



Municipal Securities Rulemaking Board

March 23, 2023

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comments on File No. SR-MSRB-2023-02

Dear Ms. Countryman:

On January 31, 2023, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to create a new rule, MSRB Rule G-46, on duties of solicitor municipal advisors (“Proposed Rule G-46”) and amend MSRB Rule G-8, on books and records (“Proposed Amended Rule G-8”) (together, the “proposed rule change”).¹ The proposed rule change was published for comment in the Federal Register on February 14, 2023.²

The MSRB appreciates the participation of commenters in the rulemaking process. One written comment letter was filed with the Commission in response to the proposed rule change.³ After carefully considering the comments, the MSRB is filing this day Amendment No. 1 to File No. SR-MSRB-2023-02 (“Amendment No. 1”) to make a correction to the original proposed rule change, as discussed below and in further detail in Amendment No. 1. This letter describes the MSRB’s response to comments on the original proposed rule change, including the correction incorporated into Amendment No. 1.

Avoiding Unnecessary Regulation. SIFMA explained that its members believe that the proposed rule change is confusing and unnecessary as many solicitor municipal advisors are already regulated by the SEC pursuant to the Investment Advisers Act.⁴ SIFMA also reiterated a

¹ The proposed rule change is available at <https://msrb.org/sites/default/files/2023-02/SEC-Filing-2023-02.pdf>. Except as expressly defined herein, the defined terms used in this letter shall have the meanings as defined in the proposed rule change.

² See Exchange Act Release No. 96842 (Feb. 8, 2023), 88 FR 9560 (Feb. 14, 2023) (File No. SR-MSRB-2023-02) (“Notice of Proposed Rule Change.”)

³ See Letter from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (Mar. 7, 2023) (“SIFMA Letter”).

⁴ Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. 80b-1 – 80b-2).

request for the MSRB to prohibit municipal advisors from paying third-party municipal advisors for a solicitation of municipal advisory business.

The MSRB appreciates the importance of avoiding unnecessary duplicative regulation. As discussed in the Notice of Proposed Rule Change, the proposed rule change is designed to be harmonized with relevant rules under comparative regimes, including the regime for investment advisers. However, the MSRB does not believe that the fact that some solicitor municipal advisors are also investment advisers obviates the need for regulation in their capacity as solicitor municipal advisors. As SIFMA notes “[s]olicitation has correctly been an area of concern for regulators in both rulemaking and enforcement. Importantly, the practice of paying municipal advisors for the solicitation of municipal advisory business could create material conflicts of interest and could give rise to circumstances suggesting quid pro quo corruption involving municipal entities resulting from such conflicted interests. Such practice could be damaging to the integrity of the municipal securities market.”⁵ Among other things, the proposed rule change is designed to address these material conflicts of interest and to provide some guardrails around such solicitation activities. The Dodd-Frank Act specifically created the category of solicitor municipal advisors, evidencing the intent to allow municipal advisors to engage in this capacity and the MSRB believes that this approach, as opposed to the outright prohibition on paying solicitor municipal advisors for their third-party solicitations of municipal advisory business, is consistent with the apparent intent in the Dodd-Frank Act in granting rulemaking authority to the MSRB over such conduct.

Inadvertent Solicitations. SIFMA further indicated that a safe harbor for inadvertent solicitations is warranted because there is confusion as to what disclosures are due to which parties and when. As described in Amendment No. 1, the MSRB is making a technical correction to the proposed rule change to correct a typographical error in Proposed Rule G-46(f)(i)(A) that it believes may have inadvertently contributed to any confusion. Specifically, Amendment No. 1 would provide that at the time of the first direct communication with a solicited entity on behalf of a specific solicitor client, the requisite disclosures must be provided to the *solicited entity* representative (rather than the *solicitor client* representative as set forth in the Notice of Proposed Rule Change) with whom such communication is made. The MSRB notes that this is consistent with the heading of section (f) of Proposed Rule G-46, which is titled “Timing and Manner of Disclosures to *Solicited Entities*” (emphasis added).⁶

As a result, the dual disclosure obligation set forth in the proposed rule change would require the following. For direct solicitations of a solicited entity by a solicitor municipal advisor, at the time of the first solicitation, Proposed Rule G-46(f)(i)(A) would require the

⁵ SIFMA Letter at 2.

