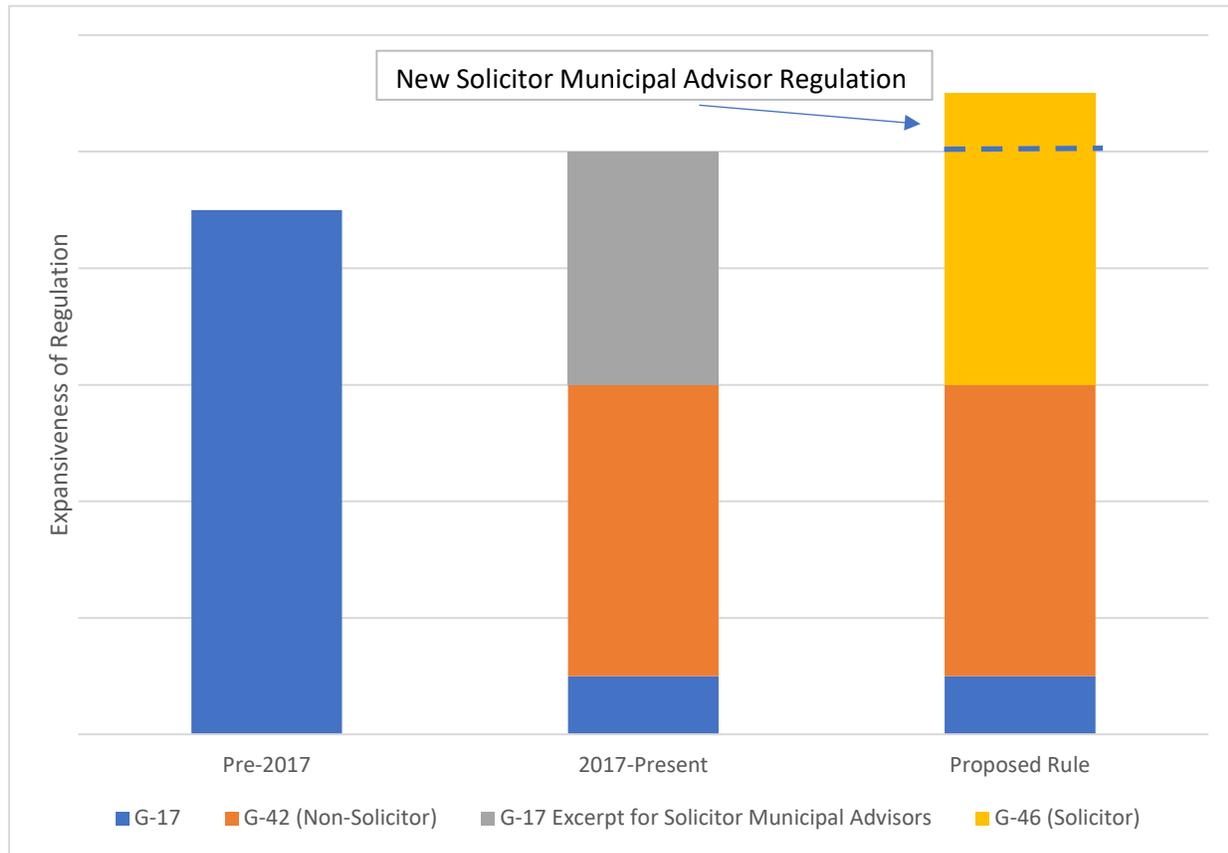
¹⁴ Previously, the rule only applied to the municipal securities activities of dealers.

The core standards applicable to non-solicitor municipal advisors and underwriters under Rule G-42 and Rule G-17 are highlighted in a standalone rule for non-solicitor municipal advisors and a standalone interpretation that was filed with and approved by the SEC, respectively. In contrast, the G-17 Excerpt for Solicitor Municipal Advisors did not undergo a formal public comment process. While, by its terms, MSRB Notice 2017-08 was intended to be a resource only, having the G-17 Excerpt for Solicitor Municipal Advisors with interpretive guidance in the MSRB rule book has resulted in inconsistency in its application among solicitor municipal advisors.

