

THE BOND BUYER

MSRB MA compliance guidance details rules for firms, professionals

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WASHINGTON – The Municipal Securities Rulemaking Board has released a compliance advisory for municipal advisors that details rules applicable to MAs and provides examples of potential violations.

The document, released on Thursday, follows the board's announcement of its new strategic goals, which include an organizational shift toward assisting regulated entities with their compliance efforts.

The MSRB said that goal prioritizes initiatives like issuing regulatory guidance and advisories to support compliance with its rules. The board said it issued the MA compliance document "to aid advisor firms with understanding recently implemented MSRB rules and identifying potential compliance risks."

"This advisory is designed to aid municipal advisors in the process of establishing, maintaining, reviewing, testing and modifying written compliance policies and supervisory procedures," the MSRB said in the advisory. "The MSRB engages in an ongoing dialogue with municipal market participants through outreach events and education activities so that the compliance resources it prepares are appropriately tailored and responsive to market needs."

The MSRB also said the guidance is intended for general information purposes only and included links in each section to give MAs the ability to access more information about the rules.



Municipal Securities Rulemaking Board

The MSRB released a compliance advisory for MAs on Thursday that details applicable rules and considerations as the firms and professionals carry out their business.

One rule the guidance covers is MSRB Rule G-42 on core duties of municipal advisors. Rule G-42 applies to MAs engaging in municipal advisory activities other than the solicitation of municipal entities or obligated persons on behalf of certain third parties. The rule subjects MAs to a duty of care and a duty of loyalty.

The duty of loyalty, among other things, requires that an MA deal honestly with the municipal entity client and with the utmost good faith. It also requires an MA act in the best interest of its municipal entity client without regard to self-interest. The duty of care covers requirements like ensuring the MA possesses the degree of knowledge and expertise needed to provide a municipal entity client with informed advice.

One violation of the rule can occur if the MA fails to inform their municipal entity client that the underwriter the MA is recommending has agreed to recommend the MA for services on another transaction it is underwriting. If an MA tells its client that it has chosen to limit the scope of the due diligence it will undertake to identify any conflicts of interest that may need to be disclosed, the MA would also be in violation of the rule.

The MSRB recommends, among other things, that MAs assess how they are ensuring their professionals are adhering to the rule as well as how well it is structuring client agreements and detailing the responsibilities of each party.

The board also included considerations for MAs associated with its Rules G-37 on political contributions and G-20 on gifts and gratuities.

G-37 is designed to address pay-to-play practices in the market and generally prohibits MAs from engaging in advisory business with a municipal entity within two years of certain contributions to an official of such municipal entity. The MSRB said a failure to track payments made by MA professionals at fundraising events and failures to submit required quarterly disclosure filings to the board could count as violative conduct.

Rule G-20 generally prohibits an MA from giving any item or service of value in excess of \$100 per year, in aggregate, to any recipient if the gift or service is in relation to the municipal securities or MA activities of the recipient's employer. A failure to review regular business expenses to gauge the frequency of gifts of meals or entertainment hosted by the firm could lead to potentially violative conduct, the MSRB said.

The board included considerations and possibly violative conduct in relation to rules that ensure MA firms and professionals are properly qualified as well as rules that firms have appropriate compliance programs and properly maintain their books and records.