⁶ Amendment No. 1 also would amend Proposed Rule G-46(e)(ii) to make a minor non-substantive amendment to correct a typographical error. Additionally, Amendment No. 1 would make minor non-substantive amendments to correct internal cross-references in Proposed Rule G-46(f)(i) and (g)(ii).

solicitor municipal advisor to make the disclosures required by Proposed Rule G-46(e) to the solicited entity representative (*i.e.*, the person actually solicited, such as an employee of the solicited entity). If that solicitation results in the solicited entity engaging the solicitor client for investment advisory services or municipal advisory services, Proposed Rule G-46(f)(ii) would require all disclosures required by Proposed Rule G-46(e) to be provided again at the time that such engagement documentation is delivered to the solicited entity or promptly thereafter. Pursuant to Proposed Rule G-46(f)(i)(B) and Proposed Rule G-46(f)(ii), the same standard would apply for indirect solicitations, except for the fact that, at the time of the first solicitation, the disclosures would be required to be provided to the intermediary with whom such communication is made.

The MSRB understands that a solicitor municipal advisor may make multiple solicitations of a solicited entity (sometimes spanning more than one year) before a solicitation may result in a solicited entity engaging a solicitor client. As a result, the MSRB believes that it is important that the disclosures set forth in Proposed Rule G-46(e) are provided twice—once in connection with the initial solicitation so that the solicitee can appropriately evaluate the disclosures in connection with the solicitation and again at the time of the relevant engagement when an official that is reasonably believed to have the authority to bind the solicited entity by contract is guaranteed to receive the disclosures.

Importantly, pursuant to Sections 15B(e)(4)(ii) and (e)(9) of the Exchange Act,⁷ one meets the definition of a “municipal advisor” if, in relevant part, one undertakes a *direct or indirect* communication with a municipal entity or obligated person. As a result, consistent with a regulated entity’s supervisory and compliance obligations, the MSRB would expect regulated entities to be cognizant of their communications and to put into place appropriate processes to help them ascertain whether or not they are engaging in municipal advisory activity. One such mechanism, in the context of third-party solicitations, may be to inquire of intermediaries whether they represent municipal entities or obligated persons. The MSRB also notes that nothing would prohibit a solicitor municipal advisor from, out of an abundance of caution, providing the disclosures specified in Proposed Rule G-46(e) to all intermediaries that the solicitor municipal advisor solicits.

Finally, after careful consideration, the MSRB continues to believe that a safe harbor for inadvertent solicitations is not warranted. Consistent with the definition of “municipal advisor” under the Exchange Act, to trigger the application of Proposed Rule G-46, a solicitor municipal advisor must undertake the relevant solicitation “for the purpose of obtaining or retaining” an engagement between the solicited entity and the solicitor client.⁸ Because this requires affirmative intent, the MSRB continues to believe that a provision for “inadvertent” solicitations is not appropriate. To that end, the MSRB does not believe that the example set forth in the SIFMA Letter would subject a firm to Proposed Rule G-46. If a firm initially solicits a solicited

⁷ 15 U.S.C. 78o-4(e)(4) and (e)(9).

⁸ Exchange Act Section 15B(e)(9), 15 U.S.C. 78o-4(e)(9).

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entity on its own behalf, but the solicited entity unilaterally chooses not to engage the firm and, instead, seeks to engage a third-party investment adviser and the firm earns compensation based on such engagement, the MSRB does not believe that the firm would be subject to Proposed Rule G-46 if it has not solicited the solicited entity for the purpose of obtaining or retaining an engagement on behalf of that third-party investment adviser.

The attachment to this letter sets forth Amendment No. 1.

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If you have any questions, please feel free to contact me, at 202-838-1500.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Olgun', with a long horizontal flourish extending to the right.