In contrast to the regulation for underwriters and non-solicitor municipal advisors, the MSRB does not have any express standards regarding documentation of a solicitor municipal advisor's engagement. Nor does it have express standards regarding solicitor municipal advisor disclosures of conflicts of interest. Given the importance that these standards have under other regimes, the MSRB believes that it is important to seek comment as to whether such standards are equally important for the regulation of solicitor municipal advisors. The MSRB believes that a codified Rule G-46, as modified in response to public comments and if filed with and approved by the SEC, would result in informed, clearer regulatory standards and expectations for solicitor municipal advisors and that the process followed to arrive at any such final rule would help ensure appropriate consideration of the benefits and burdens of any potential final requirements. In addition, draft Rule G-46 would better align the obligations imposed on solicitor municipal advisors with those applicable to non-solicitor municipal advisors under Rule G-42, underwriters under the G-17 Underwriter's Guidance, and investment advisers or their promoters under the IA Marketing Rule.

B. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of draft Rule G-46, a baseline or baselines must be established as a point of reference to compare the expected future state with draft Rule G-46. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state. Chart 1 below identifies the rules pertaining to municipal advisors that have evolved since the passage of the Dodd-Frank Act in 2010.

Chart 1. MSRB Obligations for Solicitor and Non-Solicitor Municipal Advisors Since 2010

For solicitor municipal advisors, the evaluation baseline is Rule G-17, which applies to all municipal advisors (solicitor and non-solicitor alike) and requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. The G-17 Excerpt for Solicitor Municipal Advisors expounds on these fair dealing obligations for solicitor municipal advisors.

Another baseline for consideration is the cash solicitation rule under the Investment Adviser's Act.¹⁵ That rule generally prohibits investment advisers that are required to be registered under the Investment Adviser's Act from

¹⁵ While the cash solicitation rule will be replaced by the new merged IA Marketing Rule later in 2021, the MSRB understands that, at this time, investment advisers must continue to comply with the requirements of the cash solicitation rule. See Investment Adviser Marketing, [SEC Release No. IA-5653](#) (December 22, 2020). The effective date of the IA Marketing Rule is 60 days after publication in the *Federal Register*, with an 18-month transition period between the IA Marketing Rule's effective date and its compliance date. The IA Marketing Rule was published in the *Federal Register* on March 5, 2021. See 86 FR 13024 (March 5, 2021).

paying a cash fee to a solicitor for a solicitation unless the arrangement complies with a number of conditions set forth in the rule. Thus, for a subgroup of solicitor municipal advisors who undertake solicitations on behalf of an investment adviser that is subject to the requirements of the cash solicitation rule, the burden for compliance is already in place partially, as these solicitor municipal advisors are presumably already complying with the conditions outlined by the rule. A new draft Rule G-46 would not increase the burden for this subgroup of solicitor municipal advisors as much as the burden for solicitor municipal advisors who do not conduct solicitations that are subject to the cash solicitation rule.

Finally, for a subset of municipal advisory firms who conduct both solicitation and non-solicitation business activities, the baseline is comprised of Rule G-17 and Rule G-42 on duties of non-solicitor municipal advisors.

C. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB policy on economic analysis in rulemaking addresses the need to consider alternative regulatory approaches, when applicable. Under this policy, only reasonable regulatory alternatives should be considered and evaluated.

