

# Securities Compliance (SC)

## **Municipal Securities Rulemaking Board Rules**

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## Introduction

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The Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Municipal Securities Rulemaking Board Rules," provides guidance to bank examiners for evaluating compliance with the Municipal Securities Rulemaking Board (MSRB) rules. MSRB rules govern municipal securities dealers and municipal advisors and their activities. These activities include underwriting, financial advising, dealing in, and trading with or on behalf of customers. Throughout this booklet, national banks and federal savings associations (FSA) are referred to collectively as banks, except when it is necessary to distinguish between the two. (Updated January 31, 2018)

The Securities Acts Amendments of 1975 created the MSRB, a separate, self-regulatory body, to formulate working rules for the regulation of the municipal securities industry. The OCC is statutorily required to enforce those rules as they apply to banks.

MSRB Rule G-16, "Periodic Compliance Examination," requires that bank municipal securities dealers be examined every two calendar years for compliance with applicable MSRB rules. The examination procedures contained in this booklet highlight significant aspects of the MSRB's rules. It is important to note that when conducting an MSRB compliance examination with these procedures, examiners must also refer to the MSRB's comprehensive set of rules and interpretations for additional information and guidance. This information can be found at the MSRB's website, [www.msrb.org](http://www.msrb.org).

An overview of the risks associated with municipal securities trading activities (e.g., price risk, credit risk, and liquidity risk) is included in the to-be-issued *Comptroller's Handbook* booklet "Financial Derivatives and Trading Activities." In addition, the *Comptroller's Handbook* booklet "Government Securities Act" provides supervisory guidance related to banks that operate as government securities dealers or engage in repurchase transactions that involve government securities. (Updated January 31, 2018)

## Legal Framework

The authority under which banks may invest in, sell, or otherwise deal in municipal securities is found in 12 USC 24 (Seventh) for national banks and 12 USC 1464(c) for FSAs. For national banks, 12 USC 24 (Seventh) provides that the statute's restrictions and limitations on national banks' securities activities do not apply to a national bank dealing in, underwriting, or purchasing for the bank's own account the general obligations of a state or political subdivision. The OCC issued 12 CFR 1 under the authority of 12 USC 24 (Seventh) and has defined various terms, including "general obligation of a state or political subdivision" and "municipal bonds." "General obligation of a state or political subdivision" means (1) an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation; or (2) an obligation payable from a special fund or by an obligor not possessing general powers of taxation, when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on

the obligation. “Municipal bond” means an obligation of a state or political subdivision other than a general obligation. This includes limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986 and are issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of one or more states, or any public agency or authority of any state or political subdivision of a state.

12 CFR 1 categorizes permissible securities into five types and provides the standards applicable to a national bank’s ability to deal in, underwrite, purchase, and sell each type. Categories one through three contain information specific to municipal securities.

- Type I securities include municipal government general obligations and, for well-capitalized banks, municipal bonds. A national bank may deal in, underwrite, purchase, and sell Type I securities for the bank’s own account without any percentage limit.
- Type II securities include obligations that may be issued by a state, political subdivision, or state agency for specialized purposes as set forth in 12 CFR 1. A national bank may deal in, underwrite, purchase, and sell Type II securities provided that the aggregate par value of Type II securities issued by any one obligor and held by the bank does not exceed 10 percent of the bank’s capital and surplus.
- Type III securities include municipal bonds that do not satisfy the definition of Type I or Type II securities. A national bank may purchase and sell Type III securities if the aggregate par value of Type III securities issued by any one obligor and held by the bank does not exceed 10 percent of the bank’s capital and surplus. National banks are prohibited from underwriting and dealing in Type III securities.

The Home Owners’ Loan Act of 1933 (HOLA) and OCC regulation 12 CFR 160 provide the authority for FSAs to invest in, purchase, sell, or otherwise deal in specified investments. Section 5(c) of HOLA (codified in 12 USC 1464(c)) sets forth broad and specific investment powers of FSAs, as well as limitations and restrictions on such powers. HOLA, however, did not define permissible investments in the same manner as 12 USC 24 (Seventh) did for national banks. Certain investments set forth in section 5(c) are not subject to a percentage of assets limitation, including investments in obligations issued by any state or political subdivision (including any agency, corporation, or instrumentality of a state or political subdivision). An FSA, however, is subject to a per-issuer limit of 10 percent of the FSA’s total capital on nongeneral obligation bonds (e.g., revenue bonds). Each type of investment listed in 12 USC 1464(c) is subject to the capital limits set forth for that investment in 12 CFR 160.30 and to other applicable standards as set forth in 12 CFR 160.

Banks that underwrite, trade, and sell municipal securities also are subject to requirements under the federal securities laws. In 1975, Congress enacted the Securities Acts Amendments, which amended the Securities Exchange Act of 1934 (Exchange Act). The 1975 amendments to the Exchange Act created the MSRB and put in place a new regulatory scheme governing municipal securities dealers. The definition of “municipal security dealer” includes a bank or a “separately identifiable department or division of a bank.” All banks dealing in municipal securities must register as municipal securities dealers with the U.S. Securities and Exchange Commission (SEC), MSRB, and the OCC and must comply with

applicable SEC, OCC, and MSRB rules. (For information on the registration process, see the “Regulatory Oversight” section of this booklet.) For bank municipal securities dealers, the SEC and the appropriate bank regulatory agency have enforcement jurisdiction. Banks’ transactions in municipal securities are also subject to the antifraud provisions of section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, as well as section 17(a) of the Securities Act of 1933. Banks may also be subject to registration as “municipal advisors” under section 975 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank), which amended section 15B(a) of the Exchange Act to make it unlawful for municipal advisors to provide certain advice to or to solicit municipal entities or certain other persons without registering with the SEC.

## What Are ‘Dealers’ and ‘Municipal Securities Dealers’ Under the Federal Securities Laws?

Section 3(a)(5) of the Exchange Act generally defines a dealer as “any person engaged in the business of buying and selling securities for such person’s own account, through a broker or otherwise.” The definition provides, however, that a bank engaging in buying and selling municipal securities is not considered a dealer under the general definition because municipal securities are exempted securities.

Section 3(a)(30) of the Exchange Act defines a municipal securities dealer as “any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his (or her) own account, through a broker or otherwise.” The term “municipal securities dealer” does not include

- any person insofar as he (or she) buys or sells such securities for his (or her) own account, either individually or in some fiduciary capacity, but not as a part of a regular business.
- a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise; provided, however, that if the bank is engaged in such business through a separately identifiable department or division, the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

On November 7, 2007, the SEC’s Division of Trading and Markets issued the “Staff Compliance Guide to Banks on Dealer Statutory Exceptions and Rules” (Staff Compliance Guide). According to the Staff Compliance Guide, typical dealer functions include

- providing two-sided quotations or otherwise indicating an ongoing willingness to buy and sell particular securities.
- issuing or originating securities that the person also buys and sells.

The Staff Compliance Guide further states that the following questions can help determine whether a particular bank is acting as a dealer:

- Does the bank hold itself out as being in the business of buying and selling securities?

- Does the bank engage in transactions with the public?
- Does the bank make a market in, or quote prices for both purchases and sales of, one or more securities?
- Does the bank participate as principal in a “selling group” or otherwise underwrite securities?
- Does the bank hold a dealer inventory or trade with an affiliate that is a dealer?

A “yes” answer to any of these questions indicates that the bank may be a dealer under the federal securities laws. Examiners requiring legal guidance on what constitutes a potential dealer activity should contact the OCC’s Securities & Corporate Practices Division.

## De Minimis Exception

SEC Exchange Act Rule 3a5-1 exempts a bank from dealer registration if the bank engages in or effects no more than 500 riskless principal transactions during a calendar year. This exemption must be read together with section 3(a)(4)(B)(xi) of the Exchange Act, which provides an exemption from registration as a broker if a bank effects no more than 500 securities transactions in a given calendar year (that do not meet any of the additional exceptions to broker registration laid out in section 3(a)(4)(B)). Under Rule 3a5-1, the exemption from registration as a dealer only applies if the riskless principal transactions allowed under Rule 3a5-1 and the securities brokerage transactions allowed under section 3(a)(4)(B)(xi) number no more than 500 in a calendar year when combined.<sup>1</sup> If the bank relies on the de minimis exception it must maintain adequate records to demonstrate compliance with the requirements of the exception.

## General Types of Trading Activities

Banks may be involved in three general types of trading activities:

- The bank buys or sells securities on behalf of a customer. These are agency transactions in which the agent (bank) assumes no substantial risk and is compensated by a prearranged commission or fee.
- As a dealer, the bank buys and sells securities for its own account. These are termed principal transactions because the bank is acting as a principal, buying or selling securities through its own inventory and absorbing whatever market gain or loss is made on the transaction.
- The bank executes a contemporaneous, “riskless” principal trade. The bank typically buys and sells the securities as a principal, with the purchase and sale originating almost simultaneously. Exposure to market risks is limited by the brief period of actual ownership. For a bank dealer, for example, any resulting profits are generated from the dealer-initiated markup, which is the difference between the purchase and sale prices.

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<sup>1</sup> See “Staff Compliance Guide to Banks on Dealer Statutory Exceptions and Rules,” SEC Division of Trading and Markets (November 7, 2007).

Trading in municipal securities takes place in an over-the-counter (OTC) secondary market. The OTC market is characterized by a system of broker-dealer market making and inter-dealer transactions rather than the auction market system common on the securities exchanges. Almost all municipal securities are traded in the OTC market. Prices for most municipal securities are quoted on a yield-to-maturity basis and can be converted to a dollar price. Daily pricing information is available through the MSRB's Electronic Municipal Market Access (EMMA) system, which is available online.

## Regulatory Oversight

The Securities Acts Amendments of 1975 created the MSRB to protect investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. To fulfill this mission, the MSRB regulates the municipal securities firms, banks, and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its EMMA Web site, the official repository for information on all municipal bonds. The MSRB is governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is subject to SEC oversight.

The MSRB's rules are enforced by the Financial Industry Regulatory Authority (FINRA) for securities firms, by bank regulatory agencies (the Board of Governors of the Federal Reserve System, the OCC, and the Federal Deposit Insurance Corporation) for banks registered as municipal securities dealers, and by the SEC for municipal advisors that are not FINRA members. An important aspect of the MSRB's rulemaking activities involves the ongoing interpretation of its rules, which are communicated via interpretive letters and notices.

The MSRB's rules are discussed below. For a comprehensive discussion of each rule, see [www.msrb.org](http://www.msrb.org).

## Separately Identifiable Department

A bank or, at its option, a separately identifiable department engaged in the business of buying and selling municipal securities must register with the SEC, MSRB, and the OCC as a municipal securities dealer. MSRB Rule G-1, "Separately Identifiable Department or Division of a Bank," defines a "separately identifiable department or division of a bank" involved in municipal securities dealing as a unit that is under the direct supervision of officers designated by the bank's board of directors and is responsible for municipal securities dealer activities, maintains separate or separately extractable records, and performs any of the following:

- Underwrites, trades, or sells municipal securities.
- Offers financial advisory and consultant services for issuers in connection with the issuance of municipal securities.
- Provides processing and clearing services for municipal securities.
- Offers research and investment advice on municipal securities.

- Communicates in other ways with public investors in municipal securities.
- Maintains records of the activities described above.