Saliha Olgun
Interim Chief Regulatory Officer

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)¹ and Rule 19b-4 thereunder,² the Municipal Securities Rulemaking Board (“MSRB”) is filing this amendment (“Amendment No. 1”) to File No. SR-MSRB-2023-02, originally filed with the Securities and Exchange Commission (“Commission”) on January 31, 2023, with respect to a proposed rule change to create a new rule, MSRB Rule G-46, on duties of solicitor municipal advisors (“Proposed Rule G-46”) and amend MSRB Rule G-8, on books and records (“Proposed Amended Rule G-8”) (together, the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on February 14, 2023.³

The original proposed rule change, together with Amendment No. 1 (collectively, “the proposed rule change”) is designed to govern the conduct of solicitor municipal advisors⁴ - those municipal advisors that undertake certain solicitations of a municipal entity or obligated person

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 96842 (Feb. 8, 2023), 88 FR 9560 (Feb. 14, 2023) (File No. SR-MSRB-2023-02) (“Notice of Proposed Rule Change.”).

⁴ Section 15B(e)(9) of the Exchange Act (15 U.S.C. 78o-4(e)(9)) generally defines “solicitation of a municipal entity or obligated person” to mean a direct or indirect 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, municipal advisor, or investment adviser . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities 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 SEC has interpreted this phrase generally in a manner similar to the statutory definition. However, it has also added two exceptions to the statutory definition for (i) advertising by a dealer, municipal advisor or investment adviser and (ii) solicitations of an obligated person where such obligated person is not acting in the capacity of an obligated person or the solicitation is not in connection with the issuance of municipal securities or with respect to municipal financial products. See Exchange Act Rule 15Ba1-1(n) (17 CFR 240.15Ba1-1(n)). Additionally, the SEC has exempted from the municipal advisor definition a person that undertakes a solicitation of a municipal entity or obligated person for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person of a dealer or a municipal advisor for or in connection with municipal financial products that are investment strategies, to the extent such investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. See Exchange Act Rule 15Ba1-1(d)(1) (17 CFR 240.15Ba1-1(d)(1)) and 15Ba1-1(d)(3)(viii) (17 CFR 240.15Ba1-1(d)(3)(viii)).

on behalf of certain third-party financial professionals.⁵ Amendment No. 1 makes a minor technical amendment to correct a typographical error in Proposed Rule G-46(f)(i)(A).

Background

On January 31, 2023, the MSRB filed with the Commission File No. SR-MSRB-2023-02. The Commission published the proposed rule change for comment in the Federal Register on February 14, 2023,⁶ and received one comment letter.⁷ In its comment letter, the Securities Industry and Financial Markets Association (“SIFMA”), noted that its members believe that the proposed rule change is confusing, specifically with respect to what disclosures are due to which parties and when.⁸

After carefully considering the comments, the MSRB is filing this day Amendment No. 1 to File No. SR-MSRB-2023-02 (“Amendment No. 1”) to correct minor typographical errors in the proposed rule change that the MSRB believes will improve the clarity of Proposed Rule G-46.

Minor Change Made in Response to Comments

Amendment No. 1 modifies the original proposed rule change with a minor revision to correct a typographical error in Proposed Rule G-46(f)(i)(A). Specifically, Amendment No. 1 would provide that at the time of the first direct communication with a solicited entity on behalf of a specific solicitor client, the requisite disclosures must be provided to the solicited entity representative (rather than the *solicitor client* representative as set forth in the original proposed rule change) with whom such communication is made. The MSRB notes that this is consistent

⁵ Section 15B(e)(4) of the Exchange Act (15 U.S.C. 78o-4(e)(4)) generally defines “municipal advisor” to mean a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity. Notwithstanding the omission of the term, “obligated person” in connection with the undertaking of a solicitation under Section 15B(e)(4)(A)(ii) of the Exchange Act (15 U.S.C. 78o-4(e)(4)(A)(ii)), the SEC has interpreted the definition of “municipal advisor” to include a person who engages in the solicitation of an obligated person acting in the capacity of an obligated person. See Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67467, at notes 138 and 408 (November 12, 2013) (File No. S7-45-10) (“SEC Final MA Rule Adopting Release”). See also Exchange Act Rule 15Ba1-1(d)(1)(i) (17 CFR 240.15Ba1-1(d)(1)(i)).

