



RISK ALERT

DIVISION OF EXAMINATIONS

December 9, 2024

Municipal Advisors: Staff Assessment of Risks, Scoping of Examinations, and Requesting of Documents^{*}

I. Introduction

The Division is publishing this Risk Alert to describe the examination selection process for municipal advisors and provide an attachment listing the types of documents and information that Division staff may request during an examination.

A municipal advisor, as defined by the Securities Exchange Act of 1934 (“Exchange Act”), is a person¹ (who is not a municipal entity or an employee of a municipal entity) that: (1) provides 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 (2) undertakes a solicitation of a municipal entity. The definition of municipal advisor includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that provide municipal advisory services, unless they are statutorily excluded.²

Since 2010, it has been unlawful for municipal advisors to provide certain advice to, or on behalf of, or to solicit, municipal entities or obligated persons without registering with the Commission.³ As of November 2024, there are more than 400 municipal advisors registered with the Commission.⁴

Given the size of the securities industry and the Division’s limited resources, the Division utilizes a risk-based approach for selecting firms to examine and in determining the scope of risk areas to review in each examination. The Division’s risk-based approach reflects changes in market conditions and industry

^{*} The views expressed herein are those of the staff of the Division of Examinations (“Division” or “EXAMS”). This Risk Alert is not a rule, regulation, or statement of the Securities and Exchange Commission (“SEC” or “Commission”). The Commission has neither approved nor disapproved the content of this Risk Alert. This Risk Alert, like all staff statements, has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

¹ The term “person” includes an individual, sole proprietorship, or a firm. A firm includes any partnership, corporation, trust, limited liability company, limited liability partnership, or other organization. See [Instructions for the Form MA Series](#), Glossary of Terms.

² Section 15B(e)(4) of the [Exchange Act](#).

³ Section 15B(a)(1)(B) of the [Exchange Act](#). [Exchange Act Rule 15Ba1-1\(k\)](#) defines the term “obligated person” as any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities; however, the term “obligated person” does not include (1) a person who provides municipal bond insurance, letters of credit, or other liquidity facilities; (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or (3) the federal government.

⁴ See Commission, [Information About Registered Municipal Advisors](#), November 2024 Data Download.

practices. For example, a municipal advisor may be selected for examination to evaluate (1) risks present at that firm or (2) industry practices that pose risks to municipal clients and the markets more broadly. Examinations may also be conducted to assess how registrants are adapting to new regulatory requirements. Examinations of municipal advisors may focus on compliance with their statutory fiduciary obligation,⁵ standards of conduct,⁶ professional qualification,⁷ filings and submissions,⁸ recordkeeping,⁹ advertising,¹⁰ and supervisory requirements.¹¹ The Division has previously published two Risk Alerts providing observations from its examinations of municipal advisors, one in 2017 and one in 2022.¹²

II. Assessing Risks and Scoping Examinations

Each year, the Division publishes its annual priorities to provide registrants, including municipal advisors, with insight into those areas that the Division has identified as the key risks, trends, and requirements that the Division plans to focus on during the upcoming year, including certain products, services, or business practices.¹³ In 2025, for example, the Division will continue to assess whether municipal advisors have met their fiduciary duty to municipal entity clients when engaging in municipal advisory activities, such as providing advice or recommendations regarding the pricing or method of sale with respect to the issuance of municipal securities. The Division will also continue to assess whether municipal advisors have complied with MSRB Rule G-42, which establishes the core standards of conduct and duties applicable to non-solicitor municipal advisors, including requirements to disclose conflicts of interest and to document municipal advisory relationships. Finally, the Division will continue to assess whether municipal advisors have made required filings with the Commission and met their professional qualification, recordkeeping, and supervision requirements.

A. Selecting Firms to Examine

The Division leverages technology to collect and analyze large sets of industry- and firm-level data to help analyze the municipal advisor population to identify risks when determining which firms to examine. The Division may also review disclosure documents and filings with regulators (e.g., [Form MA](#), [Form MA-I](#), [Form A-12](#), and for municipal advisors that are dually registered as broker-dealers, [Form BD](#) and [FOCUS](#) reports).

Division staff may also consider risk factors related to a particular municipal advisor's business activities, conflicts of interest, and regulatory history. For example, the staff may consider, among other things: (1) prior examination history; (2) supervisory concerns, such as disciplinary history of associated individuals

⁵ Section 15B(c)(1) of the [Exchange Act](#).

