

Fiduciary Obligations of Financial Advisors

Lynnette Kelly, Executive Director
Municipal Securities Rulemaking Board

California Debt and Investment Advisory
Commission Pre-Conference Program

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MSRB

Municipal Securities
Rulemaking Board

MSRB Mission



- Protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market through:
 - The establishment of rules for dealers and municipal advisors
 - The collection and dissemination of market information
 - Market leadership, outreach and education

Dodd-Frank and the Municipal Market



- Expanded the MSRB's mission to protect state and local governments that issue municipal bonds
- *Today's Focus:* **Established framework for regulation of municipal advisors by the MSRB**

Municipal Advisor Regulation



- Rules and standards for professional conduct and qualification
 - Promote a fair and efficient market
 - Preserve municipal market integrity
 - Protect state and local governments and other entities that engage the services of a municipal advisor

Goals of Municipal Advisor Rulemaking



- Prohibit fraud and manipulative practices
- Establish fiduciary obligation to municipal entity clients
- Require fair treatment of investors, municipal entities and obligated persons
- Address real and perceived conflicts of interest

Defining Municipal Advisors

- Dodd-Frank defines municipal advisors broadly
 - Advise on municipal securities transactions
 - Advise on municipal financial products, including derivatives, guaranteed investment contracts and investment strategies
 - Third-party marketers, placement agents, solicitors, finders and certain swap advisors
- SEC approved final definition on September 18, 2013

Current Municipal Advisor Duties

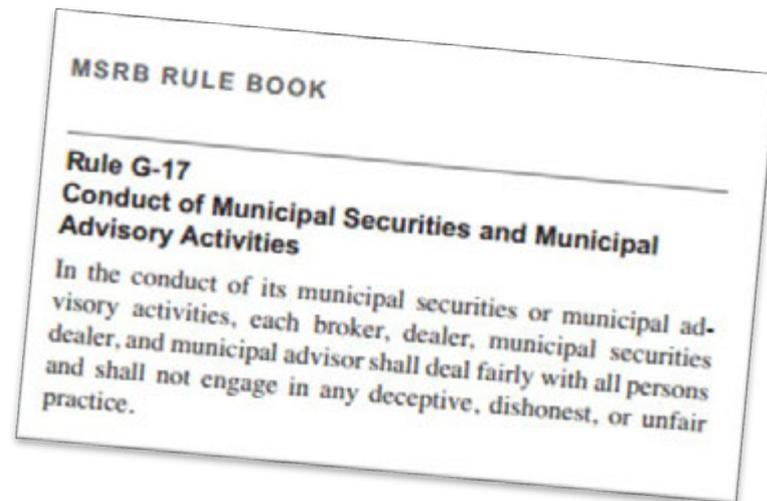
- Registration with the MSRB and the SEC
- Fair Dealing
- Fiduciary Duty

Municipal Advisor Registration

- Municipal advisors must register first with the SEC and then with the MSRB
- Issuers can verify a municipal advisor's registration on the MSRB's website
 - <http://www.msrb.org/msrb1/pqweb/MARegistrants.asp>
- Unregistered municipal advisors are in violation of federal law in conducting traditional municipal advisory business
 - May be unaware of or disregarding obligations under MSRB rules

Fair Dealing

- MSRB Rule G-17 applies to municipal advisors as well as municipal securities dealers
 - Must deal fairly with all persons
 - Must not engage in any deceptive, dishonest or unfair practice



Fiduciary Duty



- Dodd-Frank requires municipal advisors to put their clients' interests first without regard to their own financial or other interests
- MSRB rulemaking will address application of fiduciary duty

Application of Fiduciary Duty of Municipal Advisors to Issuers



- Elements of expected MSRB rule proposal
 - Duty of loyalty and care to municipal entity
 - Recommendations must be in best interest of municipal entity
 - Achieved necessary qualifications to render informed advice
 - Obligation to investigate reasonably feasible alternatives

Application of Fiduciary Duty of Municipal Advisors to Issuers *(cont.)*



- Disclosure of conflicts of interest and receipt of municipal entity's informed consent

- Addressing certain unmanageable conflicts
 - Kick-backs
 - Fee-splitting
 - Excessive compensation

Advancing Municipal Advisor Regulation



- In addition to clarifying the application of fiduciary duty, the MSRB is creating a regulatory framework and professional standards for municipal advisors
- Will reexamine draft rules for municipal advisors, revise them if necessary in light of the SEC's final guidance and seek public comment

Proposed Areas of Municipal Advisor Regulation



- Conflicts of Interest
- Political Contributions
- Gifts and Gratuities
- Preservation of Records
- Books and Records
- Assessments

MSRB Rulemaking Process

Identify an Issue

- Board discussion
- Does this issue warrant rulemaking?
- Are there other alternatives?

Rule Proposal

- Publish for comment
- May be preceded by concept release

Board Discussion of Comments

- All comment letters go to the Board

Proposed Rule filed with SEC for Approval

- All points made by commentators must be addressed in filing

SEC Publishes Proposed Rule in Federal Register for Comment

- Additional comment period
- SEC generally asks MSRB to respond to any comments made

SEC Approval Order

- Final action required
- Has the force and effect of Federal law
- Goes into effect on specific date

Professional Qualification Standards



- MSRB establishing an exam to assess competency of advisors
 - Developed with external input on common advisory activities
 - Evaluated for consistency with SEC definition
 - SEC approval required for the exam
- Signals baseline qualifications of advisors to issuer clients

Planned MSRB Resources for Municipal Advisors



- **Prepare**

- Preparing for Regulation: A Guide for Municipal Advisors

- **Participate**

- Overview of the MSRB rulemaking process

- **Put into Practice**

- Complying with MSRB rules and standards

Municipal Advisors: Prepare for Regulation



- ✓ Understand the Importance of Registration
- ✓ Learn about the MSRB
- ✓ Review Existing Business Practices
- ✓ Access Available Resources on www.msrb.org

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Main Phone

703-797-6600

MSRB Support

703-797-6668

Hours of Operation:

7:30 a.m. - 6:30 p.m.

MSRBsupport@msrb.org

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