

Rule G-46: Duties of Solicitor Municipal Advisors(a) Definitions.

(i) “Compensation” means any cash, in-kind or non-cash remuneration, including but not limited to merchandise, gifts, travel expenses, meals and lodging.

(ii) “Excluded communications” means (A) advertising by a dealer, municipal advisor, or investment adviser; (B) direct or indirect communications with an obligated person if such obligated person is not acting in the capacity of an obligated person; (C) direct or indirect communications with an obligated person made for the purpose of obtaining or retaining an engagement that is not in connection with the issuance of municipal securities or with respect to municipal financial products; and (D) direct or indirect communications made for the purpose of obtaining or retaining an engagement for or in connection with municipal financial products that are investment strategies to the extent that those investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(iii) “Solicitation” means a direct or indirect communication with a municipal entity or obligated person made by a solicitor municipal advisor, for direct or indirect compensation, on behalf of a municipal advisor or investment adviser that does not control, is not controlled by, or is not under common control with the solicitor municipal advisor for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor for or in connection with municipal financial products or the issuance of municipal securities or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; provided, however, that it does not include excluded communications, as defined in Rule G-46(a)(ii).

(iv) “Solicited entity” means any municipal entity (as defined in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder) or obligated person (as defined in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder) the solicitor municipal advisor has solicited, is soliciting or intends to solicit within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

(v) “Solicitor client” means the municipal advisor or investment adviser on behalf of whom the solicitor municipal advisor undertakes a solicitation within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

(vi) “Solicitor municipal advisor” means, for purposes of this rule, a municipal advisor within the meaning of Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided, that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(i) of the Act and the rules and regulations thereunder.

(vii) A “solicitor relationship” shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to undertake a solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder. The solicitor relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the solicitor relationship has terminated pursuant to the terms of the documentation of the solicitor relationship required in section (c) of this rule or (ii) the date on which the solicitor municipal advisor withdraws from the solicitor relationship.

(b) *Disclosure to Solicitor Clients.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the solicitor client full and fair disclosure in writing of:

(i) all material conflicts of interest; and

(ii) any legal or disciplinary event that would be material to a reasonable solicitor client’s evaluation of the solicitor municipal advisor or the integrity of its management or advisory personnel.

As an alternative to providing a narrative description of any legal or disciplinary events required to be disclosed under Rule G-46(b)(ii) above, information regarding such events may be disclosed for purposes of this subsection by: (i) in the case of solicitor municipal advisors that are also registered broker-dealers or investment advisers, identification of the specific type of event and specific reference to the relevant portions of the solicitor municipal advisor’s Form BD or Form ADV if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms or (ii) in the case of all other solicitor municipal advisors, identification of the specific type of event and specific reference to the relevant portions of the solicitor municipal advisor’s most recent Forms MA or MA-I filed with the Commission if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of the Solicitor Relationship.* A solicitor municipal advisor must evidence each of its solicitor relationships by a writing or writings created and delivered to the solicitor client prior to, upon or promptly after the establishment of the solicitor relationship. The writing(s) must be dated and include, at a minimum:

(i) a description of the solicitation activities to be engaged in by the solicitor municipal advisor on behalf of the solicitor client (including the scope of the agreed-upon activities and a statement that the scope of the solicitation is anticipated to include the solicitation of municipal entities and/or obligated persons);

(ii) the terms and amount of the compensation to be received by the solicitor municipal advisor for such activities; and

(iii) the date, triggering event, or means for the termination of the relationship, or, if none, a statement that there is none; and

(iv) any terms relating to withdrawal from the relationship.

(d) Representations to Solicited Entities.

(i) A solicitor municipal advisor is prohibited from making a representation that the solicitor municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the solicitor client.

(ii) A solicitor municipal advisor must have a reasonable basis for any material representations it makes to a solicited entity regarding the capacity, resources or knowledge of the solicitor client.

