




Compliance Corner: Summer 2018

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COMPLIANCE CORNER **Summer 2018**

Compliance Corner is a quarterly electronic newsletter published by the MSRB to support the compliance obligations of brokers, dealers and municipal securities dealers (collectively "dealers") and municipal advisors. Compliance Corner provides regulatory updates and resources to facilitate understanding of MSRB rules. Items below labeled "MA" are for municipal advisors; "BD" for dealers; "MA/BD" for all.

Coming this Fall: Improved Data Collection Process for MSRB Form G-37

What's Changing?

This fall, the MSRB is enhancing its electronic Form G-37 to improve the overall data collection process. Among other things, the changes will add definitions of key terms to the submission portal; will allow multiple users at a regulated entity to enter and edit data, and save and submit Form G-37; and eliminate duplication in the process for providing information about municipal entities with which the regulated entity has engaged in municipal securities business or municipal advisory business. These changes will be reflected on Form G-37 in October 2018 and, beginning in September, regulated entities will be notified about their ability to submit test submissions to preview and test the new submission process. The MSRB is hosting a [virtual compliance workshop on completing Form G-37](#) on September 14, 2018 (details below).

Compliance Tips for Form G-37 Submitters

As a reminder, dealers and municipal advisors must submit a Form G-37 to the MSRB for a calendar quarter — even if they do not have any reportable contributions for that quarter — unless they have a valid Form G-37x on file. This means that if a firm engaged in any municipal securities or municipal advisory business with a municipal entity, the regulated entity must file a Form G-37 with the MSRB unless it has a valid Form G-37x on file.

When submitting Form G-37, remember:

- Only an officer of the regulated entity may submit Forms G-37 and G-37x, and designated officers must have access rights in MSRB Gateway to submit Form G-37.
- Consult the text of [Rule G-37](#) for definitions of terms found on Form G-37 to ensure the information submitted is accurate.
- The ability to manually enter in the municipal entities with which a regulated entity has engaged in business is an alternative to uploading the same information. Regulated entities are not required to do both and also should not upload supporting information (e.g., engagement letters, etc.).
- In addition to disclosing information about certain contributions to issuer officials and state or local political parties, dealers and municipal advisors are required to submit to the MSRB information about certain contributions to bond ballot campaigns. See [MSRB Rule G-37\(e\)](#) and [associated interpretive guidance](#) to learn more the required disclosure.

Additional Resources

- [Instructions for Forms G-37, G-37x and G-38t](#)
- [MSRB Rule G-37 Interpretive Questions and Answers](#)
- [MSRB Rule G-37, Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business](#)

If you have questions after consulting the submission manual and other resources, contact MSRB Support at MSRBsupport@msrb.org or 202-838-1330.

Compliance Concerns with Issuer-Directed Charitable Donations

Dealers and municipal advisors are sometimes asked by issuers or their officials to make donations to charitable organizations. As stated in a [1994 FAQ on MSRB Rule G-37](#), such donations are not “political contributions” under [Rule G-37](#). However, such donations may trigger obligations or prohibitions under other rules.

[MSRB Rule G-17](#) requires dealers acting as underwriters in a negotiated underwriting to disclose actual or potential material conflicts of interest with respect to the issuance. It would be a violation of Rule G-17 for an underwriter to compensate any undisclosed third party in order to secure municipal securities business. If an underwriter makes a

charitable donation for these purposes, the underwriter must disclose the donation to the issuer as a conflict of interest.

[MSRB Rule G-42](#) generally prohibits municipal advisors from making payments for the purpose of obtaining or retaining an engagement. If a municipal advisor makes a charitable donation for these purposes, it would violate Rule G-42.

Finally, subject to exceptions, [MSRB Rule G-20](#) prohibits any regulated entity or its associated persons from directly or indirectly giving any thing or service of value in excess of \$100 to a person if such payments or services are in relation to the municipal securities or municipal advisory activities of the recipient's employer. Where a regulated entity makes a directed donation to a charity that is closely aligned with the third party requesting the donation, it may be deemed an indirect gift or gratuity under Rule G-20. If that person is an official of an issuer and the donation is in excess of \$100, the regulated entity may be in violation of Rule G-20.

Compliance FAQs

Get answers to commonly asked questions about compliance with MSRB rules.

Q: Where can I learn about the grounds for exemptive relief from the prohibition on business under MSRB Rule G-37?

A: The MSRB recently added to its website information regarding exemptive relief under [MSRB Rule G-37](#), on political contributions and prohibitions on municipal securities business and municipal advisory business. The information includes an overview of the grounds that may warrant an exemption from the ban on business and a complete list of summaries of certain decisions issued since 1996 in response to applications for an exemption. Find this information in the [Compliance Center on MSRB.org](#) and on the [Compliance Resources tab of Rule G-37](#).

