



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF COMPLIANCE
INSPECTIONS AND
EXAMINATIONS

August 19, 2014

Dear Senior Executive or Principal of a Newly Registered Municipal Advisor:¹

We are sending you this letter to introduce you to the National Exam Program (“NEP”), which is administered by the Office of Compliance Inspections and Examinations (“OCIE”) within the United States Securities and Exchange Commission (“SEC”), and to provide you with information about upcoming examinations of certain municipal advisors (“MAs”) that are newly registered under the SEC’s final MA rules which went into effect on July 1, 2014.² ***The NEP staff will contact you separately if your firm is selected for an examination.***

I. Information about the NEP

OCIE examines MAs to assess whether they are operating in a manner consistent with the federal securities laws. OCIE administers such examinations through the NEP, which is comprised of staff in the SEC’s 11 regional offices and the home office in Washington, D.C. The NEP’s mission is to protect investors and maintain market integrity through risk-focused examinations that promote compliance, prevent fraud, monitor risk, and inform policy.

II. Examinations of Certain Newly Registered Municipal Advisors

Consistent with OCIE’s mission and objectives, the NEP is launching an initiative (“the MA Examination Initiative”) to conduct focused, risk-based examinations of MAs that are registered with the SEC, but are not registered with FINRA.³ This initiative will take place over the next two years and has three primary phases: engagement; examination; and informing policy. Each phase is described further below.

Engagement Phase

The NEP is engaging in a nationwide outreach to inform newly registered firms about their obligations under the Dodd Frank Act and related rules, the MA Examination Initiative, and

¹ For purposes of this letter, OCIE distinguishes a municipal advisor as “newly registered” if it registered with the SEC after the SEC’s final MA rules became effective (July 1, 2014), regardless of whether the entity registered with the SEC under Rule 15Ba2-6T of the Securities Exchange Act of 1934.

² The SEC, as a matter of policy, disclaims responsibility for any publication or statement by any of its employees. The views expressed herein are those of the staff and do not necessarily reflect the views of the SEC or the other staff members of the SEC.

³ Section 15A provides FINRA with authority to conduct examinations of its members’ activities as registered municipal advisors in order to evaluate their compliance with the applicable laws and rules. In addition, pursuant to Securities Exchange Act of 1934 Section 15B (as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the “Dodd-Frank Act”), the Commission designated FINRA to examine its members’ activities as registered municipal advisors and evaluate compliance by such members with federal securities laws, Commission rules and regulations, and Municipal Securities Rulemaking Board (“MSRB”) rules applicable to municipal advisors.

OCIE's practice of engaging directly with firms' senior management. The SEC's website (www.SEC.gov) currently contains information and links to relevant laws and rules, staff guidance, and interpretive letters. The MSRB's website also contains resources and guidance for MAs.⁴ Some of these resources and applicable reference links are provided at the end of this letter.⁵

In addition, the SEC's staff is planning to engage newly registered MAs at a Compliance Outreach Program for MAs. This program will provide MA senior executives or principals with a forum to discuss compliance issues, to share experiences, to speak with the SEC, FINRA, and MSRB staff, to learn about effective compliance practices, and to understand what to expect from an MA examination. More information will be available at a later date on www.SEC.gov.

Examination Phase

During the examination phase of the MA Examination Initiative, NEP staff will review one or more of the identified risk areas of the businesses and operations of MAs selected for examination. In part, OCIE will examine MAs for compliance with the SEC's final MA rules, including the books and recordkeeping requirements.⁶ In addition, OCIE will examine MAs for compliance with applicable final MSRB rules as and when those rules have been approved by the SEC and go into effect.

1. Registration

Examiners will evaluate whether the MA is in compliance with the SEC and the MSRB registration rules. This will include, but will not be limited to, the following as they apply to MAs:

- Exchange Act Rule 15Ba1-2 (Registration with the SEC using Form MA and Form MA-I), effective July 1, 2014;
- Exchange Act Rule 15Ba1-5 (Amendments to Form MA and MA-I) and Rule 15Ba1-6 (Form MA-NR);
- MSRB Rule D-11 (Associated Persons); and
- MSRB Rule D-13 (Municipal Advisory Activities).

2. Fiduciary Duty

Examiners will evaluate whether the MA is in compliance with the statutory fiduciary duty requirements established under the Dodd Frank Act and SEC and MSRB rules. Pursuant to

⁴ Additional resources are available at FINRA's website.

⁵ This letter does not provide a complete description of all of the legal obligations of SEC-registered MAs nor does it provide a comprehensive inventory of resources that may be available.