⁶ Exchange Act Release No. 96842 (Feb. 8, 2023), 88 FR 9560 (Feb. 14, 2023).

⁷ See Letter from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (Mar. 7, 2023) (“SIFMA Letter”).

⁸ See SIMFA Letter, 2-3 (Mar. 7, 2023).

with the heading of section (f) of Proposed Rule G-46, which is titled “Timing and Manner of Disclosures to *Solicited Entities*”) (emphasis added). Amendment No. 1 also would amend Proposed Rule G-46(e)(ii) to make a minor non-substantive amendment to correct a typographical error (i.e., remove an errant “’s” from the rule text). Additionally, Amendment No. 1 would make minor non-substantive amendments to correct internal cross-references in Proposed Rule G-46(f)(i) and (g)(ii).

The MSRB believes that the Commission has good cause, pursuant to Section 19(b)(2) of the Act, for granting accelerated approval of Amendment No. 1 because the amendment is intended to correct minor typographical errors and correct cross-references and the rule text remains consistent with the purposes of the proposed rule. Specifically, Amendment No. 1 is a minor change that is technical in nature and raises no significant issues with respect to the proposed rule change, nor does it alter or impact the analysis of the burden on competition or the statutory basis with respect to the proposed rule change.

The change made by Amendment No. 1 to the original proposed rule change is indicated in attached Exhibit 4. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

TEXT OF DRAFT AMENDMENTS

Rule G-46: Duties of Solicitor Municipal Advisors

(a) – (d) No change.

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

(i) No change.

(ii) *Conflicts Disclosures.* A solicitor municipal advisor must disclose any material conflicts of interest, including, but not limited to the fact that, because the solicitor municipal advisor is compensated for its solicitation efforts, it has an incentive to recommend its clients, resulting in a material conflict of interest. The solicitor municipal advisor also must disclose any material conflicts of interest, of which the solicitor municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the solicitor[’s] municipal advisor’s ability to solicit the solicited entity in accordance with its duty of fair dealing.

(f) *Timing and Manner of Disclosures to Solicited Entities.* Any disclosures required under section (e) of this rule must be made in writing and comply with the following:

(i) *First Communication.* The disclosures must be delivered at the time of the first communication, as that term is used in the definition of “solicitation” under Rule G-46(a)(iii), with a solicited entity (or an intermediary in connection with an indirect solicitation) on behalf of a specific solicitor client, as specified below:

(A) *Direct Solicitations.* The disclosures must be provided to the solicited entity [solicitor client] representative with whom such communication is made.

(B) *Indirect Solicitations.* The disclosures must be provided to the intermediary with whom such communication is made.

(ii) No change.

(g) *Specified Prohibitions.* A solicitor municipal advisor is prohibited from:

(i) No change.

(ii) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the solicitor municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the solicitor municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable

fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in Rule G-46(g)[(iii)](ii)(1) above; and (3) payments that are permissible “normal business dealings” as described in Rule G-20.

Supplementary Material

.01 - .04. No change.

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Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

(a) – (h) No change.

Supplementary Material

.01 - .02 No change.

Rule G-46: Duties of Solicitor Municipal Advisors(a) Definitions.

(i) “Compensation” means any cash, in-kind or non-cash remuneration, including but not limited to merchandise, gifts, travel expenses, meals and lodging.

(ii) “Excluded communications” means (A) advertising by a dealer, municipal advisor, or investment adviser; (B) direct or indirect communications with an obligated person if such obligated person is not acting in the capacity of an obligated person; (C) direct or indirect communications with an obligated person made for the purpose of obtaining or retaining an engagement that is not in connection with the issuance of municipal securities or with respect to municipal financial products; and (D) direct or indirect communications made for the purpose of obtaining or retaining an engagement for or in connection with municipal financial products that are investment strategies to the extent that those investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(iii) “Solicitation” means a direct or indirect communication with a municipal entity or obligated person made by a solicitor municipal advisor, for direct or indirect compensation, on behalf of a municipal advisor or investment adviser that does not control, is not controlled by, or is not under common control with the solicitor municipal advisor for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor for or in connection with municipal financial products or the issuance of municipal securities or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; provided, however, that it does not include excluded communications, as defined in Rule G-46(a)(ii).