Have a compliance question? Send your inquiry to the MSRB at compliance@msrb.org.

Compliance question?
Email the MSRB

Compliance Tip



Subscribe to receive a weekly compliance tip, like the below example, directly to your inbox.

Underwriters are required to honor their commitments to the issuer with respect to priority provisions in a negotiated primary offering of municipal securities. [MSRB Rule G-11](#) and related guidance issued in [2010](#) and [2012](#) address this obligation of underwriters, which applies equally to a sole underwriter, a syndicate manager or a syndicate member. While an underwriter must balance a number of competing interests in allocating securities in a primary offering and be able to quickly determine when it is appropriate to allocate away from the priority provisions, the underwriter must accept, give priority to or allocate orders

in conformance with the priority provisions, if any, specified by the issuer. It would be inconsistent with the principles of fair dealing for an underwriter, absent the issuer's consent, to allocate securities in a manner that was inconsistent with the priority provisions specified by the issuer.

Compliance Calendar

Dealers and municipal advisors should note the following key compliance dates and deadlines relevant through the third quarter of calendar year 2018.

June 14, 2018: New Requirements on CUSIP Numbers

Effective (MA/BD)

Amended Rule G-34, on CUSIP numbers, reflects the MSRB's long-standing interpretation that municipal securities dealers acting as placement agents in private placements of municipal securities, including direct purchase transactions, must obtain a CUSIP number. In addition, the amendments extend to non-dealer municipal advisors the requirement that a municipal advisor obtain a CUSIP number when advising on a competitive transaction in municipal securities. The amended rule is effective June 14, 2018. View the MSRB notice.

June 30, 2018: New Form G-45 Submission Requirements for 529 Plans/ABLE

Programs (BD)

Amended requirements for data reporting take effect for underwriters of programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) and to underwriters of 529 savings plans. Under amended Form G-45, the MSRB will collect data about the transactional fees primarily assessed by ABLE programs and about any variance in the account maintenance fee due to the residency of the account owner. Access an updated manual and specifications document for submitting Form G-45 that reflects the amendments.

July 16, 2018: Submit Comments on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Draft Amendments (BD)

Share your input regarding the MSRB's draft proposal to re-establish a standalone rule governing the handling of transactions in discretionary accounts—those customer accounts in which a dealer is authorized to determine what municipal securities will be purchased or sold. Read the request for comment and submit your response by Monday, July 16, 2018.

July 31, 2018: Quarterly Political Contribution Disclosures (MA/BD)

All dealers and municipal advisors must submit disclosures to the MSRB, on a quarterly basis, regarding political contributions under MSRB Rule G-37. The quarterly disclosures must be submitted through Form G-37 by January 31, April 30, July 31 and October 31 of each year. See MSRB Rule G-37.

August 6, 2018: Submit Comments on Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (MA/BD)

Share your input regarding the MSRB's existing interpretive guidance that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The 2012 guidance established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. Read the request for comment and submit your response by Monday, August 6, 2018.

August 29, 2018: Form G-45 Submission Deadline for Period Ending June 30, 2018 (BD)

Underwriters of 529 savings plans or ABLE programs must make certain submissions to the MSRB by August 29, 2018 for the period ending June 30, 2018. **Please note, this is the first submission deadline for ABLE program reporting.** Submissions must be made through Form G-45, which was recently amended to collect data about the transactional fees primarily assessed by ABLE programs and about any variance in the account maintenance fee due to the residency of the account owner. Refer to the manual and specifications document for submitting Form G-45.

Upcoming Events

To submit questions in advance of any workshop or to suggest topics for future workshops, email MSRBEvents@msrb.org.

**Compliance Workshop on MSRB Rule G-17: Making Disclosures to Issuers (MA/BD)
June 22, 2018, 12:30 p.m. – 1:30 p.m. ET**

[Register to attend](#) this free, virtual compliance workshop. MSRB staff will conduct an in-depth discussion about guidance establishing underwriters' obligations to make disclosures to issuers under MSRB Rule G-17 on fair dealing. The workshop will follow a question-and-answer format based on questions and suggestions from regulated entities and other stakeholders.

**Compliance Workshop on MSRB Rule G-37: Completing Form G-37 (MA/BD)
September 14, 2018, 12:30 – 1:30 p.m. ET**

[Register to attend](#) this free, virtual compliance workshop. MSRB staff will conduct an in-depth discussion about key provisions of [MSRB Rule G-37](#) on Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business related to Form G-37. The workshop will follow a question-and-answer format based on questions and suggestions from regulated entities and other stakeholders.