## Municipal Securities Dealer Registration

A bank that acts as a municipal securities dealer, and an associated person who acts as a municipal securities principal or representative, must file certain forms with the SEC, the MSRB, and the OCC.<sup>2</sup> (Updated January 31, 2018)

Form MSD, “Application for Registration as a Municipal Securities Dealer,” is used by a bank to apply for registration as a municipal securities dealer with the SEC pursuant to section 15B of the Exchange Act. Form MSD must be filed with the SEC. An original signed copy of Form MSD must also be filed with the OCC’s Market Risk Division. Effective May 12, 2014, banks are also required to apply for registration as municipal securities dealers with the MSRB by completing Form A-12.<sup>3</sup>

Form MSDW, “Notice of Withdrawal From Registration as a Municipal Securities Dealer,” is used by a bank that is no longer engaged in municipal securities dealer activities to withdraw from registration with the SEC as a municipal securities dealer pursuant to section 15B of the Exchange Act. Form MSDW must be filed with the SEC. An original signed copy of the form must also be filed with the OCC’s Market Risk Division. Effective May 12, 2014, a bank that ceases to be engaged in municipal securities dealer activities must also submit an updated Form A-12 to the MSRB.

## Professional Qualification Standards

MSRB rules impose standards that prohibit transactions in municipal securities unless the dealer and all associated persons are properly qualified. MSRB Rules G-2 through G-7 govern the qualification, classification, disqualification, disciplinary actions, and related professional requirements for municipal securities dealers. Additional detail on these rules is provided below. (Updated January 31, 2018)

Municipal securities dealers must obtain information on the identity, education, past employment, and disciplinary history of all associated persons. When a person becomes associated with a municipal securities dealer, the dealer must verify that information by contacting each employer the person had during the preceding three years. 12 CFR 10.2 requires that bank municipal securities dealers submit to the OCC on Form MSD-4 certain information on municipal securities principals or representatives before the association. If any such information becomes materially inaccurate or incomplete, the applicant must furnish the correct or missing information to the bank and the OCC. Within 30 days after an association ceases, bank management must prepare Form MSD-5 explaining the reason for

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<sup>2</sup> The forms—MSD, MSDW, MSD-4, and MSD-5—are available at [www.occ.gov](http://www.occ.gov).

<sup>3</sup> See MSRB Regulatory Notice 2014-05, “SEC Approves New Consolidated Registration Rule and Registration Form for Dealers and Municipal Advisors.”

the termination and file the form with OCC. Examiners may obtain a current list of the bank's municipal securities registered principals and representatives from the OCC's Market Risk Division.

A municipal securities representative is a person engaged in municipal securities dealer activity in other than a supervisory or clerical capacity. A municipal securities representative achieves qualification by taking and passing the Series 52 Municipal Securities Representative Examination. Generally, all municipal securities principals and representatives are required to pass the Series 52 examination, but there are exceptions based on prior qualification or experience in a field closely related to the municipal securities business. A municipal securities representative also is required to satisfy the continuing education requirements mandated by MSRB rules.

Persons who passed the Series 7 General Securities Representative Examination before November 7, 2011, and have continuously been registered in such capacity qualify as municipal securities representatives. Those persons taking and passing the Series 7 examination after November 7, 2011, qualify as municipal securities sales limited representatives and are limited to sales activities only.

A bank with 10 or fewer people in its municipal securities dealer operations must have at least one municipal securities principal, an individual engaged in the management, direction, and supervision of municipal securities activities and in the training of municipal securities personnel. Each office of municipal supervisory jurisdiction (OMSJ) must have one or more designated principals, along with principals in each municipal branch office, with authority to carry out supervisory responsibilities with respect to municipal securities. A municipal securities principal becomes qualified by taking and passing the Series 53 Municipal Securities Principal Examination. A municipal securities principal also is required to satisfy the continuing education requirements mandated by MSRB rules.

A qualified person who ceases his or her association with a municipal securities broker or dealer for two or more years must take and pass an appropriate examination before again effecting transactions in municipal securities. A person entering the municipal securities business must serve a 90-day apprenticeship before transacting such business with the public.

Every bank or bank department registered as a municipal securities dealer must maintain a record identifying each associated person, the type of functions he or she performs, and whether he or she was exempt or has taken and passed a qualifying examination.

## Record-Keeping Rules

MSRB Rule G-8, "Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers," describes the records to be maintained by each registered municipal securities dealer for all municipal security transactions. The rule requires the following records:

- "Blotters" or other records of original entry containing an itemized daily record of

- all purchases, sales, receipts, and deliveries of municipal securities.
- all receipts and disbursements of cash.
- all other debits and credits pertaining to municipal securities transactions.
- Account records for each customer account and the accounts of each broker, dealer, or municipal securities dealer. The bank dealer's account should reflect
  - all purchases, sales, receipts, and deliveries of municipal securities.
  - all receipts and disbursements of cash.
  - all other debits and credits relating to the account.
- Securities records showing
  - all positions in each municipal security held for the bank's own account or for a customer's account.
  - location of the securities.
  - name or other designation of the account in which each position is carried.
  - any security count differences, with the dates the differences were discovered.
- Subsidiary records consisting of
  - ledgers or other records that reflect municipal securities in transfer.
  - those municipal securities sent to be validated, borrowed, or lent.
  - transactions not completed by settlement date (fails).
- Records of all written or oral options to sell (put options) or repurchase municipal securities in which the bank has a direct or indirect interest or which the bank has granted or guaranteed.
- A memorandum of each agency order and accompanying instructions, terms, or conditions. The record should indicate
  - account for which the order was entered.
  - date and time of the order's receipt.
  - price at which the order was executed.
  - date and time of execution.
  - name and address of the person who entered the order, if other than the name on the account (e.g., if the order was entered pursuant to a power of attorney or on behalf of a corporation or partnership).
  - the terms, conditions, and date and time of cancellation, if a customer cancels an agency order.
- A memorandum of each principal transaction in municipal securities, showing the price, date, and time of execution. In the event such a purchase or sale involves a customer, a record of his or her order should also be maintained, showing
  - date and time of the order's receipt.
  - order's terms and conditions.
  - name or other designation of the account in which the order was entered.
  - name and address of the person who entered the order, if other than the name on the account (e.g., if the order was entered pursuant to a power of attorney or on behalf of a corporation or partnership).
- Records on each syndicate or similar account formed for the purchase of municipal securities.
- A copy for municipal securities of

- all purchase and sale confirmations.
- notices of debits and credits, cash, and other items.
- written statements, disclosures, or notices provided to customers.
- Customer account information, for other than an institutional account, consisting of the following information, to the extent applicable:
  - Records of
    - each customer’s name and address.
    - whether customer is of legal age.
    - customer’s tax identification or Social Security number.
    - customer’s occupation.
    - name and address of customer’s employer.
  - Customer information required by Rule G-19.
  - Name and address of any beneficial owners of the account, if transactions in the account are to be confirmed to those owners.
  - Signature of the municipal securities representative introducing the account and the signature of the municipal securities principal accepting the account.
  - For discretionary accounts, the customer’s written authorization to exercise discretionary power in relation to the account and written approval of the municipal securities principal or municipal securities sales principal for each transaction in the account, including the time and date of approval.
  - Record of whether the customer is employed by another broker, dealer, or municipal securities dealer.
  - Written authorization of, or notice provided to, the customer in connection with SEC Rules 8c-1 and 15c2-1 related to hypothecation.
  - Written authorization from the customer in connection with MSRB Rule G-15.
  - Pre-dispute arbitration agreements with customers in accordance with MSRB Rule G-8(xi)(M).
- Records of all written customer complaints and notations of the bank’s actions concerning those grievances.
- Records concerning disclosures in connection with primary offerings pursuant to Rules G-11 and G-32.
- Record of all designations of persons responsible for the maintenance and preservation of books and records as required by Rule G-27(b)(ii).
- Records concerning delivery of official statements, advance refunding documents, and Forms G-36(OS) and G-36(ARD) to the MSRB or its designee pursuant to Rule G-36.
- Records concerning political contributions and prohibitions on municipal securities business pursuant to Rule G-37.
- Records concerning compliance with Rule G-20 on gifts and gratuities.
- Records concerning consultants pursuant to former Rule G-38.
- Records concerning compliance with Rule G-27(c) and (d), having to do with written supervisory procedures and internal inspections.
- Records concerning sign-in logs for in-firm regulatory element continuing education.
- Records concerning compliance with Rule G-34(c) having to do with auction rate securities and Rule G-34(c)(ii) for variable rate demand obligations.

- Records concerning compliance with Rule G-34(a)(ii)(C) on an underwriter’s duty to maintain a record of the time of formal award, the time of first execution, and the time the new issue received trade eligibility status.
- Records of secondary market trading account transactions.
- Broker’s broker records as defined in Rule G-43.

“Complaint” is defined in Rule G-8(a)(xii). MSRB Rule G-10, “Delivery of Investor Brochure,” requires dealers to deliver a copy of the MSRB’s “Information for Municipal Securities Investors” (investor brochure) to a customer promptly upon receipt of the customer’s complaint. For a copy of the MSRB’s current investor brochure, see [www.msrb.org](http://www.msrb.org).

Rule G-8 does not require municipal securities dealers to maintain records in a specific manner. Required information may be set forth on a single record or a group of secondary records, provided that it is clearly and accurately reflected and is sufficient for audit or examination purposes. MSRB Rule G-9, “Preservation of Records,” lists various time frames for preservation of required municipal security records. Records must be maintained in an easily accessible place for at least two years and thereafter be available to OCC examiners within a reasonable period of time. They may be retained in any manner provided the bank has adequate facilities for retrieval and for production of readable copies.

## Sales of New Issue Municipal Securities During Underwriting Period

The MSRB defines an underwriter as a broker-dealer that purchases a new issue of municipal securities from the issuer for resale in a primary offering. The municipal securities dealer serving as an underwriter may acquire the securities by negotiation with the issuer or through competitive bidding.

Negotiated underwriting occurs when a new issue of municipal securities is sold by an issuer directly to an underwriter or underwriting syndicate<sup>4</sup> selected by the issuer. A negotiated sale is distinguished from a sale by competitive bid, which requires public bidding by the underwriters. Typically, the primary points of negotiation for an issuer are the issue’s interest rate, call features, and purchase price.

In a competitively bid new issuance, underwriters submit proposals for the purchase of the new issue of municipal securities. The securities are then awarded to the underwriter or underwriting syndicate presenting the best bid according to stipulated criteria set forth in the notice of sale. This type of securities underwriting is also called a public sale.

An underwriter may decide that the size of the security issue calls for the organization of a syndicate or joint account to aid in distribution and share risk exposure. It is important that

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<sup>4</sup> The MSRB defines a syndicate as a group of underwriters formed to purchase a new issue of municipal securities from the issuer and offer it for resale to the general public. The syndicate is organized for the purposes of sharing the risks of underwriting the issue, obtaining sufficient capital to purchase the issue, and broadening the distribution channels of the issue to the investing public. One of the underwriting firms will be designated as the syndicate manager or lead manager to administer the operations of the syndicate.

syndicate members have sufficient financial resources to purchase any undistributed bonds that remain unsold when the syndicate account is terminated.

MSRB Rule G-11, “Primary Offering Practices,” addresses the operation of underwriting syndicates. Every municipal securities dealer submitting an order to a syndicate to purchase securities must disclose whether the order is being submitted for the dealer’s own account or for the account of related municipal securities portfolios (e.g., bank-owned or affiliated bank portfolios or trust portfolios). Every municipal securities dealer submitting a group order (an order for the account of all syndicate members on a pro rata basis according to each member’s interest in the syndicate) must disclose the identity of the person for whom the order is submitted. This section does not apply to a qualified note syndicate as defined in Rule G-11(a)(ix).