⁶ MSRB Rules [G-17](#), [G-42](#), and [G-46](#).

⁷ MSRB Rules [G-2](#) and [G-3](#).

⁸ Exchange Act Rules [15Ba1-2](#), [15Ba1-4](#), [15Ba1-5](#), [15Ba1-6](#), and MSRB Rules [A-12](#) and [G-37](#).

⁹ Exchange Act Rule [15Ba1-8](#) and MSRB Rules [G-8](#) and [G-9](#).

¹⁰ MSRB Rule [G-40](#).

¹¹ MSRB Rule [G-44](#).

¹² See Division, [Risk Alert: Observations from Municipal Advisor Examinations](#) (Nov. 7, 2017) and [Risk Alert: Recent Observations from Municipal Advisor Examinations](#) (Aug. 22, 2022).

¹³ See, e.g., Division, [FY 2024 Examination Priorities](#) (Oct. 16, 2023) and [FY 2025 Examination Priorities](#) (Oct. 21, 2024).

or affiliates; (3) tips, complaints, or referrals involving the firm; (4) the length of time since the firm's last examination or registration; (5) the firm's client base and activity level; (6) the services offered by the firm; (7) business activities of the firm or its personnel that may create conflicts of interest, such as outside business activities and dual registration with an affiliated broker-dealer; and (8) reporting by news and media that may involve or impact the firm.

B. Selecting Examination Focus Areas

Once a municipal advisor is selected for examination, staff conducts additional risk assessment to determine the scope of the examination, such as selecting areas of the business that examiners will review. Therefore, the scope of an examination, and consequently the documents requested, will vary from examination to examination depending on the examined firm's business model, associated risks, and the Division's reason for conducting the examination. The staff may also consider whether municipal advisors that are dually registered as broker-dealers have been subject to an examination in a similar area by a self-regulatory organization.¹⁴ The examination scope may be adjusted during the examination based on information received and staff observations.¹⁵

III. Selecting Documents to Request – Potential Information That May Be Requested

As part of the examination process, the staff usually sends a letter notifying the municipal advisor of the upcoming examination, which contains an initial request list identifying certain information, including documents, that the staff will review as part of the examination. The initial request for information may include: (1) information that provides the staff with an understanding of the municipal advisor's business activities; (2) the written compliance policies and supervisory procedures the firm has established, maintained, and enforced to address the firm's business activities; and (3) information for the staff to perform its own testing for compliance in various areas. As an examination progresses, the staff often makes additional requests for information and documents from the municipal advisor, as needed.

To assist municipal advisors further, the Division is providing a Sample Initial Information Request List for Municipal Advisors as an attachment to this Risk Alert.

IV. Conclusion

The Division is providing this information to help municipal advisors better understand the examination process and prepare for an examination. Although the Division continuously refines and enhances its risk assessment and examination process to address emerging risks, new and developing industry practices, and regulatory developments, the information shared herein may assist firms in their compliance efforts.

¹⁴ Broker-dealers are subject to examination by any self-regulatory organization of which the broker-dealer is a member. Most broker-dealers are members of, and examined by, FINRA. As part of the pre-examination planning process, the staff actively coordinates examination oversight to help prevent duplication of regulatory efforts. However, an earlier examination by a self-regulatory organization will not necessarily preclude an SEC examination in the same area.

¹⁵ Ultimately, the scope of an examination will determine whether a given item is included within an initial document request. See also Division, [Information for Entities Subject to Examination or Inspection by the Securities and Exchange Commission \(Examination Brochure\)](#) (last updated March 2023) for additional information regarding the examination process.

This Risk Alert is intended to highlight for firms risks and issues that Division staff has identified. In addition, this Risk Alert describes risks that firms may consider to (1) assess their supervisory, compliance, and/or other risk management systems related to these risks, and (2) make any changes, as may be appropriate, to address or strengthen such systems. Other risks besides those described in this Risk Alert may be appropriate to consider, and some issues discussed in this Risk Alert may not be relevant to a particular firm's business. The adequacy of supervisory, compliance and other risk management systems can be determined only with reference to the profile of each specific firm and other relevant facts and circumstances.