Enforcement Insight

This periodic feature summarizes a recent enforcement matter brought by an examining authority, which includes the Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA) or applicable bank regulator, relevant to the municipal securities market. Enforcement matters can, when applicable, inform firms and help identify potential compliance risks. [Read about the MSRB's regulatory coordination and enforcement support.](#)

Municipal Advisors' Fiduciary Duty: In May 2018, a municipal advisor firm and its sole associated person, Mario Hinojosa, consented to an SEC administrative proceeding to settle claims stemming from conduct related to three bond offerings between January 2013 and December 2014. Mr. Hinojosa established a municipal advisor firm and represented that the firm had municipal finance experience in multiple municipal bond issuances and Mr. Hinojosa had four years of municipal finance experience, but failed to disclose that such experience was limited to administrative and paralegal services to bond counsel for municipal bond issuances.

The SEC alleged that this conduct violated Section 15B(a)(5) of the Securities Exchange Act of 1934, which prohibits any fraudulent, deceptive, or manipulative act or practice while providing advice to a municipal entity with respect to municipal financial products or the issuance of municipal securities. In addition, the SEC alleged that the firm and Mr. Hinojosa each willfully breached its fiduciary duty under the federal securities laws and failed to deal fairly in violation of MSRB Rule G-17. The sanctions imposed by the SEC against the firm and Mr. Hinojosa included disgorgement and civil penalties totaling more than \$562,120 and a bar against Mr. Hinojosa from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating agency. [Read more.](#)

Compliance Toolbox

The MSRB supports regulatory compliance by providing interpretive guidance, checklists, sample templates and other resources about municipal market regulations. [Learn more about the types of available compliance information.](#) The latest resources are listed below and available in the MSRB's online Compliance Center.

- **Guidance: New and Updated FAQs on Confirmation Disclosure and Prevailing Market Price (BD)**

The MSRB provided new and updated interpretive guidance on MSRB rules related

to confirmation disclosure and prevailing market price, which went into effect on May 14, 2018. To facilitate compliance with the new requirements, in July 2017, the MSRB published guidance in the form of answers to frequently asked questions (FAQs). The updated FAQs address new questions and clarify existing FAQs. [Read the FAQs.](#)

- **Informational Notice: Investor Education Resources on New Mark-Up Disclosure Requirements (BD)**

The MSRB provided new and updated investor education resources to support investor awareness and understanding of information about mark-up and mark-down disclosure. Municipal securities dealers, particularly retail broker networks, that work with individual investors may find the documents helpful as they adapt to the new disclosure standard.

- **Compliance Resource: Municipal Advisor Outsourcing of Compliance Functions (MA)**

This resource is designed to enhance understanding of provisions related to outsourcing compliance tasks, including the role of Chief Compliance Officer (CCO) under MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors.

- **Compliance Resource: Written Supervisory Procedures for Municipal Advisors (MA)**

This document is designed to assist municipal advisors in establishing and maintaining written compliance policies and written supervisory procedures (WSPs), under MSRB Rule G-44. The template illustrates one possible format for developing WSPs, and the checklist can be used as an aid in assessing whether WSPs address the applicable rules.

- **Issue Brief: Regulatory Framework for Municipal Market Derivatives (MA/BD)**

Read about the regulatory framework for swaps and other derivatives under the Dodd-Frank Act, and where that framework intersects with the MSRB's regulatory framework for municipal advisors.

- **RTRS Resources: Updated Manuals, Specification Documents and Tutorial Videos for Real-Time Transaction Reporting System (RTRS) (BD)**

At the end of May, the MSRB launched enhancements to RTRS, including the Data Subscription Service and the RTRS Web interface. RTRS users can access updated tutorial videos, user manuals and specification documents on msrb.org.

Coming Soon

Compliance Resources:

- [FAQs on MSRB Rule G-42 and the Making of Recommendations \(MA\)](#)

- Compliance Resource: Summary of Questions and Answers from Compliance Workshop on Supervision for Small Municipal Advisors (MA)
- Guidance: New MSRB Rule G-40 on Advertising by Municipal Advisors (MA)
- Compliance Resource: Mergers and Acquisitions by MSRB-Registered Firms (MA/BD)

Professional Qualification:

- Content Outline for the Municipal Advisor Principal Qualification Examination (Series 54) (MA)

Regulatory Roundup

Keep up with current requests for comment, updated regulatory requirements and upcoming rule filings, and learn about opportunities to provide input at various stages of the MSRB's rulemaking process.

June 5, 2018: Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

May 16, 2018: Request for Comment on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Draft Amendments

May 10, 2018: Federal Register Notice of Approval for Proposed Rule Change Consisting of Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors

May 10, 2018: SEC Approval Order for Proposed Rule Change to Revise the Language of Certain Administrative Rules to Continue to Help Ensure that They Reflect MSRB Practices and Improve Consistency Among the Rules

April 30, 2018: MSRB Response to Comments during SEC Comment period for Proposed Rule Change Consisting of Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors

April 18, 2018: Federal Register Notice of Approval for Proposed Changes to the MSRB's Facility for the Real-Time Transaction Reporting System