Every municipal securities dealer functioning as the senior manager of a syndicate must disclose to the syndicate in writing the following information in accordance with the timeline laid out in Rule G-11(g):

- Identity of each related portfolio for which an order was submitted, including the par amounts and maturities allocated to each portfolio.
- Identity of each person submitting a group order to which securities have been allocated.
- Summary of the allocation of securities to other orders, including any order confirmed at a price other than the original list price that indicates par value and maturity.
- All available information on designations paid to syndicate and non-syndicate members expressed in total dollar amounts.
- Amounts of each portion of the take down directed to each member by the issuer.

Every syndicate must establish the priority of different order types for purchase of syndicate securities, whether the priority can be changed, and, if so, the procedures for doing so. Before offering securities, the syndicate manager must, in writing, communicate to syndicate members

- statement of the issuer’s terms and conditions.
- priority of orders.
- procedures for changing order priority.
- that the manager is permitted to allocate securities on a case-by-case basis.
- whether orders may be confirmed before the end of the period during which orders are being solicited. The syndicate manager must promptly and in writing communicate to members any changes in procedures governing the priority of various types of orders.

At or before final settlement of the syndicate, the senior manager must furnish members with an itemized statement setting forth the nature and amount of expenses incurred for the syndicate. Final settlement must be within 30 days following the manager’s delivery of the securities to members.

## Uniform Practices

MSRB Rule G-12, “Uniform Practice,” establishes uniform industry practices for the processing, clearance, and settlement of transactions in municipal securities between brokers and dealers. The rule does not apply to transactions with customers and provides certain exemptions for registered clearing agencies. Provisions of the rule cover

- uniform settlement dates.
- dealer-to-dealer confirmation procedures and content.
- reporting and resolving unrecognized transactions.
- acceptable methods of delivery and payment.
- use of automated comparison, clearance, and settlement systems related to registered clearing agencies.
- procedures for rejections and reclamations.
- close-out procedures.
- settlement of secondary market trading accounts.
- interest payment claims.

For purposes of this rule, the term “settlement date” means the day used in price and interest computations, which shall also be the day delivery is due unless otherwise agreed to by the parties. The settlement date for cash transactions is the trade date. “Regular way” settlement date is the second business day following the trade date; “when, as, and if issued” (WI) settlement date is a date agreed to by the parties, subject to additional limitations set out in Rule G-12(b)(ii)(C). For all other transactions, the settlement date is the date agreed to by the parties, although brokers and dealers shall not provide for payment and delivery later than the second day after the date of the transactions unless expressly agreed to by the parties. (Updated January 31, 2018)

For transactions that do not occur in a system operated by a registered clearing agency, buying and selling dealers are generally required to exchange confirmations on the trade date. Cash transactions shall be confirmed verbally by phone on the trade date and in writing one business day following the trade date. Initial confirmation of WI transactions occurs one business day after the trade date, and confirmations indicating final settlement dates are required to be sent at least three business days before the settlement date.

Dealer confirmations must include certain minimum information as specified in Rule G-12. The exchange of confirmations is required so they can be compared for discrepancies. If discrepancies are discovered, either by the selling dealer or buying dealer, the rule specifies what steps must be taken to resolve them. If material discrepancies are not resolved, the transaction may be canceled by either party.

A purchasing dealer may reject delivery of securities on a properly confirmed trade if the selling dealer fails to make “good delivery.” The rule defines what constitutes good delivery.

Once delivery is accepted and payment made, a buyer or seller can still reverse the trade by “reclamation,” i.e., the return by the receiving party of securities previously accepted for

delivery, or a demand by the delivering party for the return of delivered securities. Securities may be reclaimed by either party if information is discovered that, if known at the time of delivery, would have prevented good delivery.

Reclamation or rejection of a securities transaction can only be accomplished by written notice and within a certain time period after the transaction.

In addition to reclamation and rejection of a securities transaction, Rule G-12 provides for “close-out” procedures. A close-out can occur when a seller has made good delivery that is rejected by a purchaser, or when a purchaser fails to receive good delivery of a confirmed securities transaction. Certain notice requirements must be met to effect a close-out under Rule G-12.

## Quotations Relating to Municipal Securities

MSRB Rule G-13, “Quotations Relating to Municipal Securities,” applies to all municipal securities quotations disseminated by or on behalf of a municipal securities dealer. For purposes of the rule, “quotation” means any bid for or offer of municipal securities or a request for bids for or offers of municipal securities, including indications of “bid wanted” and “offer wanted.”

The rule prohibits a bank municipal securities dealer from disseminating quotations unless the quotations are “bona fide,” that is, the bank is prepared to buy or sell securities according to stated conditions. The rule does not forbid indications of “bid wanted” or “offer wanted,” nor are nominal quotations given merely as an indication of price and solely for informational purposes, though such quotations must be clearly identified as nominal quotations when given. No bank dealer may issue a quotation unless, in the dealer’s best judgment, it represents the fair market value for the securities.

## Reports of Sales and Purchases

MSRB Rule G-14, “Reports of Sales or Purchases,” requires municipal securities dealers to report to the MSRB information about each purchase and sale transaction effected in municipal securities to the Real-Time Transaction Reporting System (RTRS) in the manner prescribed by Rule G-14. Rule G-14 also forbids brokers, dealers, municipal securities dealers, and associated persons from distributing or publishing reports of purchases or sales unless they know, or have reason to know, that the purchase or sale was actually effected and have no reason to believe it was fictitious or in furtherance of any fraudulent, deceptive, or manipulative purpose.

## Customer Confirmations

Written confirmations must be sent or given to customers at or before completion of a transaction in municipal securities. The timing and content of those confirmations is governed by MSRB Rule G-15, “Confirmation, Clearance, Settlement and Other Uniform

Practice Requirements with Respect to Transactions with Customers.” Customer confirmations must contain the following:

- Transaction information as set forth in Rule G-15(a)(i)(A), including
  - information about the parties to the transaction and their capacities.
  - amount and source of any commission, fee, or other remuneration received or to be received by a municipal securities dealer, or a statement that such remuneration has or will be received and that the source and amount will be furnished upon request.
  - name of the contra-party or a statement that the information will be furnished upon request.
  - trade date and time of execution.
  - par value of the securities.
  - settlement date.
  - yield and dollar price.
  - information breaking down the dollar amounts of the various components of the transaction.
  - delivery information about the securities.
- Securities identification information as set forth in Rule G-15(a)(i)(B), including
  - issuer’s name.
  - any Committee on Uniform Securities Identification Procedures (CUSIP) number.
  - any maturity date.
  - any interest rate.
  - dated date if it affects the price or interest calculation.
- Securities descriptive information as set forth in Rule G-15(a)(i)(C), including
  - information about credit backing.
  - features of the securities, such as their designation as callable or puttable.
  - information on the status of the securities, such as whether they are prefunded, escrowed, or advanced refunded.
  - tax information.
- Disclosure information as set forth in Rule G-15(a)(i)(D).

## Conduct of Municipal Securities and Municipal Advisory Activities

MSRB Rule G-17, “Conduct of Municipal Securities and Municipal Advisory Activities,” requires municipal securities dealers to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. This rule is most often cited in connection with duties owed by dealers to investors; it also applies, however, to dealers’ interactions with other market participants, including municipal entities such as states and political subdivisions of states that issue municipal securities.

## Best Execution

(Updated January 31, 2018)

MSRB Rule G-18, “Best Execution,” requires dealers, in any transaction in a municipal security for or with a customer or a customer of another broker, dealer, or municipal securities dealer, to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a dealer has used “reasonable diligence,” with no single factor being determinative, are the

- character of the market for the security (e.g., price, volatility, and relative liquidity);
- size and type of transaction;
- number of markets checked;
- information reviewed to determine the current market for the subject security or similar securities;
- accessibility of quotations; and
- terms and conditions of the customer’s inquiry or order, including any bids or offers, that result in the transaction, as communicated to the dealer.

In addition, the rule further states that in any transaction for or with a customer or a customer of another dealer, a dealer must not interject a third party between itself and the best market for the subject security in a manner inconsistent with the requirements stated above.

The obligations described above apply to transactions in which the dealer is acting as agent and transactions in which the dealer is acting as principal. These obligations are distinct from the fairness and reasonableness of commissions, markups, or markdowns, which are governed by Rule G-30.

## Suitability of Recommendations and Transactions

MSRB Rule G-19, “Suitability of Recommendations and Transactions; Discretionary Accounts,” requires a municipal securities dealer to have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer, based on the information obtained through the reasonable diligence of the municipal securities dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the municipal securities dealer in connection with a recommended transaction.

MSRB Rule G-19 is composed of three main suitability obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

The reasonable-basis obligation requires a municipal securities dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the municipal security or investment strategy and the municipal securities dealer's familiarity with the municipal security or investment strategy. A municipal securities dealer's reasonable diligence must provide the municipal securities dealer with an understanding of the potential risks and rewards associated with the recommended municipal security or strategy and an understanding of information about the municipal security or strategy, including the information described in MSRB Rule G-47, "Time of Trade Disclosure," to the extent such information is material. The lack of such an understanding when recommending a municipal security or strategy violates the suitability rule.

The customer-specific obligation requires that a municipal securities dealer have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in MSRB Rule G-19.

Quantitative suitability requires a municipal securities dealer who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in MSRB Rule G-19. No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a municipal securities dealer has violated the quantitative suitability obligation.

## Gifts, Gratuities, and Non-Cash Compensation

MSRB Rule G-20, "Gifts, Gratuities and Non-Cash Compensation," is intended to prevent fraud in the municipal securities market by limiting the amounts of gifts from municipal securities dealers. Among other things, Rule G-20 prohibits dealers from giving, directly or indirectly, any thing or service of value, including gratuities, in excess of \$100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer. Occasional gifts (meals, tickets to entertainment, etc.) are permitted provided that such gifts are not so frequent or so extensive as to raise any question of propriety.

## Advertising

MSRB Rule G-21, "Advertising," defines an advertisement as any material (other than listings of offerings) published or designed for use in the public media (including electronic media), or any promotional literature distributed or made generally available to customers or to the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release, or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements, but does pertain to abstracts or summaries of official statements, offering circulars, and other similar documents prepared by

municipal securities brokers or municipal securities dealers. The rule prohibits the bank from publishing or causing to be published any materially false or misleading advertisements concerning municipal securities or the bank's services or skills as a municipal securities dealer.

Product advertisements for new issue municipal securities other than municipal funds have additional requirements regarding pricing or yield as set forth in Rule G-21(d). Advertisements for municipal fund securities are required to have additional information, including disclosures, performance data, and identifying information as set forth in Rule G-21(e). All advertisements must be approved in writing by a municipal securities principal before first use, and each municipal securities dealer shall make and keep current in a separate file records of all such advertisements.

## Control Relationships

MSRB Rule G-22, "Control Relationships," concerns municipal securities transactions in which certain overlapping relationships exist. A control relationship exists when a bank controls, is controlled by, or is under common control with the issuer of a security or a person other than the issuer who is obligated with respect to debt service on the security. For example, if an associated person of the municipal securities dealer is also on the board of a debt-issuing school district, any transaction between the two could be subject to this rule. If such a relationship exists, a written disclosure of the nature of the control relationship must be made before completion of the transaction.

## Financial Advisors

MSRB Rule G-23, "Activities of Financial Advisors," establishes ethical standards and disclosure requirements for municipal securities dealers who act as financial advisors to issuers of municipal securities. A financial advisory relationship exists when a municipal securities dealer renders or enters into an agreement to provide financial advisory or consultant services to an issuer for new issue municipal securities. The financial advisor furnishes the services for a fee or other compensation (including deposits). The services may include advice on the structure, timing, terms, or other aspects of new issue municipal securities. All financial advisory relationships must be documented in a written agreement entered into before, upon, or promptly after the inception of the financial advisory relationship.

