

Rule G-20: Gifts, Gratuities[and], Non-Cash Compensation and Expenses of Issuance

(a) Purpose. The purpose of this rule is to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process. The rule protects against improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal securities or municipal advisory activities of the recipients' employers.

(b) Definitions. For purposes of this rule, the following terms have the following meanings:

(i) "Cash compensation" means any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of municipal securities.

(ii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4), and other rules and regulations thereunder.

(iii) "Non-cash compensation" means any form of compensation received in connection with the sale and distribution of municipal securities that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, travel expenses, meals and lodging.

(iv) "Offeror" means, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including, but not limited to, the issuer's financial advisor, municipal advisor, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under FINRA Rules 5110, 2320, or NASD Rule 2830 in connection with any securities held as assets of or underlying such municipal fund securities.

(v) "Person" means a natural person.

(vi) "Primary offering" means a primary offering as defined in Securities Exchange Act Rule 15c2-12(f)(7).

(vii) "Regulated entity" means a broker, dealer, municipal securities dealer or municipal advisor, but does not include the associated persons of such entity.

[(a)](c) General Limitation on Value of Gifts and Gratuities. No [broker, dealer or municipal securities dealer] regulated entity or any of its associated persons shall, directly or indirectly, give or provide or permit to be given or provided any thing or service of value, including gratuities, in excess of \$100 per year to a person (other than an employee or partner of such

[broker, dealer or municipal securities dealer,]regulated entity), if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service. For purposes of this rule the term "employer" shall include a principal for whom the recipient of a payment or service is acting as agent or representative.

[(b) *Normal Business Dealings*. Notwithstanding the foregoing, the provisions](d) *Gifts and Gratuities Not Subject to General Limitation*. The general limitation of section [(a)](c) of this rule shall not[be deemed to prohibit occasional] apply to the following gifts, provided that they do not give rise to any apparent or actual material conflict of interest:

(i) *Normal Business Dealings. Occasional* gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the[broker, dealer or municipal securities dealer;] regulated entity or its associated persons, and the sponsoring by the[broker, dealer or municipal securities dealer] regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses;[or gifts of reminder advertising;] provided[,] that such gifts shall not be so frequent or so extensive as to raise any question of propriety.

(ii) *Transaction-Commemorative Gifts*. Gifts that are solely decorative items commemorating a business transaction, such as a customary plaque or desk ornament (*e.g.*, Lucite tombstone).

(iii) *De Minimis Gifts*. Gifts of *de minimis* value (*e.g.*, pens, notepads or modest desk ornaments).

(iv) *Promotional Gifts*. Promotional items of nominal value displaying the regulated entity's corporate or other business logo. The value of the item must be substantially below the \$100 limit of section (c) to be considered of nominal value.

(v) *Bereavement Gifts*. Bereavement gifts that are reasonable and customary for the circumstances.

(vi) *Personal Gifts*. Gifts that are personal in nature given upon infrequent life events (*e.g.*, a wedding gift or a congratulatory gift for the birth of a child).

(e) *Prohibition of Use of Offering Proceeds*. A regulated entity that engages in municipal securities activities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of such offering of municipal securities. For purposes of this prohibition, entertainment expenses do not include ordinary and reasonable

expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained.

[(c)](f) *Compensation for Services*. [Notwithstanding the foregoing, the provisions]The general limitation of section [(a)](c) of this rule shall not apply to compensation paid as a result of contracts of employment with or[to] compensation for services rendered by another person; provided[,] that there is in existence prior to the time of employment or before the services are rendered a written agreement between the[broker, dealer or municipal securities dealer subject to this rule] regulated entity and the person who is to perform such services[;] and[provided, further, that] such agreement[shall include] includes the nature of the proposed services, the amount of the proposed compensation[,] and the written consent of such person's employer.

[(d)](g) *Non-Cash Compensation in Connection with Primary Offerings*. In connection with the sale and distribution of a primary offering of municipal securities, no broker, dealer or municipal securities dealer, or any associated person thereof, shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation. Notwithstanding the[provisions] foregoing and the general limitation of section [(a)](c) of this rule, the following non-cash compensation arrangements are permitted:

(i) - (ii) No change.

(iii) payment or reimbursement by offerors in connection with meetings held by an offeror or by a broker, dealer or municipal securities dealer for the purpose of training or education of associated persons of a broker, dealer or municipal securities dealer, provided that:

(A) associated persons obtain the prior approval of the broker, dealer or municipal securities dealer to attend the meeting and attendance is not preconditioned by the broker, dealer or municipal securities dealer on achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by [paragraph (d)]subsection (g)(iv);

(B) No change.

(C) No change.

(D) the payment or reimbursement is not preconditioned by the offeror on achievement of a sales target or any other non-cash compensation arrangement permitted by[paragraph (d)] subsection (g)(iv).

(iv) No change.

(v) contributions by any person other than the broker, dealer or municipal securities dealer to a non-cash compensation arrangement between a broker, dealer or municipal securities

dealer and its associated persons, provided that the arrangement meets the criteria in [paragraph (d)] subsection (g)(iv).

[(e) Definitions. For purposes of this rule, the following terms have the following meanings:]

[(i) The term "non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of municipal securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.]

[(ii) The term "cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of municipal securities.]

[(iii) The term "offeror" shall mean, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including but not limited to the issuer's financial adviser, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided, however, that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under NASD Rule 2710, NASD Rule 2820 or NASD Rule 2830 in connection with any securities held as assets of or underlying such municipal fund securities.]

[(iv) The term "primary offering" shall mean a primary offering defined in Securities Exchange Act Rule 15c2-12(f)(7).]