Another alternative would be to amend Rule G-42 on the duties of non-solicitor municipal advisors to have it apply to solicitor municipal advisors. This would help provide one helpful location for all duty of care obligations for *all* municipal advisors, as defined by the SEC. However, the MSRB deliberately decided not to apply Rule G-42 to solicitor municipal advisors due to fundamental differences between the nature of their clients and the business activities in which they engage. For example, whereas the clients of non-solicitor municipal advisors are municipal entities and obligated persons, the clients of solicitor municipal advisors are third-party dealers, municipal advisors and investment advisers. Similarly, whereas non-solicitor municipal advisors primarily provide advice to their clients, solicitor municipal advisors are retained to solicit municipal entities and obligated persons on behalf of the solicitor municipal advisor's clients. Because the roles of solicitor and non-solicitor municipal advisors differ in critical ways, combining the obligations for both types of municipal advisors into a single Rule G-42 would not be easily feasible; therefore, the MSRB believes that a standalone rule for solicitor municipal advisors is warranted.

D. Assessing the benefits and costs of the proposed changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change when the rule change proposal is fully implemented against the context of the economic

baselines. The MSRB is currently unable to quantify the economic effects of draft Rule G-46 in totality because not all of the information necessary to provide a reasonable estimate is available. There are few publicly available sources of information about the municipal advisory industry, especially in terms of the business operations, as well as revenue and expense data for relevant business lines. In addition, estimating the costs for solicitor municipal advisory firms to comply with the draft rule is hampered by the fact that these costs depend on the business activities and size of these firms, which can vary greatly. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with the draft rule, the MSRB has considered these costs and benefits primarily in qualitative terms augmented with some preliminary quantitative cost estimates based on the information provided by a previous SEC analysis.

Regardless, the MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the proposed changes.

Benefits

The main benefit of draft Rule G-46 would be to codify and provide needed clarification on regulatory obligations for solicitor municipal advisors with regard to their duties. Draft Rule G-46 would help prevent derelictions of a solicitor municipal advisor's fair dealing obligations by promoting clearer regulatory requirements and expectations. Thus, the benefit provided by draft Rule G-46 is that it will remove uncertainty and potential "gray areas" of regulations that would hinder a potential solicitor municipal advisor from completing its obligations as intended.

Furthermore, the additional requirements for solicitor municipal advisors from draft Rule G-46 would enhance the transparency and protection for recipients of solicitations, further promoting fair dealings between the market participants. As mentioned above, the additional requirements would also align some of the obligations imposed on solicitor municipal advisors with those applicable to non-solicitor municipal advisors under Rule G-42 and underwriters under the G-17 Underwriter's Guidance as well as those applicable to certain endorsements and testimonials in connection with certain investment adviser advertisements under the SEC's investment adviser regime. This alignment would alleviate the complexity due to differing obligations and increase the efficiency for regulatory entities tasked with examining and enforcing such requirements.

Costs

The MSRB acknowledges that solicitor municipal advisors would likely incur costs, relative to the baseline state, to meet the standards of conduct and duties contained in draft Rule G-46. These changes may include the one-time upfront costs related to setting up and/or revising policies and procedures, as well as the ongoing costs such as compliance costs associated with each solicitation and additional record-keeping costs.

For the upfront costs, it is possible that solicitor municipal advisors may need to seek the appropriate advice of in-house or outside legal and compliance professionals to revise policies and procedures in compliance with draft Rule G-46. Solicitor municipal advisors may also incur costs as related to continuing education and/or standards of training in preparation for the implementation of draft Rule G-46. Assuming solicitor municipal advisors currently already have policies and procedures in place in relation to the G-17 Excerpt for Solicitor Municipal Advisors, the additional upfront costs for draft Rule G-46 should be incremental.

For the ongoing costs, solicitor municipal advisors may incur compliance costs as related to each solicitation, including costs pertaining to creating and maintaining books and records. Firms may have to make changes to their current recordkeeping practices in order to satisfy the additional requirements of draft Rule G-46 for the specific disclosures to a solicited entity as outlined above, such as the creation of disclosures for all material information regarding the role and compensation of the solicitor municipal advisor; documentation of the relationship between a solicitor municipal advisor and its solicitor client; and disclosure of material conflicts of interest. However, the MSRB currently does not have the necessary information to calculate the totality of these costs.