In November 2011, the MSRB amended Rule G-23 to prohibit a dealer who serves as financial advisor to an issuer for a particular issue, sold on either a negotiated or competitive bid basis, from switching roles and underwriting the same issue. The amendments to Rule G-23

- prohibit a dealer financial advisor with respect to the issuance of municipal securities from acquiring all or any portion of the issue, directly or indirectly, from the issuer as principal, or acting as agent for the issuer in arranging the placement of the issue, either alone or as a participant in a syndicate or other similar account formed for that purpose.

- apply the same prohibition to any dealer controlling, controlled by, or under common control with the dealer financial advisor.
- prohibit a dealer financial advisor from acting as the remarketing agent for the issue.

## Municipal Advisors

Dodd–Frank expanded the MSRB’s and SEC’s jurisdiction to include the regulation of municipal advisors. Section 975 of Dodd–Frank amended section 15B(a) of the Exchange Act to make it unlawful for municipal advisors to provide certain advice to or to solicit municipal entities or certain other persons without registering with the SEC.

The final rule does not provide a general exemption for banks. The SEC has stated that banks do not have to register to the extent they provide advice on certain identified banking products and services (such as deposit accounts, extensions of credit, sweep accounts, or bond indenture trustee services).<sup>5</sup> This tailored exemption does not apply to banks that provide advice to or on behalf of a municipal entity or obligated person with respect to “municipal financial products” or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or if they undertake a solicitation of a municipal entity or an obligated person. As defined by the Exchange Act, “municipal financial products” are municipal derivatives, guaranteed investment contracts, and “investment strategies.” According to the SEC, a person providing advice with respect to investment strategies only has to register if such advice relates to (1) the investment of proceeds of municipal securities, (2) the investment of municipal escrow funds, or (3) municipal derivatives.

Banks should analyze how the rule applies to their operations.<sup>6</sup> Banks meeting the definition of “municipal advisor” must file Form MA with the SEC and are subject to a fiduciary duty standard regarding any municipal entity they advise under the rule. Regulations related to municipal advisors can be found in SEC Rules 15Ba1-1 through 15Ba1-8. Municipal advisors are also subject to MSRB rules. (Updated January 31, 2018)

## Use of Information and Assets

MSRB Rule G-24, “Use of Ownership Information Obtained in Fiduciary or Agency Capacity,” prohibits the use of confidential, nonpublic information to effect securities transactions or for financial gain. A bank acting in a fiduciary or agency capacity is forbidden from using any such information obtained through this relationship without first obtaining written approval from the affected party. An example of a prohibited source of information would be the bank’s trust division if it serves as a paying agent or transfer agent for an issuer of municipal securities.

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<sup>5</sup> See SEC Release 34-70462 (September 20, 2013), 78 Fed. Reg. 67468 (November 12, 2013). (Updated January 31, 2018)

<sup>6</sup> See OCC Bulletin 2013-36, “Registration of Municipal Advisors: Dodd–Frank Act section 975, SEC Final Rule.”

MSRB Rule G-25, “Improper Use of Assets,” forbids improper use of municipal securities or funds held on behalf of customers. Banks are also prohibited from guaranteeing any customer against loss and from sharing in the profits or losses of municipal securities transactions made on a customer’s behalf.

## Customer Account Transfers

MSRB Rule G-26, “Customer Account Transfers,” establishes procedures for transferring a customer’s municipal securities account from one dealer to another. When the customer gives written notice of the municipal securities transfer, both dealers must expedite and coordinate activities within the time frames specified in the rule.

## Supervision

MSRB Rule G-27, “Supervision,” specifies, in part, that a municipal securities dealer shall supervise the activities of its associated persons and its municipal securities business. At least one municipal securities principal must be designated as responsible for

- enforcing the procedures specified in Rule G-27.
- maintaining and preserving the books and records.
- supervising the activities of municipal securities dealers of each location in which an associated person engages in municipal securities activities.

This rule also requires that the municipal securities dealer establish, maintain, and enforce written supervisory procedures to assure compliance with all of the MSRB rules and applicable provisions of securities laws, rules, and regulations. The written procedures must, at a minimum, provide for

- designation of at least one qualified municipal securities principal as responsible for supervision.
- designated municipal securities principal’s prompt review and written approval of
  - the opening of each municipal securities customer account.
  - each transaction in municipal securities.
  - the handling of all customer complaints.
  - all correspondence pertaining to the solicitation or execution of municipal securities.
  - other matters required by rule to be reviewed or approved by a municipal securities principal.
- prompt review and written approval of each municipal transaction effected for a discretionary account and the regular and frequent examination of customer accounts to detect and prevent irregularities and abuses.
- designated principal’s prompt review of municipal securities representatives’ incoming and outgoing written and electronic correspondence with the public relating to the dealer’s municipal securities activities.

Rule G-27 also requires each dealer to designate one or more principals to establish, maintain, and enforce a system of supervisory control policies and procedures that tests and verifies that the dealer's supervisory procedures are reasonably designed—with respect to the dealer's municipal securities activities, its registered representatives, and its associated persons—to achieve compliance with applicable rules. The supervisory procedures should be added to or amended if testing and verification identify this need.

The designated principal or principals must submit to the dealer's senior management no less than annually a report detailing each dealer's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

## Employee Transactions

MSRB Rule G-28, "Transactions With Employees and Partners of Other Municipal Securities Professionals," requires a municipal securities dealer to take specified actions in connection with municipal securities transactions effected for the accounts of customers who are employed by or are the partner of another municipal securities dealer, or for or on behalf of such a person's spouse or minor child. This rule also requires that a duplicate copy of each transaction confirmation is sent to the customer's employer.

## Availability of Board Rules

MSRB Rule G-29, "Availability of Board Rules," requires that a complete, up-to-date copy of the MSRB rules be maintained in each bank office where dealer activities are performed. Dealers can meet the requirements of Rule G-29 in several ways, including through Internet connections in each office that allow access to the rules at [www.msrb.org](http://www.msrb.org). Dealers can also use printed copies or software that contains the MSRB rules. Regardless of the bank's compliance method, customers at each office must be given access to a copy of the rules upon request.

## Prices and Commissions

MSRB Rule G-30, "Prices and Commissions," requires municipal securities dealers to conduct principal transactions at an aggregate price (including any markup or markdown) that is fair and reasonable. Rule G-30 also requires that, in all agency transactions, the municipal securities dealer make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to the prevailing market conditions. Commission and service charges may not be in excess of a fair and reasonable amount. MSRB Rule G-30 supplementary materials contain guidance on relevant factors to be considered when determining the fairness and reasonableness of prices and commissions.

MSRB Rule G-30 also contains guidance with respect to dealers that operate alternative trading systems. Although the duty under MSRB Rule G-30 to evaluate the prices of certain individual transactions is eliminated under MSRB Rule G-48 when such transactions are effected for sophisticated municipal market professionals, a dealer operating an alternative

trading system must, under the general duty set forth in MSRB Rule G-30, act to investigate any alleged pricing irregularities on its system brought to the dealer's attention.

## Investment Companies

MSRB Rule G-31, "Reciprocal Dealings With Municipal Securities Investment Companies," prohibits a municipal securities dealer from soliciting municipal securities transactions with or for an investment company as compensation for the dealer's sales of shares, units, or participations in the investment company.

## Disclosures in Connection With Primary Offerings

MSRB Rule G-32, "Disclosures in Connection With Primary Offerings," requires a municipal securities dealer to furnish certain information to the customer before sending final written confirmation, including a copy of the official statement. Under certain circumstances, a dealer may be able to fulfill its requirement to provide the official statement by providing notice to the customer on how to obtain the statement on EMMA.

SEC Rule 15c2-12 requires dealers, when underwriting certain types of municipal securities, to ensure that the state or local government issuing the bonds enters into an agreement to provide certain information to the MSRB about the securities on an ongoing basis. Such continuing disclosure agreements for new issues after December 2010 normally require annual financial information and certain event notices, including principal and interest payment delinquencies, nonpayment-related defaults, rating changes, bond calls and tender offers, or substitution of credit or liquidity providers.

In most cases, state or local governments or obligated persons must submit annual disclosures on or before the date specified in the continuing disclosure agreement or provide notice of failure to do so to the MSRB through EMMA. Disclosure on events for new issues after December 2010 must be submitted to EMMA within 10 business days of the event. For additional information on disclosures, see MSRB Notice 2013-18, "MSRB Market Transparency Advisory—Suggested Practices in Submitting of Financial Disclosures to EMMA."

## Calculations and CUSIP Numbers

MSRB Rule G-33, "Calculations," establishes the mathematical calculations to determine accrued interest, dollar price, and yield for interest-bearing securities, and dollar price and return on investment for discounted securities.

MSRB Rule G-34, "CUSIP Numbers, New Issue, and Market Information Requirements," requires that each municipal securities dealer who acquires a new issue security, either as principal or as agent, must apply for and affix to the security a CUSIP number.

## Short-Term Obligation Rate Transparency System

The Short-Term Obligation Rate Transparency (SHORT) System is an MSRB facility for collecting and disseminating information and documents about securities bearing interest at short-term rates, including auction rate securities (ARS) and variable rate demand obligations (VRDO). Submissions may be made by the following classes of submitters:

- ARS program dealer.
- VRDO remarketing agent.
- ARS auction agent.
- Designated agent, who may submit, on behalf of another submitter, whatever class of securities the agent's employer is permitted to submit.

Municipal securities dealers acting in one of the capacities described above are required to submit certain information to the SHORT System, as described in MSRB Rule G-34. Information may include

- interest rate reset date and time.
- interest rate period.
- effective date of interest rate.
- interest rate.
- minimum rate and maximum rate.
- liquidity facility type.
- liquidity facility expiration date.
- identity of liquidity provider.

## Arbitration

MSRB Rule G-35, "Arbitration," specifies that municipal securities dealers are subject to the Code of Arbitration Procedure of the National Association of Securities Dealers (NASD) for every claim, dispute, or controversy arising out of or in connection with the municipal securities dealer's municipal securities activities. The NASD has changed its name to the Financial Industry Regulatory Authority (FINRA), and though Rule G-35 has not been updated to reflect the name change, the NASD's arbitration procedures are still applicable.

## Political Contributions

MSRB Rule G-37, "Political Contributions," establishes certain requirements on municipal securities dealers concerning political contributions. Provisions of the rule

- prohibit municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of a security's issuer.
- require municipal securities dealers to disclose quarterly certain political contributions, as well as other information on Form G-37, to allow public scrutiny of political contributions and the municipal securities dealer's municipal securities business.

## Solicitation of Municipal Securities Business

MSRB Rule G-38, “Solicitation of Municipal Securities Business,” prohibits a municipal securities dealer from providing, or agreeing to provide, directly or indirectly, payment for soliciting municipal securities business on the dealer’s behalf to any person not affiliated with the municipal securities dealer.

## Telemarketing

MSRB Rule G-39, “Telemarketing,” establishes certain requirements on municipal securities dealers concerning telemarketing, including time of day restrictions, firm-specific do not call lists, and national do not call lists. Municipal securities dealers must institute procedures to comply with MSRB Rule G-39 before engaging in telemarketing, and the procedures must include a written policy and the training of personnel engaged in telemarketing.

## Anti-Money Laundering Compliance Program

MSRB Rule G-41, “Anti-Money Laundering Compliance Program,” requires each municipal securities dealer to establish and implement an anti-money laundering (AML) compliance program reasonably designed to achieve and monitor ongoing compliance with the requirements of the Bank Secrecy Act (BSA), 31 USC 5311, et seq, and the regulations thereunder. An OCC-supervised municipal securities dealer that establishes and implements an AML compliance program that is in compliance with the rules, regulations, or requirements governing the establishment and maintenance of AML programs prescribed by the OCC is deemed to be in compliance with section 5318(h)(1) of the BSA and the regulations promulgated thereunder for purposes of this rule.