(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.

(v) “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.

(vi) “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.

(vii) A “solicitor relationship” shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to undertake a solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder. The solicitor relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the solicitor relationship has terminated pursuant to the terms of the documentation of the solicitor relationship required in section (c) of this rule or (ii) the date on which the solicitor municipal advisor withdraws from the solicitor relationship.

(b) *Disclosure to Solicitor Clients.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the solicitor client full and fair disclosure in writing of:

(i) all material conflicts of interest; and

(ii) any legal or disciplinary event that would be material to a reasonable solicitor client’s evaluation of the solicitor municipal advisor or the integrity of its management or advisory personnel.

As an alternative to providing a narrative description of any legal or disciplinary events required to be disclosed under Rule G-46(b)(ii) above, information regarding such events may be disclosed for purposes of this subsection by: (i) in the case of solicitor municipal advisors that are also registered broker-dealers or investment advisers, identification of the specific type of event and specific reference to the relevant portions of the solicitor municipal advisor’s Form BD or Form ADV if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms or (ii) in the case of all other solicitor municipal advisors, identification of the specific type of event and specific reference to the relevant portions of the solicitor municipal advisor’s most recent Forms MA or MA-I filed with the Commission if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *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 terms and amount of the compensation to be received by the solicitor municipal advisor for such activities; and

(iii) the date, triggering event, or means for the termination of the relationship, or, if none, a statement that there is none; and

(iv) any terms relating to withdrawal from the relationship.

(d) Representations to Solicited Entities.

(i) A solicitor municipal advisor is prohibited from making a representation that the solicitor municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the solicitor client.

(ii) A solicitor municipal advisor must have a reasonable basis for any material representations it makes to a solicited entity regarding the capacity, resources or knowledge of the solicitor client.

(e) Disclosures to Solicited Entities. A solicitor municipal advisor must disclose to any solicited entity all material facts about the solicitation within the timing and in the manner described in section (f) 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 with the solicitor client, including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor municipal advisor for such solicitation;

(E) payments made by the solicitor municipal advisor to another solicitor municipal advisor (including an affiliate, but not an employee) to facilitate the solicitation, regardless of characterization of the payment; and

(F) the following statements:

(1) In connection with its solicitation activities as a municipal advisor, a solicitor municipal advisor does not owe a fiduciary duty under Section 15B(c)(i) of the Exchange Act or MSRB rules to the entities that it solicits and is not required by those provisions to act in the best interests of such entities without regard to the solicitor municipal advisor's own financial or other interests. However, in connection with such solicitation activities, a solicitor municipal advisor is required to deal fairly with all persons, including 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 the fact that, because the solicitor municipal advisor is compensated for its solicitation efforts, it has an incentive to recommend its clients, resulting in a material conflict of interest. The solicitor municipal advisor also must disclose any material conflicts of interest, of which the solicitor municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the solicitor municipal advisor's ability to solicit the solicited entity in accordance with its duty of fair dealing.

(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, Part 2 (in the case of an 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, Part 2, as applicable.

(f) Timing and Manner of Disclosures to Solicited Entities. Any disclosures required under section (e) of this rule must be made in writing and comply with the following:

(i) First Communication. The disclosures must be delivered at the time of the first communication, as that term is used in the definition of "solicitation" under Rule G-46(a)(iii), with a solicited entity (or an intermediary in connection with an indirect solicitation) on behalf of a specific solicitor client, as specified below:

(A) Direct Solicitations. The disclosures must be provided to the solicited entity representative with whom such communication is made.

(B) Indirect Solicitations. The disclosures must be provided to the intermediary with whom such communication is made.