Table 1 below shows the number of solicitor municipal advisory firms registered with the MSRB. The table groups together solicitor municipal advisor only firms (meaning those firms that indicated to the MSRB that they engage in solicitation activity only and not non-solicitation municipal advisory activity) and separately groups together those solicitor municipal advisor firms that indicated to the MSRB that they engage in both solicitation and non-solicitation municipal advisory activities (*e.g.*, under some engagements, they conduct solicitations of municipal entities and/or obligated persons whereas pursuant to other engagements, they provide covered advice to municipal entities and/or obligated persons). Table 1 also illustrates the type of solicitation activity in which solicitor municipal advisory firms registered

with the MSRB engage (*i.e.*, solicitations for investment advisory business versus other solicitations).¹⁶

Table 2 illustrates preliminary estimates for both the upfront and ongoing compliance costs assuming implementation of the new draft Rule G-46 for each solicitor municipal advisory firm in its respective group. As of January 2021, there is a total of 105 municipal advisory firms registered with the MSRB who indicated solicitation business activities on Form A-12, with 20 of those firms indicating that they engage solely in solicitation activities and the remaining 85 firms indicating they engage in both solicitation and non-solicitation municipal advisory activities. Of the 20 municipal advisory firms engaging solely in solicitation activities, 17 firms (10 + 7) indicate solicitation activities made on behalf of investment advisory business and three firms indicate solicitation activities only made on behalf of non-investment advisory business. Of the 85 municipal advisory firms engaging in both solicitation and non-solicitation activities, 58 firms (26 + 32) indicate solicitation activities made on behalf of investment advisory business and 27 firms indicate solicitation activities only made on behalf of non-investment advisory business.

¹⁶ Pursuant to MSRB Rule A-12, on registration, all municipal advisors, including solicitor municipal advisors, must register with the MSRB prior to engaging in any municipal advisory activity. Form A-12 is the single, consolidated form for registrants to provide the MSRB with registration information required under Rule A-12. Among other things, Form A-12 is used to: register with the MSRB, update registration information following a change to any information contained in the form, and affirm registration information on an annual basis. The data in Tables 1 and 2 below regarding the number and breakdown of solicitor municipal advisor firms and the types of activities in which they engage is derived from Form A-12 data submitted to the MSRB.

Table 1. Number of Solicitor Municipal Advisory Firms

Business Activities	Number of Firms
Firms with Solicitation Activities Only	20
Investment Advisory Business Only	10
Non-Investment Advisory Business Only	3
Both	7
Firms with Solicitation and Non-Solicitation Activities	85
Investment Advisory Business Only	26
Non-Investment Advisory Business Only	27
Both	32
Total	105

Table 2. Estimated Incremental Compliance Costs for Each Solicitor Municipal Advisory Firm¹⁷

Cost Components	Assumed Hourly Rate	20 Firms with Solicitation Activities Only				85 Firms with Solicitation and Non-Solicitation Activities			
		17 Firms On Behalf of Investment Advisory		3 Firms Not On Behalf of Investment Advisory		58 Firms On Behalf of Investment Advisory		27 Firms Not On Behalf of Investment Advisory	
		Number of Hours	Cost per Firm	Number of Hours	Cost per Firm	Number of Hours	Cost per Firm	Number of Hours	Cost per Firm
Upfront Cost									
a) Revision of Policies and Procedures	\$ 470	3.0	\$ 1,410	4.0	\$ 1,880	2.5	\$ 1,175	3.5	\$ 1,645
b) Training	\$ 620	1.0	\$ 620	1.5	\$ 930	1.0	\$ 620	1.5	\$ 930
Ongoing Compliance Cost - Per Each Solicitation	\$ 430	2.0	\$ 860	3.0	\$ 1,290	2.0	\$ 860	3.0	\$ 1,290