## Broker’s Brokers

MSRB Rule G-43, “Broker’s Brokers,” requires each dealer acting as a broker’s broker with respect to the execution of a transaction in municipal securities for or on behalf of another dealer to make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. For the purposes of this rule, a broker’s broker means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker’s broker. A broker’s broker may be a separate company or part of a larger company.

## Time of Trade Disclosure

MSRB Rule G-47, “Time of Trade Disclosure,” prohibits a municipal securities dealer from selling a municipal security to a customer, or purchasing a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, at or before the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market.

## Transactions With Sophisticated Municipal Market Professionals

(Section updated January 31, 2018)

MSRB Rule G-48, “Transactions With Sophisticated Municipal Market Professionals,” provides that a municipal securities dealer shall not have any obligations with respect to the best execution obligation under Rule G-18, time-of-trade disclosure obligation in Rule G-47 or the obligation under Rule G-19 to perform a customer-specific suitability analysis to a customer that it reasonably concludes is a sophisticated municipal market professional (SMMP). In addition, a municipal securities dealer shall not have any obligation to an SMMP under Rule G-30(b)(i) to take action to ensure that transactions meeting all of the following conditions are effected at fair and reasonable prices:

- Transactions are nonrecommended secondary market agency transactions.
- The municipal securities dealer’s services with respect to the transactions have been explicitly limited to providing anonymity, communication, order matching, or clearance functions.
- The municipal securities dealer does not exercise discretion as to how or when the transactions are executed.

The MSRB defines an SMMP in Rule D-15 as

- a customer of a municipal securities dealer that is a bank, savings and loan association, insurance company, or registered investment company.
- an investment adviser registered with the SEC under section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions).
- any other person or entity with total assets of at least \$50 million.

Additionally, the municipal securities dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities.

MSRB Rule D-15 also requires that an SMMP customer must affirmatively indicate that it

- is exercising independent judgment in evaluating
  - the recommendations of the dealer;
  - the quality of execution of the customer’s transactions by the dealer; and
  - the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer’s services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and
- has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

The customer affirmation may be given either orally or in writing and may be given on a trade-by-trade basis, a type-of-transaction basis, a type-of-municipal-security basis (e.g., general obligation, revenue, variable rate), or an account-wide basis.

## Third-Party Relationships

The OCC's expectations for assessing and managing risks associated with third-party relationships are outlined in OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance." A third-party relationship is any business arrangement between a bank and another entity, by contract or otherwise. Third-party relationships include activities that involve outsourced products and services, the use of independent consultants, networking arrangements, and services provided by affiliates and subsidiaries. The OCC expects each bank to have risk management processes that are commensurate with the level of risk and complexity of its third-party relationships and the bank's organizational structures. An effective third-party risk management process follows a continuous life cycle for all relationships and incorporates planning, due diligence in selecting third parties, contract negotiation, ongoing monitoring, and termination. Throughout the life cycle of the third-party relationship, the bank should review each of the following areas as part of its risk management process:

- **Oversight and accountability:** Assigning clear roles and responsibilities for managing third-party relationships and integrating the bank's third-party risk management process with its enterprise risk management framework enables continuous oversight and accountability.
- **Documentation and reporting:** Proper documentation and reporting facilitates oversight, accountability, monitoring, and risk management associated with third-party relationships.
- **Independent reviews:** Conducting periodic independent reviews of the risk management process enables management to assess whether the process aligns with the bank's strategy and effectively manages risk posed by third-party relationships.

## Compensation

An incentive compensation arrangement can be useful in successfully managing a bank, but such arrangements can prompt executives and employees to take imprudent risks that are not conducive to the bank's long-term health. If a bank offers incentive compensation programs, the programs should be consistent with OCC Bulletin 2010-24, "Interagency Guidance on Sound Incentive Compensation Policies." To be consistent with safety and soundness, the bank's incentive compensation arrangements should comply with the following key principles:

- Provide employees incentives that appropriately balance risk and reward.
- Be compatible with effective controls and risk management.
- Be supported by strong corporate governance, including active and effective oversight by the organization's board of directors.

The OCC expects banks to regularly review their incentive compensation arrangements for all executive and nonexecutive employees who, either individually or as part of a group, could expose the organization to material amounts of risk.<sup>7</sup> The OCC also expects banks to regularly review the risk management, control, and corporate governance processes related to these arrangements. Banks should immediately address any identified deficiencies in these arrangements and any processes that are inconsistent with safety and soundness. (Updated January 31, 2018)

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<sup>7</sup> See 12 CFR 30, appendix A, section III. (Updated January 31, 2018)

# Examination Procedures

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MSRB Rule G-16, “Periodic Compliance Examination,” requires that bank municipal securities dealers be examined every two calendar years for compliance with applicable MSRB rules. The examination procedures contained in this booklet highlight significant aspects of the MSRB’s rules. To facilitate the examination process, related rules are grouped by functional areas. It is important to note that when conducting an MSRB compliance examination with these procedures, examiners must also refer to the MSRB’s comprehensive set of rules and interpretations for additional information and guidance. This information can be found at [www.msrb.org](http://www.msrb.org). A “no” answer to any procedure indicates a possible exception or deficiency that should be addressed by management. Depending on the facts and circumstances, a violation of MSRB rules may be cited.

Note on sampling: In determining the size of an underwriting or customer investment account sample, examiners should consider the quantity, quality, and nature of the population to be reviewed; the bank’s risk management systems; the bank’s appetite for risk; the purpose and objective of the sample; and resource constraints. For additional information on sampling, see the *Comptroller’s Handbook* booklet “Sampling Methodologies.”

## Scope

These procedures are designed to help examiners tailor the examination to each bank and determine the scope of the municipal securities dealer activities examination. This determination should consider work performed by internal and external auditors and other independent risk control functions. Examiners should coordinate work with examiners responsible for the oversight and examination of the bank’s trading activities. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the following objective. See appendix A for a sample request letter.

**Objective:** To determine the scope of the examination of the bank’s municipal securities dealer activities and identify examination objectives and procedures necessary to meet the needs of the supervisory strategy for the bank.

1. Review the following sources of information and note any previously identified problems related to the bank’s municipal securities dealer activities that require follow-up:
  - Supervisory strategy.
  - Examiner-in-charge’s (EIC) scope memorandum.
  - OCC’s information system.
  - Previous reports of examination (ROE), related supervisory letters and work papers.
  - Internal and external audit reports and work papers.
  - Compliance reports and work papers.
  - Bank management’s responses to previous ROEs, supervisory letters, matters requiring attention (MRA), and audit reports.

- Customer complaints and litigation.
2. Obtain and review policies, procedures, and reports bank management uses to supervise the bank's municipal securities dealer activities, including internal risk assessments.
  3. In discussions with bank management, determine whether there have been any significant changes (for example, in policies, processes, personnel, control systems, products, volumes, markets, or geographies) since the prior examination of the bank's municipal securities dealer activities.
  4. Determine what percentage of the municipal securities business is
    - underwritings and syndications.
    - selling group participations.
    - secondary trading (wholesale and retail).
  5. Obtain transaction data for the prior year to help determine the volume and type of activity conducted by the registered municipal securities dealer. The OCC's Market Risk Division can provide data on the bank's municipal securities transactions.
  6. Based on an analysis of information obtained in the previous steps, as well as input from the EIC, determine the scope and objectives of the bank's municipal securities dealer activities examination.
  7. Select from the following examination procedures the steps necessary to meet examination objectives and the supervisory strategy.

## Functional Areas Procedures

### Supervision

#### MSRB Rule G-27, Supervision

1. Assess the adequacy of the bank's written municipal securities dealer policies to determine whether they provide appropriate guidance for managing the bank's municipal securities dealer activities and are consistent with the bank's mission, values, risk appetite, and principles. Determine whether the bank's policies meet the following supervisory requirements as set forth in Rule G-27:
  - Establishment and maintenance of a supervisory system. If yes, does the system require the designation of one or more qualified principals as responsible for supervising the dealer's municipal securities activities?
  - Designation of each OMSJ and designation of one or more appropriately registered principals in each OMSJ.
  - Assignment of each registered person to an appropriately registered principal.
  - All registered representatives participate in an annual meeting to discuss compliance matters.
  - A designated principal to
    - provide for the prompt review and written approval of the opening of each customer account in which transactions in municipal securities may be effected.
    - review each transaction in municipal securities daily.
    - provide for the periodic review of each office engaging in municipal securities activities.
    - supervise the processing and clearing of municipal securities transactions.
    - review the bank's municipal securities representatives' incoming and outgoing written and electronic correspondence with the public regarding municipal securities activities.
    - review incoming and outgoing correspondence to verify that customer complaints are properly handled.
  - Inspection at least annually of every OMSJ and any branch office that supervises one or more nonbranch locations.
  - Inspection at least every three years of every municipal branch office that does not supervise one or more nonbranch locations.
  - Designated principal to submit to the dealer's senior management at least annually a report detailing the dealer's system of supervisory controls, a summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.
2. Determine whether the dealer department policies are reviewed at least annually by the board or designated committee to determine the policies' adequacy relative to changing conditions.

3. Determine whether the board or board committee ensures, at least annually, that the dealer department is in compliance with the bank's municipal securities dealer policies.
4. Determine whether one or more municipal securities principals are designated as responsible for supervising the activities and business of the dealer and the activities of the dealer's associated persons. If so, note name(s) and area(s) of responsibility.
5. Determine whether one or more municipal securities principals are designated as responsible for the maintenance and preservation of books and records (MSRB Rule G-27) required to be maintained by MSRB Rules G-8 and G-9. If so, note name(s).
6. Determine whether the municipal securities dealer has conducted an annual review of its supervisory systems and written supervisory procedures to verify that the systems and procedures are adequate and up-to-date.
7. Evaluate management's commitment to correcting MRAs cited in ROEs and supervisory letters. If matters have not been corrected, determine why.
8. Determine whether all violations, possible violations, or deficiencies that have been reported to the board or designated committee, either by the audit staff or compliance staff, have been corrected or adequately addressed.
9. Determine whether the dealer department maintains a written customer complaint file. (MSRB Rule G-8(a)(xii))
10. Determine whether customer complaint follow-up memorandums are prepared for, submitted to, and approved by senior managers.
11. Determine whether the dealer department delivers a copy of the MSRB's investor brochure to customers upon receipt of a complaint by the customer, as outlined in MSRB Rule G-10.

## Third-Party Relationships

12. Determine whether the dealer department has contracted with a third party (including affiliates) to perform any dealer-related activity, including, but not limited to, investment research, financial advising, trade processing, or trade reporting.
13. Determine whether the bank's management of the third-party relationships meets the OCC's expectations as outlined in OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance." At a minimum, the bank should review each of the following areas as part of its third-party relationships risk management process:
  - **Oversight and accountability:** Assigning clear roles and responsibilities for managing third-party relationships and integrating the bank's third-party risk

management process with its enterprise risk management framework enables continuous oversight and accountability.

- **Documentation and reporting:** Proper documentation and reporting facilitates oversight, accountability, monitoring, and risk management associated with third-party relationships.
- **Independent reviews:** Conducting periodic independent reviews of the risk management process enables management to assess whether the process aligns with the bank's strategy and effectively manages risk posed by third-party relationships.