(e) Disclosures to Solicited Entities. A solicitor municipal advisor must disclose to any solicited entity all material facts about the solicitation within the timing and in the manner described in section (f) of this rule. This includes, but is not limited to, an obligation to disclose the following:

(i) Role and Compensation Disclosures. A solicitor municipal advisor must disclose to any solicited entity:

(A) the name of the solicitor municipal advisor;

(B) the name of the solicitor client;

(C) the type of business being solicited (i.e., municipal advisory business or investment advisory services);

(D) the material terms of the solicitor municipal advisor's compensation arrangement with the solicitor client, including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor municipal advisor for such solicitation;

(E) payments made by the solicitor municipal advisor to another solicitor municipal advisor (including an affiliate, but not an employee) to facilitate the solicitation, regardless of characterization of the payment; and

(F) the following statements:

(1) In connection with its solicitation activities as a municipal advisor, a solicitor municipal advisor does not owe a fiduciary duty under Section 15B(c)(i) of the Exchange Act or MSRB rules to the entities that it solicits and is not required by those provisions to act in the best interests of such entities without regard to the solicitor municipal advisor's own financial or other interests. However, in connection with such solicitation activities, a solicitor municipal advisor is required to deal fairly with all persons, including both solicited entities and the solicitor municipal advisor's clients; and

(2) A solicitor municipal advisor's primary role is to solicit the solicited entity on behalf of certain third-party regulated entities and the solicitor municipal advisor will be compensated for its solicitation services by the solicitor municipal advisor's client.

(ii) Conflicts Disclosures. A solicitor municipal advisor must disclose any material conflicts of interest, including, but not limited to the fact that, because the solicitor municipal advisor is compensated for its solicitation efforts, it has an incentive to recommend its clients, resulting in a material conflict of interest. The solicitor municipal advisor also must disclose any material conflicts of interest, of which the solicitor municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the solicitor municipal advisor's ability to solicit the solicited entity in accordance with its duty of fair dealing.

(iii) Solicitor Client Disclosures. A solicitor municipal advisor must provide to the solicited entity the following information regarding the solicitor client:

(A) the type of information that is generally available on Form MA (in the case of a municipal advisor client) or Form ADV, Part 2 (in the case of an investment adviser client); and

(B) a description of how the solicited entity can obtain a copy of the solicitor client's Form MA or Form ADV, Part 2, as applicable.

(f) *Timing and Manner of Disclosures to Solicited Entities.* Any disclosures required under section (e) of this rule must be made in writing and comply with the following:

(i) First Communication. The disclosures must be delivered at the time of the first communication, as that term is used in the definition of "solicitation" under Rule G-46(a)(iii), with a solicited entity (or an intermediary in connection with an indirect solicitation) on behalf of a specific solicitor client, as specified below:

(A) Direct Solicitations. The disclosures must be provided to the solicited entity representative with whom such communication is made.

(B) Indirect Solicitations. The disclosures must be provided to the intermediary with whom such communication is made.

(ii) Solicitor Client Engagement with Solicited Entity. If the solicitation results in a solicited entity engaging a solicitor client for investment advisory services or municipal advisory services, all disclosures required by Rule G-46(e) must be provided at the time that such engagement documentation is delivered to the solicited entity or promptly thereafter, even if such disclosures were already provided at the time of the first communication. Disclosures required by this paragraph (f)(ii) may be provided by either the solicitor client or the solicitor municipal advisor, but must be made to an official of

the solicited entity that: (1) the solicitor municipal advisor (or, the solicitor client, if the solicitor client provides such disclosures) reasonably believes has the authority to bind the solicited entity by contract; and (2) is not a party to a disclosed conflict.

(g) Specified Prohibitions. A solicitor municipal advisor is prohibited from:

(i) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities; and

(ii) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the solicitor municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the solicitor municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in Rule G-46(g)(ii)(1) above; and (3) payments that are permissible “normal business dealings” as described in Rule G-20.