⁶ Pursuant to Exchange Act Rule 15Ba1-8, an MA is required to make and keep true, accurate and current certain books and records relating to its municipal advisory activities. An MA is required to maintain and preserve all books and records that are required to be made for a period of not less than five years, the first two years in an easily accessible place. If your firm is examined, you are required to provide examiners with access to all requested advisory records that are maintained by your firm (under certain conditions, documents may remain private under the attorney-client privilege).

Section 15B(c)(1) of the Securities Exchange Act of 1934, the MA owes a fiduciary duty to its client (*i.e.*, the municipality or governmental entity).⁷ The duties of a fiduciary generally require the fiduciary to act honestly and in the best interest of its client without regard to its own financial or other interests, and to provide full and fair disclosure of material facts and conflicts of interest. Examiners' review will include, but will not be limited to, the following as applicable:

- MSRB Rule G-20 (Gifts, Gratuities and Non-Cash Compensation);
- MSRB Rule G-42 (Duties of Non-Solicitor MAs), currently being developed and not yet finalized;⁸
- MSRB Rule G-24 (Use of Ownership Information Obtained in Fiduciary or Agency Capacity);
- MSRB Rule G-23 (Activities of Financial Advisors); and
- MSRB Rule G-3 (Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements).

3. Disclosure

Examiners will assess the accuracy of disclosures made by the MA to their client municipalities. This will include, but will not be limited to, the following as applicable:

- MSRB Rule G-32 (Disclosures in Connection with Primary Offerings); and
- MSRB Rule G-42 (Duties of Non-Solicitor MAs), currently being developed and not yet finalized.⁹

4. Fair Dealing

Examiners will evaluate whether the MA is dealing fairly (and not engaging in any deceptive, dishonest, or unfair practices) with any person or entity that may be harmed by an MA (*e.g.*, an investor, conduit borrower, obligated person, issuer, or any other market participant). This will include, but will not be limited to, the following as applicable:

- MSRB Rule G-37 (Political Contributions and Prohibitions on Municipal Securities Business) currently being developed and not yet finalized;
- MSRB Rule G-38 (Solicitation of Municipal Securities Business);
- MSRB Rule G-17 (Conduct of Municipal Securities and Municipal Advisory Activities);
- MSRB Rule G-19 (Suitability of Recommendations and Transactions; Discretionary Accounts); and

⁷ Section 15B(c)(1) of the Exchange Act provides: A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board. *See* Registration of Municipal Advisors, Release No. 34-70462 (Sept. 20, 2013), available at <http://www.sec.gov/rules/final/2013/34-70462.pdf>.

⁸ "Request for Comment on Revised Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors," (July 23, 2014), available at: <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-12.ashx?n=1>.

⁹ *See Id.*

- MSRB Rule G-38 (Solicitation of Municipal Securities Business).

5. Supervision

Examiners will evaluate whether the MA has policies, procedures, and controls in place to supervise its MA business. The examinations will include, but will not be limited to, the following as applicable:

- MSRB Rule G-44 (Supervision and Compliance Obligations of MAs), currently being developed and not yet finalized.¹⁰

6. Books and Records

Examiners will evaluate whether the MA has created and maintained the books and records required under SEC and MSRB rules. The examinations will include, but will not be limited to, the following as applicable:

- Exchange Act Rules 17a-3 and 17a-4 (Creation and Maintenance of Books and Records);
- Exchange Act Rule 15Ba1-8 (Books and Records to be Made and Maintained by MAs), effective July 1, 2014;
- MSRB Rule G-8 (Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers); and
- MSRB Rule G-9 (Preservation of Records).

7. Training/Qualifications

Examiners will assess the knowledge base of the MA staff as well as the training that an MA provides to its staff. This will include, but will not be limited to, the following as applicable:

- MSRB Rule G-3 (Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements).

Informing Policy Phase

At the conclusion of the Examination Phase, the NEP intends to report its observations to the SEC. These observations may include common practices identified in high-risk focus areas, industry trends, and significant issues.

¹⁰ “Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G-8, on Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G-9, on Preservation of Records,” (August 5, 2014), *available at*: <https://www.federalregister.gov/articles/2014/08/05/2014-18381/self-regulatory-organizations-municipal-securities-rulemaking-board-notice-of-filing-of-a-proposed>.

We hope that this letter was useful in introducing you to the MA Examination Initiative and the examination program generally, and will better acquaint you and your personnel with compliance resources. Should you have any questions regarding this letter, please identify the SEC's regional office that is assigned to your advisory firm and contact any member of NEP management in that office.⁸

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin W. Goodman", with a long horizontal flourish extending to the right.