## Compensation

14. Determine the type of compensation program established for the bank's municipal securities dealer employees. Determine whether the compensation plan is periodically reviewed by the board or a committee of the board.
15. If municipal securities dealer employees are compensated pursuant to an incentive compensation program, determine whether the program is consistent with the guidelines in OCC Bulletin 2010-24, "Interagency Guidance on Sound Incentive Compensation Policies," including compliance with the guidelines' three key principles:
  - Provide employees with incentives that appropriately balance risk and reward.
  - Be compatible with effective controls and risk management.
  - Be supported by strong corporate governance, including active and effective oversight by the bank's board of directors.

## Compliance Management

Compliance management can be performed by the audit department, the compliance department, or both.

16. Determine whether the bank has an MSRB compliance policy or program.
17. Evaluate whether the policy or program calls for MSRB compliance testing and establishes the following criteria:
  - Frequency.
  - Scope.
  - Timing and method for testing new product compliance.
18. Determine whether a person(s) is responsible for compliance with applicable MSRB rules, laws, and regulations and whether that person
  - is independent.
  - is qualified (based on training and experience) to monitor effectively the assigned areas.

- performs periodic (at least annual) reviews of all municipal securities dealer activities to determine compliance.
19. Determine whether the scope of the MSRB compliance review is sufficient to assess compliance with laws, rules, regulations, and policy restrictions.
  20. Determine whether the person responsible for MSRB compliance prepares a written dealer compliance report and presents it to the board or designated board committee at least annually.

## Registration and Qualification

### **12 CFR 10 and MSRB Rules G-1 Through G-7, Dealer Registration and Standards of Professional Qualification**

21. If the municipal securities dealer is registered as a separately identifiable department or division, review relevant minutes of the board of directors and determine whether an officer or officers have been designated as responsible for the day-to-day conduct of municipal securities dealer activities. (MSRB Rule G-1)
22. Review municipal securities dealer personnel and bank payroll records and determine whether the dealer maintains a current list of all municipal securities principals and representatives and municipal financial professionals, indicating each person's name and category of function performed, and whether he or she has taken and passed the appropriate MSRB qualification examination and, if not, why not. (MSRB Rules G-2 and G-3)
23. Review personnel records and, if the municipal securities dealer has 11 or more employees, determine whether at least two are municipal securities principals. If the dealer has fewer than 11 employees, determine whether at least one is principal. (MSRB Rule G-3)
24. Review selected personnel records and determine whether selected persons have satisfied the regulatory element continuing education requirements. (MSRB Rule G-3)
25. Review selected personnel records and determine whether selected persons have satisfied the firm element continuing education requirements. (MSRB Rule G-3)
26. Determine whether the municipal securities dealer or any of its municipal securities principals or representatives were disqualified under MSRB rules since the last examination. If yes, review commission, production, or sales records for the relevant time period and determine whether any municipal securities transactions were effected by the disqualified person or dealer. (MSRB Rule G-4)

27. Determine whether the municipal securities dealer is subject to any OCC disciplinary action imposed since the last examination. If yes, determine whether the dealer is operating within the remedial conditions imposed by the OCC. (MSRB Rule G-5)
28. Review the municipal securities dealer's records to determine whether the dealer is in compliance with the fidelity bonding requirements outlined in MSRB Rule G-6.
29. Obtain a current list of the bank's municipal securities registered principals and representatives from the OCC's Market Risk Division. Review the report and compare it to the municipal securities dealer's commission, production, or sales records and determine whether a completed Form MSD-4 has been submitted to the OCC for each municipal securities principal or representative. If a municipal securities professional is no longer employed, determine whether a completed Form MSD-5 was submitted to the OCC. (MSRB Rule G-7 and 12 CFR 10)

## Record Keeping

### MSRB Rules G-8 and G-9, Record Keeping

Note: MSRB rules do not specify how municipal securities dealers' books and records are to be maintained provided that the information is clear and accurate and provides an adequate basis for audit.

30. MSRB Rule G-8 describes the records to be maintained by each registered municipal securities dealer for all municipal security transactions. Determine whether the municipal securities dealer maintains the books and records as described in MSRB Rule G-8.
31. Review record retention policies and systems and test a sample of municipal securities transactions to determine compliance with MSRB Rule G-9. Determine whether the municipal securities dealer preserves the following municipal securities records for the required periods of time:
  - Itemized daily record of all purchases and sales, all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits pertaining to municipal securities for six years.
  - Customers' and municipal securities dealer's account ledgers for six years.
  - Customer complaint records for six years.
  - Customer account information relating to the opening and maintenance of accounts for at least six years following the closing of an account.
  - Securities position ledgers for six years.
  - Records of syndicate transactions for six years. (Such records need not be preserved for an account that was unsuccessful in purchasing an issue of municipal securities.)
  - Records of each person designated as responsible for the maintenance and preservation of the municipal securities dealer's records for six years.

32. Determine whether all records are required to be kept in a readily accessible place for at least two years, and thereafter kept in a reasonably accessible place.

## Underwriting

33. Select a sample of municipal securities underwritten by the municipal securities dealer since the prior examination. During sample review, evaluate the municipal securities dealer's compliance with internal underwriting policy guidelines, including due diligence documentation requirements, and committee approvals.

### **MSRB Rule G-8, Record Keeping**

34. MSRB Rule G-8(a)(viii) requires that for each primary offering certain records be maintained by the syndicate manager or, if no syndicate has been formed, by the sole manager. Based on selected accounts, determine whether the municipal securities dealer maintains the records listed in MSRB Rule G-8(a)(viii).

### **MSRB Rule G-11, Primary Offering Practices (Syndicates)**

35. MSRB Rule G-11 addresses the operation of underwriting syndicates. Every syndicate must establish the priority of different types of orders for the purchase of syndicate securities, whether this priority can be changed, and, if so, the procedures for doing so. Based on selected accounts, determine whether the syndicate manager communicates to syndicate members, in writing,

- the priority of orders.
- procedures for changing order priority.
- that the manager is permitted to allocate securities on a case-by-case basis.
- whether orders may be confirmed before the end of the period during which orders are being solicited.
- any changes in procedures governing order priority.

36. If the municipal securities dealer is functioning as a senior manager of a syndicate, determine, based on selected accounts, whether the dealer disclosed the following in writing:

- The identity of each person submitting a group order to which securities have been allocated.
- A summary of the allocation of securities to other orders, including any order confirmed at a price other than the original list price that indicates par value and maturity.

37. Based on selected accounts, determine whether the senior manager furnished to syndicate members, at or before final settlement of the syndicate, an itemized statement setting forth the nature and amount of expenses incurred for the syndicate.

38. Based on selected accounts, determine whether final settlement was within 30 days following delivery of the securities by the manager to the members.

### **MSRB Rule G-32, Disclosures in Connection With New Issues**

39. Based on selected accounts, determine whether the municipal securities dealer, as the underwriter of a primary offering of municipal securities, submitted the official statement to EMMA within one business day after receipt of the official statement from the issuer or the issuer's designee. If an official statement was not prepared, determine whether a notice to this effect was submitted to EMMA.
40. Based on selected accounts, determine whether the municipal securities dealer is complying with obligations to determine whether issuers are complying with issuer continuing disclosure requirements pursuant to SEC Rule 15c2-12. (See MSRB Notice 2013-18 for information on continuing disclosure requirements.)
41. Based on selected accounts, review selected transactions and determine whether the municipal securities dealer, at or before final confirmation, sent the customer information on new issue securities required by MSRB Rule G-32 (records are required per MSRB Rule G-8(a)(xiii)), including
- a copy of the official statement furnished on behalf of the issuer. (If an official statement is not being prepared by an issuer, the municipal securities dealer must provide written notice to that effect.)
  - for a negotiated sale of a new issue, whether the following information was delivered to the customer (to the extent the information is not included in the official statement):
    - The underwriting spread, if any.
    - The amount of any fee the municipal securities dealer received as placement agent for the issuer in the distribution of the securities.
    - The initial offering price for each maturity in the issue that is offered or is to be offered in whole or in part by the underwriters.

Note: The above requirements must be met when or before the final confirmation notice is sent.

### **MSRB Rule G-34, CUSIP Numbers, New Issue, and Market Information Requirements**

42. Based on selected accounts, determine whether CUSIP numbers were obtained as required by MSRB Rule G-34. (This is required only if the municipal securities dealer is functioning as a sole manager or a senior manager of a syndicate.)
43. Select a sample of VRDOs or ARSs remarketed by the municipal securities dealer since the last examination. Determine whether the municipal securities dealer submitted information to the MSRB's SHORT system at each interest rate reset or at the time of any new or amended credit enhancements as required by MSRB Rule G-34.

## Confirmations

### **MSRB Rule G-12, Uniform Practice, and MSRB Rule G-15, Customer Confirmation**

44. Review appropriate municipal securities records and operational systems, test a sample of transactions that involve other municipal securities brokers or dealers, and
  - determine whether “regular-way” dealer confirmations are sent within one business day following the trade date.
  - from sample items, determine whether the information included on dealer confirmations conforms to the requirements of MSRB Rule G-12.
45. Review operational systems and test a sample of transactions in municipal securities involving customers and
  - from operational systems, determine whether confirmations are sent to customers at or before completion of a municipal securities transaction.
  - from sample items, determine whether the information included on customer confirmations conforms to the requirements of MSRB Rule G-15.

## Transaction Reporting

### **MSRB Rule G-14, Reports of Sales or Purchases**

46. Obtain the municipal securities dealer’s 12-month transaction report from the OCC’s Market Risk Division. Review selected municipal securities dealer trade blotters and determine whether information about each purchase and sale transaction effected in municipal securities was reported to the RTRS in the manner prescribed in the “RTRS Procedures” and the “RTRS Users Manual” sections of Rule G-14.
47. Obtain the municipal securities dealer’s dealer quality report from the OCC’s Market Risk Division. Determine the municipal securities dealer’s overall compliance with the requirements to report transaction data in a timely and complete manner.

## Customer Protection

Note: MSRB Rule G-48, “Transactions With Sophisticated Municipal Market Professionals,” provides that a municipal securities dealer shall not have any obligations with respect to the best execution obligation under Rule G-18, time-of-trade disclosure obligation in Rule G-47, or the obligation under Rule G-19 to perform a customer-specific suitability analysis to a customer that it reasonably concludes is a sophisticated municipal market professional (SMMP). In addition, a municipal securities dealer shall not have any obligation to an SMMP under Rule G-30(b)(i) to take action to ensure that transactions are effected at fair and reasonable prices. (Updated January 31, 2018)

**MSRB Rule G-18, Best Execution**

(Updated January 31, 2018)

48. Select a sample of customer accounts to determine whether the municipal securities dealer used reasonable diligence in seeking to obtain for their retail customer transactions the most favorable terms possible under prevailing market conditions.

Examiners should refer to MSRB Rule G-18 and the supplementary materials for guidance on the factors to consider in determining whether a dealer has used reasonable diligence.

**MSRB Rule G-19, Suitability of Recommendations and Transactions**

(Updated January 31, 2018)

49. Select a sample of customer accounts to determine whether transactions or investment strategies involving a municipal security or municipal securities recommended by the municipal securities dealer were suitable based on the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the municipal securities dealer in connection with such recommendation.

Examiners should refer to MSRB Rule G-19 and the supplementary materials for guidance on the factors to consider in determining whether a recommendation is suitable for a particular customer.

50. Determine whether the municipal securities dealer has sufficient written supervisory procedures in place that are reasonably designed to ensure compliance with MSRB Rule G-19, including pre-trade alerts and post-trade suitability reviews.