(ii) Solicitor Client Engagement with Solicited Entity. If the solicitation results in a solicited entity engaging a solicitor client for investment advisory services or municipal advisory services, all disclosures required by Rule G-46(e) must be provided at the time that such engagement documentation is delivered to the solicited entity or promptly thereafter, even if such disclosures were already provided at the time of the first communication. Disclosures required by this paragraph (f)(ii) may be provided by either the solicitor client or the solicitor municipal advisor, but must be made to an official of

the solicited entity that: (1) the solicitor municipal advisor (or, the solicitor client, if the solicitor client provides such disclosures) reasonably believes has the authority to bind the solicited entity by contract; and (2) is not a party to a disclosed conflict.

(g) Specified Prohibitions. A solicitor municipal advisor is prohibited from:

(i) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities; and

(ii) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the solicitor municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the solicitor municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in Rule G-46(g)(ii)(1) above; and (3) payments that are permissible “normal business dealings” as described in Rule G-20.

Supplementary Material

.01 Reasonable Basis for Representations. While a solicitor municipal advisor must have a reasonable basis for the representations described in Rule G-46(d), the solicitor municipal advisor is not required to actively seek out every piece of information that may be relevant to such representation. For example, a solicitor municipal advisor soliciting a municipal entity on behalf of an investment advisor to perform investment advisory services should have reviewed the investment adviser’s Form ADV and should have met with a knowledgeable representative of the investment adviser on one or more occasions to better understand its business and to ask any relevant questions.

.02 Fair Dealing and Fiduciary Duty. Solicitor municipal advisors, like all municipal advisors, must comply with Rule G-17, on conduct of municipal securities and municipal advisory activities. As a result, like all municipal advisors, solicitor municipal advisors must deal fairly with all persons, including solicited entities and solicitor clients and must not engage in any deceptive, dishonest or unfair practice. Unlike non-solicitor municipal advisors, whose clients may include municipal entities, solicitor clients are the third-party financial professionals on whose behalf solicitor municipal advisors conduct solicitations. As a result, in connection with their solicitation activities, solicitor municipal advisors do not owe a fiduciary duty under Exchange Act Section 15B(c)(i) or MSRB rules to either their solicitor clients or the municipal entity clients that they solicit and are not required by those provisions to act in their clients’ best interest without regard to the solicitor municipal advisor’s own financial or other interests. However, solicitor municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. Additionally, as described further in SM .03 below, a solicitor municipal advisor may also engage in non-

solicitation municipal advisory activity. In that event, the requirements of Rule G-42 will apply with respect to such activity and a fiduciary duty will apply with respect to the municipal entity clients of the municipal advisor.

.03 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 that same municipal entity or 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.

.04 Documentation of Compensation and Compensation Disclosure. Rule G-46(c)(ii) and (e)(i)(D) both require written disclosures pertaining to a solicitor’s compensation. With respect to the obligation under section (c)(ii), the documentation(s) must clearly describe the structure of the compensation arrangement and the amount of compensation paid or to be paid. For example, a solicitor municipal advisor that will be paid on the basis of a flat or fixed fee must disclose the amount of the flat fee, if known and/or calculable at the time of the documentation. If the precise dollar amount is not known at the time, the documentation should disclose how such compensation will be calculated. As another example, if the compensation arrangement calls for a percentage of fees collected from the referred clients, then the documentation should state so and describe what that percentage is. The disclosures required under section (e)(i)(D) require disclosure of at least this same information, to the extent material. However, Rule G-46(e)(i)(D) may require the disclosure of additional information, depending on the facts and circumstances. For example, if the solicitor municipal advisor receives indirect compensation for the solicitation, information pertaining to the indirect compensation also must be disclosed.

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Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

(a) through (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) through (vii) No change.

(viii) Reserved.

(ix) Records Concerning Compliance with Rule G-46.

(A) evidence that the disclosures required by Rule G-46(b) were made in the manner required by that section;

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

(C) documentation substantiating the solicitor municipal advisor's reasonable basis for believing its representations as described in Rule G-46(d); and

(D) evidence that the disclosures required by Rule G-46(e) were made in the manner described in Rule G-46(f) (e.g., automatic email delivery receipt).

Supplementary Material

.01 - .02 No change.