Supplementary Material

.01 Reasonable Basis for Representations. While a solicitor municipal advisor must have a reasonable basis for the representations described in Rule G-46(d), the solicitor municipal advisor is not required to actively seek out every piece of information that may be relevant to such representation. For example, a solicitor municipal advisor soliciting a municipal entity on behalf of an investment advisor to perform investment advisory services should have reviewed the investment adviser’s Form ADV and should have met with a knowledgeable representative of the investment adviser on one or more occasions to better understand its business and to ask any relevant questions.

.02 Fair Dealing and Fiduciary Duty. Solicitor municipal advisors, like all municipal advisors, must comply with Rule G-17, on conduct of municipal securities and municipal advisory activities. As a result, like all municipal advisors, solicitor municipal advisors must deal fairly with all persons, including solicited entities and solicitor clients and must not engage in any deceptive, dishonest or unfair practice. Unlike non-solicitor municipal advisors, whose clients may include municipal entities, solicitor clients are the third-party financial professionals on whose behalf solicitor municipal advisors conduct solicitations. As a result, in connection with their solicitation activities, solicitor municipal advisors do not owe a fiduciary duty under Exchange Act Section 15B(c)(i) or MSRB rules to either their solicitor clients or the municipal entity clients that they solicit and are not required by those provisions to act in their clients’ best interest without regard to the solicitor municipal advisor’s own financial or other interests. However, solicitor municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. Additionally, as described further in SM .03 below, a solicitor municipal advisor may also engage in non-

solicitation municipal advisory activity. In that event, the requirements of Rule G-42 will apply with respect to such activity and a fiduciary duty will apply with respect to the municipal entity clients of the municipal advisor.

.03 Relationship to Rule G-42. Municipal advisors should be mindful that one may be, simultaneously, both a solicitor municipal advisor for purposes of Rule G-46 and a non-solicitor municipal advisor for purposes of Rule G-42. For example, a municipal advisor may provide “advice” as defined in Rule G-42 to a municipal entity (the “advisory engagement”) and separately may act as a solicitor municipal advisor with respect to that same municipal entity or another municipal entity as contemplated in this Rule G-46 (the “solicitor municipal advisor engagement”). As a result, the municipal advisor would be subject to Rule G-42 with respect to the advisory engagement and would be subject to Rule G-46 with respect to the solicitor municipal advisor engagement. Municipal advisors should evaluate the activity undertaken with respect to each engagement to determine which rule governs (Rule G-42 or Rule G-46) and ensure the written supervisory procedures required under Rule G-44 reflect such.

.04 Documentation of Compensation and Compensation Disclosure. Rule G-46(c)(ii) and (e)(i)(D) both require written disclosures pertaining to a solicitor’s compensation. With respect to the obligation under section (c)(ii), the documentation(s) must clearly describe the structure of the compensation arrangement and the amount of compensation paid or to be paid. For example, a solicitor municipal advisor that will be paid on the basis of a flat or fixed fee must disclose the amount of the flat fee, if known and/or calculable at the time of the documentation. If the precise dollar amount is not known at the time, the documentation should disclose how such compensation will be calculated. As another example, if the compensation arrangement calls for a percentage of fees collected from the referred clients, then the documentation should state so and describe what that percentage is. The disclosures required under section (e)(i)(D) require disclosure of at least this same information, to the extent material. However, Rule G-46(e)(i)(D) may require the disclosure of additional information, depending on the facts and circumstances. For example, if the solicitor municipal advisor receives indirect compensation for the solicitation, information pertaining to the indirect compensation also must be disclosed.

* * * * *

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

(a) through (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) through (vii) No change.

(viii) Reserved.

(ix) Records Concerning Compliance with Rule G-46.

(A) evidence that the disclosures required by Rule G-46(b) were made in the manner required by that section;

(B) a copy of each writing or writings required by Rule G-46(c);

(C) documentation substantiating the solicitor municipal advisor's reasonable basis for believing its representations as described in Rule G-46(d); and

(D) evidence that the disclosures required by Rule G-46(e) were made in the manner described in Rule G-46(f) (e.g., automatic email delivery receipt).

Supplementary Material

.01 - .02 No change.