**MSRB Rule G-47, Time of Trade Disclosures**

51. Review selected customer transactions to determine whether the municipal securities dealer sold a municipal security to a customer, or purchased a municipal security from a customer, without disclosing to the customer, orally or in writing, at or before the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market.

**MSRB Rule G-30, Prices and Commissions**

52. Determine whether the municipal securities dealer department maintains and enforces written numerical price markup and markdown guidelines and as agent commission

charges. Review selected customer transactions to determine whether the municipal securities dealer

- while functioning in a principal capacity, has effected any transactions at an aggregate price (including any markups or markdowns) that exceeded a fair and reasonable amount.
- while functioning in an agency capacity, has effected any transactions and failed to make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.
- while functioning in an agency capacity, has effected any transactions that had commissions or service charges that exceeded a fair and reasonable amount.

Examiners should refer to MSRB Rule G-30 and the supplementary materials for guidance on the factors to consider in determining the fairness and reasonableness of prices, commissions, or service charges.

53. Determine whether the municipal securities dealer operates an alternative trading system. Review internal controls and procedures designed to monitor, detect, and investigate any alleged pricing irregularities on its alternative trading system brought to the dealer's attention. Review instances of pricing irregularities on the dealer's alternative trading system and remedial action taken by the dealer.

### **MSRB Rule G-13, Quotations Relating to Municipal Securities**

54. Determine whether it is the municipal securities dealer's policy and practice to prohibit employees from disseminating quotations unless the municipal securities dealer is prepared to buy or sell securities according to stated conditions. (Nominal quotations given merely as an indication of price, and solely for informational purposes, must be clearly identified as nominal quotations when given. No municipal securities dealer may issue any quotation unless, in the dealer's best judgment, it represents the fair market value for the securities.)

### **MSRB Rule G-25, Improper Use of Assets**

55. Select a sample of customer correspondence and confirmations to determine whether the bank has guaranteed or made an offer to guarantee a customer against a loss in a municipal securities transaction.
56. Review purchase and sales ledgers and determine whether the bank has shared in the profits or losses of customer municipal securities transactions.

### **MSRB Rule G-17, Conduct of Municipal Securities and Municipal Advisory Activities**

57. Based on the review of prior items and the municipal securities dealer's own internal review, determine whether the municipal securities dealer has engaged in any deceptive, dishonest, or unfair practice related to its activities as a municipal securities dealer.

## Gifts and Gratuities

### **MSRB Rule G-20, Gifts, Gratuities, and Noncash Compensation**

58. Review the department's policies, procedures, and practices on gifts, gratuities, and noncash compensation and determine whether

- policy limits municipal securities dealer employees from giving, directly or indirectly, any thing or service of value, including gratuities, in excess of \$100 per year to a person other than an employee or partner of the municipal securities dealer, if the payments or services are in relation to the municipal securities activities of the recipient's employer. (See MSRB Rule G-20 for certain exceptions.)
- municipal securities dealer has an adequate reporting mechanism for employees to report any gifts, gratuities, and noncash compensation made by the employees or on their behalf.

## Advertising

### **MSRB Rule G-21, Advertising**

59. Review department advertising of services and securities and determine whether

- copies of all professional and product advertisements are maintained in a separate file.
- advertisements do not contain information that is materially false or misleading.
- dated principal approval is indicated on all advertisements before "first use."

60. Determine whether advertisements of a new issue of securities contain the information required by MSRB Rule G-21(d).

61. Determine whether advertisements for municipal fund securities conform to the requirements of MSRB Rule G-21(e).

## Control Relationships

### **MSRB Rule G-22, Control Relationships**

A control relationship exists when a municipal securities dealer or an associated person controls, is controlled by, or is under common control with the issuer of a security. For example, if an employee of the municipal securities dealer also sat on the board of a debt-issuing school district, any transaction between the two could be subject to this rule.

62. Review department records and determine whether

- a control relationship exists.

- before entering into a contract with or for a customer for the purchase, sale, or exchange of a municipal security where a control relationship exists, the municipal securities dealer discloses to the customer the nature of the control relationship.

## Financial Advisors

### **MSRB Rule G-23, Activities of Financial Advisors**

63. Review financial advisory relationships and determine whether

- each relationship is evidenced by a written agreement entered into before, on, or promptly after the inception of the financial advisory relationship.
- the written agreement sets forth the basis of compensation for services rendered, including provisions relating to the deposit of funds or the use of fiduciary or agency services.

64. Compare the list of underwritings since the last examination to the listing of financial advisory relationships. Determine whether the bank is in compliance with MSRB Rule G-23, which prohibits a municipal securities dealer that serves as financial advisor to an issuer for a particular issue sold on either a negotiated or competitive bid basis from switching roles and underwriting the same issue.

### **MSRB Rule G-17, Conduct of Municipal Securities and Municipal Advisory Activities**

65. Based on the review of prior items and the municipal securities dealer's own internal review, determine whether the municipal securities dealer has engaged in any deceptive, dishonest, or unfair practice related to its activities as a municipal advisor.

## Use of Ownership Information

### **MSRB Rule G-24, Use of Ownership Information Obtained in Fiduciary or Agency Capacity**

66. Review large-profit trades and question department personnel to determine whether the dealer complied with prohibitions on profiting from the use of any confidential, nonpublic information accessible to it through a related party serving in a fiduciary or agency capacity. An example of a related party would be the bank's trust division serving as a paying agent or transfer agent for an issuer of municipal securities.

## Customer Account Transfers

### **MSRB Rule G-26, Customer Account Transfers**

67. Determine whether customer account transfers are coordinated so that

- on receipt of a customer transfer instruction, the receiving party immediately submits the instruction to the carrying party.
- customer account carrying party, within three business days, validates and returns the instruction or takes exception to and advises the receiving party.
- customer account carrying party, within four business days of the validation, completes the transfer of the customer account.

## Transactions With Other Securities Professionals

### **MSRB Rule G-28, Transactions With Employees and Partners of Other Municipal Securities Professionals**

68. Determine whether the bank has accounts for anyone employed by, or who is partner of, another municipal securities dealer or on the behalf of any spouse or minor child of the person and, if so, whether
- written notice of the opening and maintenance of the account has been given first to the broker or municipal securities dealer by whom the person is employed.
  - the bank sent a confirmation notice to the employing dealer at the same time the notice was sent to the customer at the time of effecting a transaction.
  - the bank acted according to any written instructions the employing dealer or broker provided.

## Maintenance of Rules

### **MSRB Rule G-29, Availability of Board Rules**

69. Determine whether the municipal securities dealer maintains a complete, updated copy of all MSRB rules in each office in which municipal security dealer activities are conducted and makes the rules available for examination by customers promptly upon request.

## Investment Companies

### **MSRB Rule G-31, Reciprocal Dealings With Municipal Securities Investment Companies**

70. Determine whether the municipal securities dealer complies with the restriction on soliciting municipal securities transactions with or for the account of an investment company as compensation or in return for sales by that municipal securities dealer of shares, units, or participations in the investment company.

## Calculations

### **MSRB Rule G-33, Calculations**

71. Determine whether the municipal securities dealer's calculations for accrued interest, dollar price, and yield for interest-bearing securities, and dollar price and return on investment for discounted securities, comply with the requirements of MSRB Rule G-33.

## Arbitration

### **MSRB Rule G-35, Arbitration**

72. Determine whether the municipal securities dealer complies with the MSRB's requirement that the municipal securities dealer abides by FINRA's code of arbitration procedure for every claim, dispute, or controversy arising out of or in connection with the municipal securities activities.

## Political Contributions

### **MSRB Rule G-37, Political Contributions and Prohibitions on Municipal Securities Business**

73. MSRB Rule G-37 establishes certain requirements for municipal securities dealers concerning political contributions. Based on the municipal securities dealer's records, determine whether
  - municipal securities dealer refrains from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer is made by
    - the municipal securities dealer.
    - any municipal finance professional associated with the municipal securities dealer.
    - any political action committee controlled by the municipal securities dealer.  
(See MSRB Rule G-37 for certain exceptions.)
  - municipal securities dealer has an adequate reporting mechanism for employees to report any political contributions made by the employees or on their behalf, subject to MSRB Rule G-37 reporting requirements.
  - municipal securities dealer makes the required quarterly disclosures on political contributions to the MSRB on Form G-37, including
    - contributions to officials of issuers.
    - contributions to bond ballot campaigns.
    - list of issuers with which the municipal securities dealer has engaged in municipal securities business (as defined by MSRB Rule G-37(g)(vii)).  
(See MSRB Rule G-37 for certain exceptions.)

## Solicitation of Municipal Securities Business

### **MSRB Rule G-38, Solicitation of Municipal Securities Business**

74. Determine whether the municipal securities dealer complies with the restriction on providing, or agreeing to provide, directly or indirectly, payment for soliciting municipal securities business on the dealer's behalf to any person not affiliated with the municipal securities dealer.

## Telemarketing

### **MSRB Rule G-39, Telemarketing**

75. MSRB Rule G-39 establishes certain requirements for municipal securities dealers concerning telemarketing. Based on the municipal securities dealer's records, determine whether the municipal securities dealer complies with the general telemarketing requirements outlined in Rule G-39, including
- time of day restrictions.
  - firm-specific do not call lists.
  - national do not call lists.
76. Determine whether the municipal securities dealer, before engaging in telemarketing, instituted written policies and procedures that address
- training of personnel engaged in telemarketing.
  - recording of do not call requests.
  - identification of sellers and telemarketers.
  - affiliated person or entities.
  - maintenance of do not call lists.

Note: If the municipal securities dealer uses another entity to perform telemarketing services on the dealer's behalf, the municipal securities dealer remains responsible for ensuring compliance with all provisions contained in MSRB Rule G-39.

## Anti-Money Laundering Compliance Program

### **MSRB Rule G-41, Anti-Money Laundering Compliance Program**

77. Determine whether the municipal securities dealer has established and implemented an AML compliance program reasonably designed to achieve and monitor ongoing compliance with the BSA. Coordinate work with compliance examiners.

Note: An OCC-supervised municipal securities dealer that establishes and implements an AML compliance program that is in compliance with the rules, regulations, or requirements governing the establishment and maintenance of OCC-prescribed AML programs is deemed

to be in compliance with section 5318(h)(1) of the BSA and the regulations promulgated thereunder for purposes of this rule.

## Broker's Brokers

### **MSRB Rule G-43, Broker's Brokers**

78. If the municipal securities dealer, or a separately operated and supervised division or unit of the dealer, effects transactions for other dealers or holds itself out as a broker's broker, determine whether

- municipal securities dealer makes a reasonable effort to obtain a price for the broker that is fair and reasonable in relation to prevailing market conditions.
- municipal securities dealer adopts and complies with policies and procedures pertaining to the operation of bids-wanted and offerings for municipal securities.

## Conclusions

1. Determine preliminary examination findings and conclusions and discuss with the EIC. The findings and overall conclusions from this examination should be incorporated into the bank's compliance risk assessment and the management component of the bank's CAMELS rating. Consider the following:
  - Expertise and qualifications of staff, including management's knowledge of MSRB rules, applicable laws and regulations, and related internal bank policies and procedures.
  - The effectiveness of compliance and audit.
  - Record of compliance and presence of violations. Evaluate the source, nature, and level of exceptions.
  - The existence of conflicts of interest or unsuitable sales practices.
  - The source, nature, and level of customer litigation and complaints.

Note: If there is evidence that the municipal securities dealer has engaged in any deceptive, dishonest, or unfair practice, examiners should consult with the Market Risk Division and Securities & Corporate Practices Division to determine whether a referral should be made to the SEC or an enforcement action should be initiated by the OCC.

