

MSRB Comment Request on Draft FAQs Regarding Rule G-42 and Making Recommendations

February 15, 2018

By: [Edward Fierro Britt Cass Steckman](#)

On February 15, 2018, the Municipal Securities Rulemaking Board (“MSRB”) published [Notice 2018-03](#), requesting comment on draft frequently asked questions and proposed responses (“FAQs”). The draft FAQs address duties of non-solicitor municipal advisors related to providing “advice” and “recommendations” and related provisions of MSRB Rule G-8, on books and records arising under MSRB Rule G-42. MSRB Rule G-42 sets forth the core requirements that a municipal advisor must meet when, among other things, providing advice or making a recommendation to a municipal entity or obligated person client about a municipal securities transaction or municipal financial products.

While guidance in this area may be useful, market participants should carefully analyze the draft FAQs and use the opportunity provided to question ambiguities, inconsistencies or need for clarification. The draft FAQs are open for comment from now through April 16, 2018. Paraphrased below is a sampling of the draft FAQs.

1. How are advice and recommendation defined for purposes of Rule G-42?
2. How can you determine when advice constitutes a recommendation?
3. How can you determine if advice includes a call to action?
4. How can you determine if advice to or on behalf of a client includes advice to proceed with a specific municipal financial product or issuance of municipal securities?
5. Why is it necessary to distinguish between providing advice and providing advice that is a call to action to proceed with a specific municipal financial product or issuance of municipal securities?
6. What are your obligations when making a recommendation?
7. What are your obligations to present additional information about reasonably feasible alternatives?
8. How does the duty of care apply when making a recommendation?

9. Does Rule G-42 impose additional duties and obligations when you make a recommendation to a municipal entity as opposed to an obligated person?
10. What are the duties and obligations related to recordkeeping when you make a recommendation?

Notably, the MSRB stated that the FAQs are not meant to be interpretive guidance and all proposed answers are derived directly from the rulemaking record. This likely means that the MSRB does not plan to file the FAQs with the Securities and Exchange Commission (“SEC”). If a market participant believes the FAQs are interpretations that establish or change any standard, limit, or guideline with respect to the meaning of an existing MSRB rule, it should consider stating this in its comment letter to the MSRB. Such interpretations are subject to certain procedural requirements under SEC Rule 19b-4.

Our team helps clients manage the full range of regulatory and compliance issues facing municipal securities professionals. Our attorneys have experience inside government, both developing the regulatory framework for the municipal securities market and enforcing securities laws. Should you require additional information, please contact Paul Maco at 202.828.5821, Ed Fierro at 713.221.1107 or Britt Steckman at 202.828.5831.