¹⁷ Hourly rate data are gathered from the 2013 SEC's Final Rule on Registration of Municipal Advisors, [17 CFR Parts 200, 240 and 249](#). The data reflect the 2021 hourly rate level after adjusting for the annual wage inflation rate of 2% between 2013 and 2021. The MSRB uses the higher hourly rate in each category of costs. For example, while the revision of policies and procedures can be conducted by either an in-house attorney (average hourly rate \$445) or outside counsel (average hourly rate \$470), the MSRB chooses the higher hourly rate for this analysis to be aggressive in the cost estimate. Similarly, for both the training and the ongoing compliance cost per each solicitation, the task can be performed by either a Chief

As previously mentioned, the incremental costs for the subgroup of solicitor municipal advisory firms soliciting on behalf of investment advisory business may be lower than other solicitor municipal advisory firms to the extent that such solicitor municipal advisors engage in solicitations that are subject to the former cash solicitation rule. These solicitor municipal advisors are presumed to have policies and procedures consistent with, although not necessarily identical to, some of the requirements under draft Rule G-46. In addition, the MSRB assumes that municipal advisory firms that engage in both solicitation and non-solicitation activities are currently in compliance with Rule G-42 with respect to their non-solicitation municipal advisory activities. The MSRB believes these firms may be able to leverage some of their existing Rule G-42 policies and procedures, resulting in a potentially lower upfront cost for implementing draft Rule G-46 as compared to municipal advisory firms that engage in solicitation activities only. For example, municipal advisory firms that engage in both solicitation and non-solicitation activities are likely accustomed to documenting their relationships in an engagement letter and may be able to leverage their existing supervisory and compliance framework to extend it to their solicitation activities.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that draft Rule G-46 would neither impose a burden on competition nor hinder capital formation, as the proposed rule changes bring a similar regulatory regime to solicitor municipal advisors that currently exists for non-solicitor municipal advisors under Rule G-42 and for underwriters under the G-17 Underwriter's Guidance. The MSRB believes that the proposed rule would improve the municipal securities market's operational efficiency by providing solicitor municipal advisors with a clearer understanding of regulatory obligations, as well as enhancing the transparency and protection for recipients of the solicitations, further promoting fair dealings between market participants.

At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for market participants would outweigh the upfront costs of revising policies and procedures and ongoing compliance and recordkeeping costs by solicitor municipal advisors.

Compliance Officer (average hourly rate of \$620), an in-house compliance attorney (average hourly rate \$430) or an in-house compliance manager (average hourly rate \$316), and the MSRB chooses the Chief Compliance Officer rate for the training and the compliance attorney rate for the ongoing compliance cost in the estimates.

The MSRB does not expect that draft Rule G-46 would change the competitive landscape of the solicitor municipal advisory services, as the upfront costs are expected to be relatively minor for all solicitor municipal advisory firms while the ongoing costs are expected to be proportionate to the size and business activities of each solicitor municipal advisory firm.

Request for Comments

The MSRB seeks comments in response to the following questions, as well as on any other topic relevant to the draft amendments. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or relate to the topics, statements or questions raised in this request for comment.

1. Would codifying the G-17 Excerpt for Solicitor Municipal Advisors promote clearer regulatory expectations for solicitor municipal advisors?
2. Would the additional standards regarding the timing and manner of delivery of the disclosures be helpful for solicitor municipal advisors in their efforts to comply with the obligations set forth in draft Rule G-46?
3. Are the requirements set forth in draft Rule G-46 appropriate in light of the activities in which solicitor municipal advisors engage? Are they necessary?
4. Do solicitor municipal advisors anticipate any challenges to implementation of draft Rule G-46? If yes, do commenters have any alternatives that they would like to propose for the MSRB's consideration? If so, please describe them.
5. Are there any aspects of the G-17 Excerpt for Solicitor Municipal Advisors that are not reflected in draft Rule G-46, but should be?
6. What are the benefits and burdens of draft Rule G-46? Are the burdens appropriately outweighed by the benefits?
7. Do commenters agree or disagree with the preliminary estimates in Table 2? To the extent possible, please provide evidence to support your assertions.
8. How is the scope of a solicitor municipal advisor's engagement typically decided upon? Are solicitor municipal advisors typically