2. Discuss examination findings with bank management, including violations, MRAs, and overall conclusions about risks and risk management practices. If necessary, obtain commitment for corrective action.
3. Compose conclusion comments, highlighting any issues that should be included in the ROE or supervisory letter. If necessary, compose an MRA comment.
4. Update the OCC's information system and any applicable ROE schedules or tables.
5. Write a memorandum specifically setting out what the OCC should do in the future to effectively supervise municipal securities dealer activities in the bank, including time periods, staffing, and workdays required.
6. Update, organize, and reference work papers in accordance with OCC policy.
7. Ensure that any paper or electronic media that contain sensitive bank or customer information are appropriately disposed of or secured.

# Appendixes

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## Appendix A: Sample Request Letter

1. Copies of the bank's most recent amendments to Form MSD, "Application for Registration as a Municipal Securities Dealer."
2. Copy of the municipal securities dealer department's organization chart (all functional areas).
3. List of all locations where municipal securities dealer activities (including financial advisory, custodial services, and private placement activities) are conducted.
4. List of all persons functioning in the capacity of municipal securities principals or representatives.
5. Sales production or similar report detailing the sales performance of persons engaged in municipal securities sales for the most recent fiscal year and current year to date.
6. List of the five most active municipal securities customer accounts and a list of municipal securities customer accounts opened within the last 12 months.
7. Copies of exception reports used to monitor compliance with MSRB rules, including, but not limited to,
  - aged schedule of all municipal securities currently held in trading accounts.
  - list of all municipal securities the bank failed to deliver or failed to receive during the last 12 months.
  - suitability reports, including reports on excessive markups and churning.
  - reports on gifts and gratuities, political contributions, personal securities transactions, registrations, and continuing education requirements.
8. List of all VRDOs or ARSs remarketed by the municipal securities dealer during the last 12 months. Indicate those that are supported by a letter of credit or repurchase agreement issued by the bank or an affiliated organization.
9. List of all municipal securities issues underwritten since the previous examination and whether such securities were acquired by negotiated or competitive bid. Indicate in what capacity the bank functioned (i.e., syndicate manager or participating member).
10. List of all outstanding municipal financial advisory relationships. Also list all municipal financial advisory relationships entered into during the last two years.
11. Copies of all written customer complaints received since the last examination by the municipal securities dealer department. Indicate how the complaints were resolved.

12. Copies of all municipal securities dealer department advertisements since the last examination.
13. Copies of all internal audit reports of the municipal securities dealer department, including internal audit review of MSRB compliance and internal controls, and management's response.
14. Copies of the most recent external audit report, including all management letters, reports, or comments pertaining to the bank's municipal securities dealer activities.
15. Copies of the most recent compliance officer's report, including all management letters and responses, pertaining to the municipal securities dealer activities.
16. Copies of the most recent OMSJ and branch office reviews, including all management letters and responses.
17. List of all litigation or arbitration proceedings now in process in which the municipal securities dealer department is involved.
18. List of all persons terminated by the municipal securities dealer department because of violations of law, rule, regulation, or bank or dealer department policy or because of disciplinary action resulting from the terminated employees' conduct as securities professionals.
19. Copies of the municipal securities dealer department earnings report (all profit centers) for the prior fiscal year and current year to date.
20. Copies of the municipal securities dealer's budget and plan for the next two fiscal years.
21. Copies of the most current written policy and procedures adopted to comply with MSRB rules.
22. Copies of the municipal securities dealer's quarterly filings of Form G-37 for the last two years.
23. Copy of the bank's continuing education plan that meets the regulatory and firm element requirements of MSRB Rule G-3.
24. Identify management information systems used in conducting the bank's municipal securities dealer activities and the purpose of each system.
25. Make available copies of policies, procedures, and controls used to ensure the integrity of record-keeping systems and the protection of municipal securities held in safekeeping.

## Appendix B: Abbreviations

AML	anti-money laundering
ARS	auction rate security
BSA	Bank Secrecy Act
CUSIP	Committee on Uniform Securities Identification Procedures
EIC	Examiner-in-charge
EMMA	Electronic Municipal Market Access
FINRA	Financial Industry Regulatory Authority
FSA	federal savings association
MSRB	Municipal Securities Rulemaking Board
NASD	National Association of Securities Dealers
OCC	Office of the Comptroller of the Currency
OMSJ	office of municipal supervisory jurisdiction
OTC	over-the-counter
OTS	Office of Thrift Supervision
ROE	report of examination
RTRS	Real-Time Transaction Reporting System
SEC	Securities and Exchange Commission
SHORT	Short-Term Obligation Rate Transparency
SMMP	Sophisticated Municipal Market Professional
VRDO	variable rate demand obligation
WI	when, as, and if issued

# References

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(Section updated January 31, 2018)

## Laws

- 12 USC 24, “Corporate Powers of Associations,” including 24 (Seventh)
- 12 USC 1464(c), “Loans and Investments”
- 15 USC 78, “Securities Exchange Act of 1934,” including 15 USC 78(c), section 3 of the Exchange Act, “Definitions and Application of Title”
- 31 USC 5311, “Bank Secrecy Act”

## Regulations

- 12 CFR 1, “Investment Securities”
- 12 CFR 10, “Municipal Securities Dealers”
- 12 CFR 21.21, “Procedures for Monitoring Bank Secrecy Act (BSA) Compliance”
- 12 CFR 30, Appendix A, Section III, “Interagency Guidelines Establishing Standards for Safety and Soundness”
- 12 CFR 160.30, “General Lending and Investment Powers of Federal Savings Associations”
- 17 CFR 240, “General Rules and Regulations, Securities Exchange Act of 1934,” including 240.3a5-1, “Exemption From the Definition of ‘Dealer’ for a Bank Engaged in Riskless Principal Transactions”
- 17 CFR 240.15Ba1-1 to 15Ba1-8, “Registration of Municipal Advisors”
- 17 CFR 240.15c2-12, “Municipal Securities Disclosure”

## Comptroller’s Handbook

### Examination Process

- “Community Bank Supervision”
- “Foreword”
- “Large Bank Supervision”
- “Sampling Methodologies”

### Safety and Soundness

- “Financial Derivatives and Trading Activities” (not yet published)

### Securities Compliance

- “Government Securities Act”

## OCC Issuances

- OCC Bulletin 2010-24, “Incentive Compensation: Interagency Guidance on Sound Incentive Compensation Policies” (June 30, 2010)

- OCC Bulletin 2013-29, “Third-Party Relationships: Risk Management Guidance” (October 30, 2013)
- OCC Bulletin 2013-36, “Registration of Municipal Advisors: Dodd–Frank Act section 975, SEC Final Rule” (December 12, 2013)
- OCC Bulletin 2017-10, “Economic Growth and Regulatory Paperwork Reduction Act of 1996: Final Rule” (February 13, 2017)
- OCC Form MSD-4, “Uniform Application for Municipal Securities Principal or Representative”
- OCC Form MSD-5, “Uniform Termination Notice for Municipal Securities Principal or Representative”

## Other

### MSRB

- MSRB Form G-37, “Political Contributions Disclosure”
- MSRB Regulatory Notice 2013-18, “MSRB Market Transparency Advisory—Suggested Practices in Submitting of Financial Disclosures to EMMA” (August 12, 2013)
- MSRB Regulatory Notice 2014-05, “SEC Approves New Consolidated Registration Rule and Registration Form for Dealers and Municipal Advisors” (February 27, 2014)
- MSRB Regulatory Notice 2014-22, “SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments to Exempt Transactions with Sophisticated Municipal Market Professionals” (December 8, 2014)
- MSRB Regulatory Notice 2015-23, “MSRB Provides Implementation Guidance on MSRB Rule G-18, on Best Execution” (November 20, 2015)
- MSRB Regulatory Notice 2017-07, “MSRB Announces Date of Transition to a Two-Day Settlement Cycle for Municipal Securities Transactions” (March 28, 2017)
- MSRB rules, interpretations, educational information, and glossary of municipal securities terms ([www.msrb.org](http://www.msrb.org))

### SEC

- SEC Form MA, “Application for Municipal Advisor Registration”
- SEC Form MSD, “Application for Registration as a Municipal Securities Dealer”
- SEC Form MSDW, “Notice of Withdrawal From Registration as a Municipal Securities Dealer”

## Table of Updates Since Publication

Refer to the “Foreword” booklet of the *Comptroller’s Handbook* for more information regarding the OCC’s process for updating *Comptroller’s Handbook* booklets.

Version 1.0: Published July 24, 2014			
Version number	Date	Reason	Affected pages
1.1	January 31, 2018	Updated the “Introduction” section to conform to the latest <i>Comptroller’s Handbook</i> template.	1
		OCC Regulation 12 CFR 10, “Municipal Securities Dealers,” was amended in 2017 to codify the requirement that a federal savings association that acts as a municipal securities dealer must file certain registration and termination forms with the OCC. Refer to OCC Bulletin 2017-10, “Economic Growth and Regulatory Paperwork Reduction Act of 1996: Final Rule.”	6
		Added a clarifying statement that the requirements governing the professional qualifications for municipal securities dealers come from MSRB rules.	6
		MSRB Rule G-12, “Uniform Practice,” was amended in 2017 to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle (T+2) as opposed to a three-day settlement cycle (T+3). Refer to MSRB Regulatory Notice 2017-07, “MSRB Announces Date of Transition to a Two-Day Settlement Cycle for Municipal Securities Transactions.”	12
		MSRB Rule G-18, “Best Execution,” was implemented in 2016 and requires dealers to use reasonable diligence in seeking to obtain for their retail customer transactions the most favorable terms available under prevailing market conditions. Refer to MSRB Regulatory Notice 2014-22, “SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments to Exempt Transactions with Sophisticated Municipal Market Professionals,” and MSRB Regulatory Notice 2015-23, “MSRB Provides Implementation Guidance on MSRB Rule G-18, on Best Execution.”	15
		Added a footnote to reference SEC Release 34-70462 (September 20, 2013), 78 Fed. Reg. 67468 (November 12, 2013).  Removed reference to SEC Form MA-T. It is no longer used, as municipal advisors that previously filed Form MA-T under the temporary registration period had to refile the permanent Form MA in 2014. See SEC Release 34-70468 (September 23, 2013), 78 Fed. Reg. 59814 (September 30, 2013).	18
		MSRB Rule G-48, “Transactions With Sophisticated Municipal Market Professionals,” was amended in 2016 and provides that the best-execution obligations under MSRB Rule G-18 do not apply to transactions with customers that are SMMPs as defined in MSRB Rule D-15. Refer to MSRB Regulatory Notice 2014-22, “SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments	24-25, 36-37

Version 1.0: Published July 24, 2014			
Version number	Date	Reason	Affected pages
		to Exempt Transactions with Sophisticated Municipal Market Professionals,” and MSRB Regulatory Notice 2015-23, “MSRB Provides Implementation Guidance on MSRB Rule G-18, on Best Execution.”	
		MSRB Rule D-15, “Sophisticated Municipal Market Professionals,” which defines the term SMMP, was amended in 2016 to broaden the customer affirmation requirement. Refer to MSRB Regulatory Notice 2014-22, “SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments to Exempt Transactions with Sophisticated Municipal Market Professionals,” and MSRB Regulatory Notice 2015-23, “MSRB Provides Implementation Guidance on MSRB Rule G-18, on Best Execution.”	24-25, 36-37
		Updated narrative to conform to OCC Bulletin 2010-24, “Interagency Guidance on Sound Incentive Compensation Policies.” Added a footnote to reference 12 CFR Part 30, Appendix A, Section III, “Interagency Guidelines Establishing Standards for Safety and Soundness.”	26
		Updated references section to add and remove references due to updates described in this table.	49-50