



# **Update From the National Association of Municipal Advisors**

*SC Jobs-Economic Development Authority*

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# Role of the Municipal Advisor

- ▶ Role May Vary According To:
  - ▶ Expertise of Issuer Staff
  - ▶ Types of Bonds
  - ▶ Method of Sale
  - ▶ Scope of Services
- ▶ Relationship May be Transactional or on a Retainer Basis
- ▶ MA Has a Fiduciary Responsibility to Represent the Issuer
- ▶ Assists in a Broad Array of Capital Planning and Debt Issuance Tasks as Instructed by Issuer



## GFOA BP: Selecting Municipal Advisors

- ▶ GFOA recommends that issuers hire a municipal advisor prior to undertaking a debt financing.
- ▶ Selection of municipal advisor should be based on merit and generally done through a Request for Proposals (RFP) process.
  - ▶ Experience with similar financings: type, size, structure, state
  - ▶ Access to timely market information
- ▶ Independent vs. Underwriter-based Advisors
- ▶ Registered with SEC and MSRB
- ▶ “Pricing Advisor” vs. Municipal Advisor
- ▶ Municipal advisor will work with issuer to determine appropriate method of sale (competitive or negotiated) and therefore should be hired before consideration of underwriters.
  - ▶ Implied Best Practice = municipal advisor should be selected prior to selecting method of sale.

## ***Dodd Frank Act and the MA Rule***

- ▶ *Dodd Frank Act*: Signed Into Law 7/21/10
- ▶ Expands MSRB Jurisdiction to Include Protection of Municipal Entities and Obligated Persons
- ▶ Expands MSRB Jurisdiction to Include Municipal Advisors
- ▶ MAs Must Register with SEC and MSRB
- ▶ New Qualification Standards for MAs
- ▶ Only MA May Provide “Advice” to Issuer (unless an exception is met)
- ▶ Places Fiduciary Duty on Municipal Advisor to Client/Issuer
- ▶ Applies New and Current MSRB Rulemaking To Municipal Advisors

## MA Rule and Underwriters

- When an UW is engaged with the issuer on a transaction, it may discuss the following items without it being considered advice: structure, timing, terms, and similar matters. The UW may also discuss general market and educational information, which are not considered to be advice.
- Underwriters will be limited in the topics they can discuss or PITCH to issuers as anything deemed as a recommendations related to a transaction or possible transaction can not be done unless the MA or RFP exemptions apply.
- If an issuer has a MA or has an RFP out for response, the UW is not limited in the content of their conversations or recommendations to the issuer.
- When an issuer has a MA, but wants to receive advice or recommendations from an underwriter that otherwise would not be permissible, the issuer must represent in writing to the underwriter that they have a MA and will rely on the MA for advice.

# Fiduciary Duty

- ▶ Duty of Care
  - ▶ Degree of Knowledge and Expertise Needed to Perform Services
  - ▶ Make a Reasonable Inquiry As to the Facts That Are Relevant to a Client's Determination on a Course of Action or That Form the Basis for Advice
  - ▶ Must Undertake a Reasonable Investigation to Determine that Recommendations are Not Based on Materially Inaccurate or Incomplete Information

# Fiduciary Duty

- ▶ Duty of Loyalty
  - ▶ Must Deal Honestly and With the Utmost Good Faith With Client
  - ▶ Act in the Client's Best Interest
  - ▶ Must Manage and Mitigate Conflicts of Interest

# Fiduciary Duty Issuer and Borrower

- ▶ Issuer: Fiduciary Duty – Duty of Loyalty AND Duty of Care
- ▶ Borrower: Duty of Care
- ▶ How This Works on The Ground (?)
- ▶ Potential Conflicts
- ▶ Going Forward



## MSRB Rule G-42

- ▶ Disclose Conflicts of Interest and Potential Conflicts of Interest
- ▶ Documentation of MA Relationship With Client - Delivered to the Client
  - ▶ Prior to, upon or promptly after the establishment of the MA relationship
- ▶ Recommendations and Review of Other Parties' Recommendation
- ▶ Determination That a Financing is Suitable for the Client
- ▶ Know Your Client Standard

## MSRB Rule G-42

- ▶ Prohibitions
  - ▶ Receiving Excessive Compensation
  - ▶ Making Representations Or Omitting Information That is Materially False or Materially Misleading
  - ▶ Fee Splitting Arrangements with Underwriter
  - ▶ Making Payments to Obtain or Retain an Engagement

## MSRB Rule G-42

- ▶ Principal Transactions
  - ▶ MA Can Not Engage In Other Aspect of Financing Where It Is the MA
    - ▶ Not Applicable to Obligated Person
    - ▶ Includes Bank Loans >\$1 million



## G-42 and Issuers

- ▶ Issuers Should Always Lead the Process and Determine Scope of Services of MAs and Other Outside Professionals
- ▶ Issuers Should Understand and Be Aware of Any Conflicts That Exist When a MA Recommends Other Professionals
- ▶ Issuers Likely to See Additional “Paperwork” From MAs
  - ▶ Disclosure of Conflicts Statements
  - ▶ Additional Information About Client and Past Transactions
  - ▶ Scope of Services/Contracts
  - ▶ Unlike G-17 for Underwriters, Issuers Do NOT Need to Acknowledge Receipt Per Rules, But May Be Asked to By Professionals
- ▶ Issuers Should Check MSRB and SEC Web Sites to Ensure Their MA is Registered
- ▶ After 9/2017, Issuers Should Check MSRB Web Site to Make Sure MA Has Passed Qualification Exam

## MSRB Rule G-37

- ▶ Pay To Play Rules Applied to Municipal Advisors
- ▶ Can Not Contribute to Elected Officials Where MA Has Done Business in Past Two Years
- ▶ Must Disclose Contributions
- ▶ Types of Gifts
  - ▶ Direct
  - ▶ Indirect

## MSRB Rule G-20

- ▶ Gifts and Gratuities, Non Cash Compensation and Expenses of Issuance
- ▶ Limits on Gift Giving - \$100/annually
- ▶ Exceptions
  - ▶ Normal Business Dealings
  - ▶ Commemorative Gifts
  - ▶ Promotional and De Minimis Gifts
  - ▶ Personal and Bereavement Gifts
- ▶ Limits on Reimbursements From Proceeds

## MSRB Rule G-17

- ▶ MA May Not Engage in “Deceptive, Dishonest, or Unfair Practice”
- ▶ Also Applies to Underwriter, With Additional Responsibilities
  - ▶ G-17 Letters

## MSRB Rule G-23

- ▶ Provide Advice Related to Structure, Timing, Terms and Other Similar Matters Concerning the Issuance of Municipal Securities
- ▶ Prohibition on Engaging in Underwriting or Remarketing Activities
- ▶ MA may NOT Resign from Transaction to Serve as Underwriter on Same Transaction