engaged to solicit a broad or specific set of entities? Is it always clear whether they can or will solicit municipal entities or obligated persons within the scope of a particular engagement? If not, at the time of an engagement, how do solicitor municipal advisors determine whether their engagement will be subject to MSRB rules? If yes, would a solicitor municipal advisor know which municipal entities and/or obligated persons it anticipates soliciting at the time of an engagement?

9. Do solicitor municipal advisors make payments (including in-kind) to other solicitor municipal advisors to facilitate solicitations of a municipal entity? If so, are there any special disclosures specific to the sub-contractor solicitation arrangement that would seem appropriate?
10. Are solicitor municipal advisors engaged to present information about a product or service offered by the solicitor municipal advisor's municipal advisory client similar to presenting information about a product or service offered by an investment advisor?
11. Should solicitor municipal advisors be required to provide certain disclosures to their clients, including information pertaining to the solicitor municipal advisor's conflicts of interest and/or legal and disciplinary history? If so, should such disclosures be required in connection with engagement documentation with the client?
12. Is there any additional information pertaining to a solicitor municipal advisor's compensation that should specifically be required to be disclosed to a solicited entity?
13. Are the books and records requirements included in draft Rule G-46(f) workable in light of the many ways in which the disclosures required by draft Rule G-46 could be delivered? For example, how would solicitor municipal advisors expect to evidence that disclosures delivered via hand delivery were delivered in a manner that complies with the draft rule?
14. Is it appropriate to require solicitor municipal advisors to disclose any material conflicts of interest to solicited entities since solicitor municipal advisors do not provide any advice to the entities that they solicit? Should the required disclosures instead be limited to conflicts disclosures related to the solicitor municipal advisor's compensation arrangement or the solicitor municipal advisor's relationship with its (municipal advisor or investment adviser) client? Would a conflicts

disclosure requirement result in sufficient benefit to outweigh any potential burden? Is any additional guidance warranted in this area?

15. Should solicitor municipal advisors be required to make disclosures regarding their fiduciary status (or the lack thereof) in connection with the solicitation of a municipal entity or obligated person? Are solicitor municipal advisors sometimes deemed fiduciaries in connection with their solicitation activities pursuant to other regulatory regimes (e.g., state law)? If so, would a requirement to specifically state the solicitor municipal advisor's fiduciary status under the federal municipal advisor regime provide clarity or cause confusion to solicited entities?
16. Is the draft requirement to provide the requisite disclosures at the time of the first solicitation for a specified client workable? Why or why not? Are there circumstances under which they should be permitted to be provided as soon as reasonably practicable thereafter? If yes, please explain.
17. Should a municipal advisor client of a solicitor municipal advisor be required to make a bona fide effort to ascertain whether the solicitor municipal advisor has provided any or all of the disclosures related to the municipal advisor client to the solicited entities (e.g., the role and compensation disclosures required by draft Rule G-46(c)(i) and/or solicitor client disclosures required by draft Rule G-46(c)(iii))? For example, should the engagement documentation require the solicitor municipal advisor to contractually commit to provide the disclosures required by draft Rule G-46, and if so, should the municipal advisor client be required to undertake some level of diligence to confirm that the required disclosures are, in fact, made? Given that both the solicitor municipal advisor and all of its potential clients are regulated entities, would such a requirement appropriately further any policy goals? If so, would any burdens associated with such a requirement be outweighed by its potential benefits?
18. Draft Rule G-46 currently specifies that the required disclosures must be disclosed in writing. Should the MSRB permit such disclosures to be made orally as long as the solicitor municipal advisor maintains a record that the oral disclosures were provided, the substance of what was provided, and when?
19. Are there any elements of the IA Marketing Rule that should be incorporated into draft Rule G-46, but currently are not? Are the requirements of draft Rule G-46 sufficiently harmonized with the IA

Marketing Rule? Are there any other regimes that the MSRB should look to in connection with the potential adoption of draft Rule G-46?

