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## SEC Approves MSRB's First Dedicated Rule for Municipal Advisors

On October 23, 2014, the Securities and Exchange Commission (SEC) approved Municipal Securities Rulemaking Board (MSRB) Proposed Rule G-44, the MSRB's first dedicated rule for municipal advisors, with conforming changes to Rules G-8 and G-9 (required records and preservation period, respectively) (the Final Rule). We previously described this rulemaking in our mailings dated March 3, 2014 and August 1, 2014. A summary of the more notable provisions of the Final Rule is below.

*Effective Dates:* The effective date of all provisions in the Final Rule other than Rule G-44(d), the annual written certification requirement (described below), is April 23, 2015. The effective date of Rule G-44(d) is April 23, 2016.

The text of the Final Rule may be viewed [here](#).

### Notable Provisions of Rule G-44

A municipal advisor's supervisory system must include, at a minimum, the following elements:

- Written supervisory procedures that are designed to ensure compliance with applicable laws and regulations. Such procedures should take into account, among other things, the size and structure of the advisor and the scope and nature of its municipal advisory activities. The procedures must be updated as necessary and communicated to all relevant associated persons.
- Designation of one or more municipal advisor principals to be responsible for the supervision required by the Final Rule.
  - The supplemental guidance provides that designated supervisory principals must have the authority to carry out the supervision and also have sufficient knowledge, experience and training to understand and effectively discharge their responsibilities. The supplemental guidance further provides that even if a person is not designated as a supervisory principal, whether he or she has responsibility for supervision under this rule depends on whether, under the facts and circumstances of a particular case, the person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.
- Implementation of processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures. Review of such policies and procedures must be done at least annually and potentially more frequently depending on the advisor's circumstances.
- Designation of one individual to serve as the municipal advisor's chief compliance officer with the necessary competencies to fulfill such role as the primary advisor with respect to the municipal advisor's overall compliance scheme and the policies and procedures the municipal advisor adopts to comply with applicable rules.

In addition, G-44 includes the following notable provisions:

- *Annual written certification:* A municipal advisor's chief executive officer or equivalent must certify annually in writing that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules. This does not apply to municipal advisors that are subject to a substantially similar certification requirement of the Financial Industry Regulatory Authority with respect to all applicable rules. As noted above, the effective date of this provision is April 23, 2016.
  - *Effect on Business Line Responsibility:* The supplemental guidance provides that the person signing the certification is certifying only as to having processes in place to establish, maintain, review, test and modify the municipal advisor's written compliance and supervisory policies and procedures, and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.
- *Exemption for federally registered banks:* To the extent it engages in municipal advisory activities in the exercise of fiduciary powers pursuant to 12 C.F.R. 9.2(g) or substantially similar powers, a municipal advisor that is a bank or separately identifiable department or division of a bank is exempt from Rule G-44 and certain books and records requirements in Rule G-8 if it certifies in writing annually that it is, with respect to such activities, subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of this rule and the books and records requirements of Rule G-8(h)(iii).