Attachment: Sample Initial Information Request List for Municipal Advisors

Described below are the types of information, including documents, that Division staff may initially request and review during an examination of a municipal advisor. Information requests are generally transmitted through secure email, and responses are also typically provided electronically. If certain records are not maintained electronically or cannot be produced electronically, the staff may request that the municipal advisor make such records available for in-person examination. Staff will identify a time period (“review period”) and request all documents that were in effect or generated during such period. Firms should be aware that the “review period” may differ for each examination.

<i>General Information</i>	
Organizational Information	<ul style="list-style-type: none">• An organization chart (including reporting lines), if any.• A list of affiliated business entities, if any.• A description of the relationship between the firm and any affiliated entities, if any.• A description of the ownership structure.• A list of owners, control persons, officers, and employees.
Associated Individuals	<ul style="list-style-type: none">• Name, title, and address.• CRD number, if applicable.• Beginning and end dates for the individual’s association with the firm.• Reason for end date, such as whether the individual left voluntarily or was terminated for cause, if any.• A description of the individual’s roles and responsibilities, including any municipal advisory activities.• A list of the individual’s qualifications (whether the individual has passed the Series 50 or 54 examinations).• A list of all other business activities of the individual, if any.• A copy of the written consent to service of process for each individual that has engaged in municipal advisory activities.

Business and Operations	<ul style="list-style-type: none"> • A description of the types of business engaged in by the firm. • A list of all products and services offered to municipal advisory clients. • A description of how fees are assessed for each product or service. • A list of any fee-splitting arrangements. • A list of all service providers used by the firm for its municipal advisory business, if any. • A list of municipal advisory clients. • A list of municipal securities offerings the firm participated in. • Indicate whether the firm has access to or custody of client assets, such as funds or securities, if any.
Financial Records	<ul style="list-style-type: none"> • Balance sheet, if any. • Income statement, if any. • General ledger. • Bank statements and cash reconciliations.
Complaints, Legal, and Disciplinary Matters	<ul style="list-style-type: none"> • A list of all written complaints (including litigation and arbitration) involving the firm or any associated person of the firm. • A list of all requests for information (including subpoenas) received by the firm from any local, state, federal, or regulatory agencies regarding the firm's municipal advisory business.
<i>Supervisory and Compliance Structure</i>	
Supervision	<ul style="list-style-type: none"> • A copy of all written compliance policies and written supervisory procedures in effect during the review period. • A copy of any surveillance or exception reports used for supervision, if any. • A record of all designations of persons responsible for supervision. • A record of all reviews of written compliance policies and written supervisory procedures. • A record of all designations of persons as chief compliance officer. • A copy of the annual certifications as to compliance processes.
<i>Regulatory Requirements (Other Potential Requests)</i>	
Written Communications	<ul style="list-style-type: none"> • A list of the firm's written communication channels, if any. For each communication channel, describe how the firm ensures that all written communications received and sent relating to municipal advisory activities are maintained.

Continuing Education	<ul style="list-style-type: none"> • A copy of the firm's training needs analysis and written training plan. • A record documenting the content of the firm's training programs and completion of the programs by each person qualified as a municipal advisor representative or municipal advisor principal.
Gifts	<ul style="list-style-type: none"> • A record of any gifts or gratuities (cash and non-cash) given by the firm or any of its associated persons subject to MSRB Rule G-20.
Advertising	<ul style="list-style-type: none"> • A description of the firm's advertising efforts, if any. • A copy of any documentation showing that each advertisement was approved in writing by a municipal advisor principal prior to first use. • A record of any cash or non-cash compensation provided for a testimonial.
Standards of Conduct for Non-Solicitor Municipal Advisors	<ul style="list-style-type: none"> • A copy of the firm's engagement letter with the client. • A copy of the firm's disclosure of conflicts of interest and legal or disciplinary events to the client. • A copy of any document that memorializes the basis for any determination as to suitability for the client. • A copy of any document that was material to making a recommendation to the client. • A copy of any analysis performed or reviewed by the firm related to the decision to issue municipal securities and/or the method of sale. • A description of the firm's role in the pricing of the offering. • A copy of any documents or written communications relating to the pricing of the issuance, including any analysis from pre-pricing through post-pricing. • A copy of the closing transcript, if any. • A copy of any invoices provided to the client.
Client Education and Protection	<ul style="list-style-type: none"> • A copy of the firm's MSRB Rule G-10 notifications to the client.