20. While the Act and related SEC rules recognize a category of municipal advisors that undertake the solicitation of a municipal entity or obligated person on behalf of third-party dealers, MSRB Rule G-38 currently prohibits dealers from paying or agreeing to provide payment to any person who is not affiliated with the dealer for a solicitation of municipal securities business on behalf of such dealer. Accordingly, draft Rule G-46 assumes that such solicitations do not occur.¹⁸ This approach is different from that taken under certain other MSRB rules, including for example, MSRB Rule G-37. The MSRB believes that this is appropriate because draft Rule G-46 is designed specifically for solicitor municipal advisors. Do commenters agree? Why or why not?

March 17, 2021

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Text of Draft Rule*

Rule G-46: Duties of Solicitor Municipal Advisors

(a) Documentation of the Solicitor Relationship. A solicitor municipal advisor must evidence each of its solicitor relationships by a writing or writings created and delivered to the solicitor client prior to, upon or promptly after the establishment of the solicitor relationship. The writing(s) must be dated and include, at a minimum:

(i) a description of the solicitation activities to be engaged in by the solicitor municipal advisor on behalf of the solicitor client (including the scope of the agreed-upon activities and a statement that the scope of the solicitation is anticipated to include the solicitation of municipal entities and/or obligated persons);

(ii) the compensation to be received by the solicitor municipal advisor; and

(iii) the term of the engagement.

(b) Representations to Solicited Entities.

¹⁸ See draft Rule G-46(c)(iii) and draft Rule G-46(e)(i) which omit any reference to solicitations made on behalf of third-party dealers, and draft Rule G-46(c)(i)(C), which omits any reference to municipal securities business.

* Underlining indicates new language.

(i) All representations made by a solicitor municipal advisor to a solicited entity in connection with a solicitation subject to this rule, whether written or oral, must be truthful and accurate and must not misrepresent or omit material facts.

(ii) A solicitor municipal advisor must have a reasonable basis for the representations and other material information conveyed to a solicited entity and must refrain from making representations that the solicitor municipal advisor knows or should know are inaccurate or misleading.

(c) Disclosures to Solicited Entities. A solicitor municipal advisor must disclose to any solicited entity all material facts about the solicitation in the manner described in section (d) of this rule. This includes, but is not limited to, an obligation to disclose the following:

(i) Role and Compensation Disclosures. A solicitor municipal advisor must disclose to any solicited entity:

(A) the name of the solicitor municipal advisor;

(B) the name of the solicitor client;

(C) the type of business being solicited (i.e., municipal advisory business or investment advisory services);

(D) the material terms of the solicitor municipal advisor's compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor municipal advisor for such solicitation.

(E) the following statements:

(1) a solicitor municipal advisor is required to deal fairly at all times with both solicited entities and the solicitor municipal advisor's clients; and

(2) a solicitor municipal advisor's primary role is to solicit the solicited entity on behalf of certain third-party regulated entities and the solicitor municipal advisor will be compensated for its solicitation services by the solicitor municipal advisor's client.

(ii) Conflicts Disclosures. A solicitor municipal advisor must disclose any material conflicts of interest, including, but not limited to any material relationships of the solicitor municipal advisor with any employees or board members of the solicited entity or any other persons affiliated with the solicited entity or their officials who may have influence over the selection of the solicitor client.

(iii) Solicitor Client Disclosures. A solicitor municipal advisor must provide to the solicited entity the following information regarding the solicitor client:

(A) the type of information that is generally available on Form MA (in the case of a municipal advisor client), or Form ADV (in the case of an SEC-registered investment adviser client); and

(B) a description of how the solicited entity can obtain a copy of the solicitor client's Form MA or Form ADV, as applicable.

