

Political Law Alert

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MSRB Rulemaking Update: SEC Approves MSRB's Proposed Amendments to Gift Rule G-20, MSRB Files Second Amendment to Proposed Rule G-42

This is to update you about recent Municipal Securities Rulemaking Board (MSRB) actions.

SEC Approves MSRB's Proposed Amendments to MSRB Rule G-20 and Related Recordkeeping

On November 6, 2015, the Securities and Exchange Commission (the SEC) approved the MSRB's proposed amendments to Rule G-20 on gifts, which (1) extend Rule G-20 to municipal advisors, and (2) make changes to Rule G-20 applicable to both municipal advisors and municipal securities dealers. The amendments also make conforming changes to Rule G-8 (books and records). The amendments take effect May 6, 2016.

The MSRB's Regulatory Notice (the Notice) announcing the SEC's approval of the amendments, and the amendments' text, is available [here](#).

As noted above, the amendments extend to municipal advisors Rule G-20's prohibition on providing gifts and gratuities over \$100 per year to any person in relation to the covered business activities of the employer, subject to exemptions. Additional notable changes to G-20 include:

- Codification and consolidation of current interpretive guidance relating to (1) exemptions from the \$100 limit, including exemptions for transaction-commemorative gifts (e.g., Lucite tombstones), *de minimis* gifts, promotional items of nominal value, bereavement gifts and personal gifts, and (2) valuation and aggregation of gifts.
- A new provision prohibiting municipal advisors and municipal securities dealers from requesting or obtaining reimbursement from the proceeds of a municipal securities offering for entertainment expenses. There is an exemption for ordinary and reasonable expenses for meals hosted by the municipal advisor or municipal securities dealer directly related to the offering for which it was retained.
 - The MSRB states in the Notice that the new provision will continue to permit municipal advisors and municipal securities dealers to advance normal travel costs (e.g., reasonable airfare and hotel accommodations) to personnel of a municipal entity for business travel related to a municipal securities issuance and to obtain reimbursement for such costs.
 - The Notice provides the following examples of entertainment expenses that may not

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be reimbursed: theater, sports or other recreational spectator event tickets, sightseeing tours and transportation related to attending such events.

- Clarification that Rule G-20 is not intended to supersede any more restrictive provisions of applicable state or other laws.

The MSRB has scheduled a webinar on the amendments on March 24, 2016. Registration for the webinar is available [here](#).

MSRB Files Second Amendment to Proposed Rule G-42

On November 9, 2015, the MSRB filed its second partial amendment (Amendment No. 2) to Proposed Rule G-42, Duties of Nonsolicitor Municipal Advisors (the Proposed Rule) with the SEC. The MSRB's filing is available [here](#).

On November 17, 2015, the SEC published a notice in the Federal Register requesting comments on Amendment No. 2 by December 1, 2015. The SEC's notice is available [here](#).

Amendment No. 2 would make minor technical changes to clarify or renumber text in the Proposed Rule and add new Supplementary Material paragraphs .14 and .15 to create a narrow exception to the Proposed Rule's prohibition on principal transactions (the Exception).

The Exception would allow a municipal advisor that is also a registered broker-dealer to engage in principal transactions limited to specified types of fixed income securities with a

municipal entity client, provided certain requirements are satisfied:

- The account used to rely on the Exception is a brokerage account subject to the Securities Exchange Act of 1934 and is an account as to which the municipal advisor exercises no investment discretion except as granted by a municipal entity client on a limited basis;
- Neither the municipal advisor nor its affiliate provides, or has provided, advice to the municipal entity client as to an issuance of municipal securities or a municipal financial product that is directly related to the principal transaction (other than advice on another principal transaction that meets the requirements of the Exception);
- Either (1) on a transaction-by-transaction basis, before the completion of the transaction, the municipal advisor discloses to the client in writing the capacity in which the municipal advisor is acting, and obtains the client's consent, or (2) the municipal advisor obtains a prospective written blanket consent from the client, and complies with additional notification and consent requirements.

We described the MSRB's first partial amendment to the Proposed Rule in our [August 18, 2015, mailing](#). As we explained in that mailing, the SEC has instituted proceedings to determine whether to approve or disapprove the Proposed Rule. In an extension of time granted by the MSRB on October 28, 2015, the SEC has until January 3, 2016, to act on the Proposed Rule.

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