Kevin W. Goodman
National Associate Director, OCIE's
Broker-Dealer Examination Program

⁸ Instructions regarding identifying the SEC's office applicable to your firm are provided in the attached "Additional Information: Reference Materials" guide in the section titled "Information Regarding the NEP and Examinations."

Additional Information: Reference Materials

You may find the following non-exclusive list of informational sources to be helpful.

Information Regarding the MA Rule

- The Press Release Regarding the SEC's Approval of Registration Rules for MAs is available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539817759>.
- The Final MA Rule is available at <http://www.sec.gov/rules/final/2013/34-70462.pdf>.
- SEC's Registration of MAs Frequently Asked Questions (May 19, 2014), available at <http://www.sec.gov/info/municipal/mun-advisors-faqs.shtml>.

Information Regarding the NEP and Examinations

- Overview of Examinations by the Securities and Exchange SEC's Office of Compliance Inspections and Examinations (February 2012), available at <http://www.sec.gov/about/offices/ocie/ocieoverview.pdf>
- Examination Brochure, available at http://www.sec.gov/about/offices/ocie/ocie_exambrochure.pdf.
- NEP website, available at <http://www.sec.gov/about/of5ces/ocie.shtml>.
- Listing of the local SEC office (contact information for senior examination staff) is available at http://www.sec.gov/about/offices/ocie/ocie_org.htm. The SEC's regional office designated for an advisor can be found by first identifying the advisor's Principal Office and Place of Business on its Form ADV (as used in: Form ADV, Part 1 A, Instructions, Items 1 and 2; Schedule D; Form ADV-W, Item 1) and then identifying the SEC's regional office assigned to that state jurisdiction (which can be found at <http://www.sec.gov/contact/addresses.htm>).

Information Regarding the Role of Senior Management in Compliance and Ethics

- Speech by SEC Staff Carlo di Florio, "The Role of Compliance and Ethics in Risk Management" (October 17, 2011), available at http://www.sec.gov/news/speech/2011/spch!0171_lcvd.htm.
- Speech by SEC Staff Stephen M. Cutler, "Second Annual General Counsel Roundtable: Tone at the Top: Getting it Right" (December 4, 2004), available at http://www.sec.gov/news/speech/spch_120304smc.htm.

Information Regarding the Compliance Outreach Program

- Information about the Compliance Outreach Program for MAs and any scheduled events is available at www.SEC.gov.

Municipal Securities Rulemaking Board (“MSRB”) Information Regarding MAs

- MSRB Rules for MAs, available at <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx?category=all&role=3&tab=4>.
- MSRB News and Resources for MAs, available at <http://www.msrb.org/MSRB-For/Municipal-Advisors/News-and-Resources.aspx>.
- MSRB’s Registration of MAs, available at <http://www.msrb.org/Rules-and-Interpretations/MSRB-Registration.aspx>.

Historical Observations by SEC Commissioners Regarding the Municipal Securities Market

- Commissioner Piwowar, Remarks at the 2014 Municipal Finance Conference presented by The Bond Buyer and Brandeis International Business School (August 1, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542588006>.
- Chair Mary Jo White, Intermediation in the Modern Securities Markets: Putting Technology and Competition to Work for Investors (June 20, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542122012>.
- Commissioner Gallagher, Remarks at the Municipal Securities Rulemaking Board’s 1st Annual Municipal Securities Regulator Summit (May 29, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370541936387>.
- Commissioner Elisse B. Walter, Remarks on News Conference Call About the SEC’s Report on the Municipal Securities Market (July 31, 2012), available at <http://www.sec.gov/News/Speech/Detail/Speech/1365171490820>.
- Chairman Mary Schapiro, Remarks at Investment Company Institute 2010 General Membership Meeting (May 7, 2010), available at <http://www.sec.gov/news/speech/2010/spch050710mls.htm>.
- Commissioner Elisse Walter, Remarks before the 43rd Annual Securities Regulation Seminar (October 29, 2010), available at <http://www.sec.gov/news/speech/2010/spch102910ebw.htm>.
- Commissioner Elisse Walter, Key Note Address before the National Association of Bond Lawyers (NABL) 35th Bond Attorneys’ Workshop (October 28, 2010), available at <http://www.sec.gov/news/speech/2010/spch102810ebw.htm>.
- Commissioner Elisse Walter, Regulation of the Municipal Securities Market: Investors Are Not Second-Class Citizens (October 28, 2009), available at <http://www.sec.gov/news/speech/2009/spch102809ebw.htm>.