(d) *Timing and Manner of Disclosures.* Any disclosures required under section (c) of this rule must comply with the following:

(i) Disclosures must be made in writing to an official of the solicited entity that: (1) the solicitor municipal advisor reasonably believes has the authority to bind the solicited entity by contract; and (2) to the knowledge of the solicitor municipal advisor, is not a party to a disclosed conflict.

(ii) Disclosures must be delivered at the time of the first solicitation of the solicited entity for that specific solicitor client. In the event that a solicitor municipal advisor makes multiple solicitations of a solicited entity on behalf of the same client for the same type of services (i.e., municipal advisory business or investment advisory services) over the course of more than one calendar year, the disclosures must be provided annually thereafter until the solicitor municipal advisor ceases to make such solicitations of such solicited entity. To the extent that any additional conflicts that require disclosure under this rule arise before a solicitation is complete, such conflicts must be disclosed as they arise.

(e) *Definitions.*

(i) "Solicitor Client" means the municipal advisor or investment adviser on behalf of whom the solicitor municipal advisor undertakes a solicitation within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

(ii) "Compensation" means any cash, in-kind or non-cash remuneration.

(iii) "Solicitor municipal advisor" means, for purposes of this rule, a municipal advisor within the meaning of Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided, that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(i) of the Act and the rules and regulations thereunder.

(iv) "Solicited entity" means any municipal entity (as defined in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder) or obligated person (as defined in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder) the solicitor municipal advisor has solicited, is soliciting or intends to solicit within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

(f) *Recordkeeping.* Consistent with MSRB Rule G-8(h) and Rule 15Ba1-8(a)(1)-(8) under the Act, a solicitor municipal advisor shall retain for a period of not less than five years:

(i) a copy of each writing or writings required by Rule G-46(a);

(ii) documentation substantiating the solicitor municipal advisor’s reasonable basis belief regarding its representations as described in Rule G-46(b) of this rule; and

(iii) evidence that the disclosures required by section (c) of this rule were made in the manner described in Rule G-46(d) (e.g., automatic email delivery receipt).

Supplementary Material

.01 Reasonable Basis for Representations. While a solicitor municipal advisor must have a reasonable basis for the representations and other material information conveyed to a solicited entity, the solicitor municipal advisor is not required to actively seek out every piece of information that may be relevant to a representation. However, the solicitor municipal advisor must have some basis for its statements and must not ignore any “red flags.” For example, a solicitor municipal advisor soliciting a municipal entity on behalf of an investment advisor to perform investment advisory services may have reviewed the Form ADV for the investment adviser and may have met with a knowledgeable representative of the investment adviser on one or more occasions to better understand its business and to ask any questions that the solicitor municipal advisor may have. In addition, the solicitor municipal advisor has an affirmative duty to refrain from making representations that the solicitor municipal advisor knows or should know are inaccurate or misleading. For example, the solicitor municipal advisor must not knowingly misrepresent the capacity, resources or knowledge of a municipal advisor on whose behalf it is soliciting municipal advisory services.

.02 Relationship to Rule G-42. Municipal advisors should be mindful that one may be, simultaneously, both a solicitor municipal advisor for purposes of Rule G-46 and a non-solicitor municipal advisor for purposes of Rule G-42. For example, a municipal advisor may provide “advice” as defined in Rule G-42 to a municipal entity (the “advisory engagement”) and separately may act as a solicitor municipal advisor with respect to another municipal entity as contemplated in this Rule G-46 (the “solicitor municipal advisor engagement”). As a result, the municipal advisor would be subject to Rule G-42 with respect to the advisory engagement and would be subject to Rule G-46 with respect to the solicitor municipal advisor engagement. Municipal advisors should evaluate the activity undertaken with respect to each engagement to determine which rule governs (Rule G-42 or Rule G-46) and ensure the written supervisory procedures required under Rule G-44 reflect such.