Supplementary Material

.01 Valuations of Gifts. In general, gifts should be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other entertainment events, a regulated entity should use the higher of cost or face value. If gifts are given to multiple recipients, regulated entities should record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the general limitation of section (c).

.02 Aggregations of Gifts. Regulated entities must aggregate all gifts given by the regulated entity and each associated person of the regulated entity to a particular recipient that are subject to the general limitation of section (c) over the course of a year. Regulated entities must consistently aggregate all gifts on a calendar year basis, fiscal year basis, or rolling basis beginning with the first gift to any particular recipient.

.03 Promotional Gifts and "Other Business Logo." Logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of that regulated entity, would constitute an "other business logo" under subsection (d)(iv). The logo of a 529 college

savings plan for which a regulated entity is acting as distributor, for example, would constitute such an “other business logo.”

.04 Personal Gifts. A gift that is personal in nature under subsection (d)(vi) is not subject to the general limitation of section (c) of this rule because that limitation applies only to payments or services that are in relation to the municipal securities or municipal advisory activities of the employer of the recipient. In determining whether a gift is personal in nature and not in relation to such activities of the employer of the recipient, a number of factors will be considered including, but not limited to, the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift. When a regulated entity bears the cost of a gift, either directly or indirectly by reimbursing an associated person, the gift will be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the recipient within the meaning of the general limitation of section (c) of this rule.

.05 Applicability of State or Other Laws. Regulated entities and their associated persons may be subject to other duties, restrictions or obligations under state or other laws in this area. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to the activities of regulated entities or their associated persons.

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Rule G-20 Interpretations

Dealer Payments in Connection With the Municipal Securities Issuance Process

January 29, 2007

The Municipal Securities Rulemaking Board (“MSRB”) is publishing this notice to remind brokers, dealers and municipal securities dealers (collectively, “dealers”) of the application of Rule G-20, on gifts, gratuities and non-cash compensation, and Rule G-17, on fair dealing, in connection with certain payments made and expenses reimbursed during the municipal bond issuance process. These rules are designed to avoid conflicts of interest and to promote fair practices in the municipal securities market.

Rule G-20, among other things, 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. The rule provides an exception from the \$100 annual limit for “normal business dealings,” which includes occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the dealer (i.e., if dealer personnel accompany the recipient to the meal, sporting or other event), legitimate business functions sponsored by the dealer that are recognized by the Internal Revenue Service as a deductible

business expense, or gifts of reminder advertising. However, these “gifts” must not be “so frequent or so extensive as to raise any question of propriety.” Rule G-17 provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice.

Dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which dealers seek reimbursement from bond proceeds, comport with the requirements of these rules. Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer’s municipal securities activities. Thus, for example, a dealer acting as a financial advisor or underwriter may violate Rule G-20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering (such as may be incurred for rating agency trips, bond closing dinners and other functions) that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.

Furthermore, dealers should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue may, depending on all the facts and circumstances, constitute a deceptive, dishonest or unfair practice. A dealer may violate Rule G-17 by knowingly facilitating such a practice by, for example, making arrangements and advancing funds for the excessive or lavish expenses to be incurred and thereafter claiming such expenses as an expense of the issue.

Dealers are responsible for ensuring that their supervisory policies and procedures established under Rule G-27, on supervision, are adequate to prevent and detect violations of MSRB rules in this area. The MSRB notes that state and local laws also may limit or proscribe activities of the type addressed in this notice.

By publishing this notice, the MSRB does not mean to suggest that issuers or dealers curtail legitimate expenses in connection with the bond issuance process. For example, it sometimes is advantageous for issuer officials to visit bond rating agencies to provide information that will facilitate the rating of the new issue. It is the character, nature and extent of expenses paid by dealers or reimbursed as an expense of issue, even if thought to be a common industry practice, which may raise a question under applicable MSRB rules.

The MSRB encourages all parties involved in the municipal bond issuance process to maintain the integrity of this process and investor and public confidence in the municipal securities market by adhering to the highest ethical standards.

[Finally, the MSRB notes that NASD recently published guidance to assist dealers in complying with NASD Rule 3060 on influencing or rewarding employees of others. NASD’s guidance relates to personal gifts/exclusions; de minimis and promotional items; aggregation of gifts;

valuation of gifts; gifts incidental to business entertainment; and supervision and recordkeeping.¹ This guidance applies as well to the comparable provisions of MSRB Rule G-20.]

[¹ See NASD Notice to Members 06-69 (December 2006).]

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Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers[,] and Municipal Advisors

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xvi) No change.

(xvii) *Records Concerning Compliance with Rule G-20.* Each broker, dealer and municipal securities dealer shall maintain:

(A) a separate record of any gift or gratuity [referred]subject to [in]the general limitation of Rule G-20(c)(a)];

(B) all agreements referred to in Rule G-20(f)(c) and records of all compensation paid as a result of those agreements; and

(C) records of all non-cash compensation referred to in Rule G-20(g)(d). The records shall include the name of the person or entity making the payment, the[names] name(s) of the associated[persons] person(s) receiving the payments (if applicable), and the nature (including the location of meetings described in Rule G-20(g)(iii)(d)(iii)), if applicable) and value of non-cash compensation received.

(xviii) - (xxvi) No change.

(b) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records.

(i) No change.

(ii) [Reserved] Records Concerning Compliance with Rule G-20.

(A) a separate record of any gift or gratuity subject to the general limitation of Rule G-20(c); and

(B) all agreements referred to in Rule G-20(f) and records of all compensation paid as a result of those agreements.

(iii) - (v) No change.