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**Category**

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**Affected Rules**

[Rule G-46](#), [Rule G-8](#)

## SEC Approves New MSRB Rule G-46 on Duties of Solicitor Municipal Advisors and Related Amendments to MSRB Rule G-8

### Overview

On March 29, 2023, the Municipal Securities Rulemaking Board (MSRB or “Board”) received approval<sup>1</sup> from the U.S. Securities and Exchange Commission (SEC or “Commission”) to create a new rule, MSRB Rule G-46, on duties of solicitor municipal advisors and amend MSRB Rule G-8, on books and records. New MSRB Rule G-46 is designed to establish the core standards of conduct for solicitor municipal advisors when engaging in solicitation activities that would require them to register with the SEC and the MSRB as municipal advisors. The related amendments to Rule G-8 establish recordkeeping requirements to facilitate and document compliance with the new obligations of Rule G-46.

The adoption of Rule G-46 and the related amendments to Rule G-8 furthers the MSRB’s mandate to protect municipal entities, obligated persons, investors, and the public interest. The compliance date for Rule G-46 and the related amendments to Rule G-8 will be March 1, 2024.



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<sup>1</sup> See Securities Exchange Act of 1934 (“Exchange Act”) Release No. 97218 (March 29, 2023) (File No. SR-MSRB-2023-02).

## Background

There are two broad categories of municipal advisors—those that provide certain advice to or on behalf of a municipal entity or obligated person and those that undertake certain solicitations of a municipal entity or obligated persons on behalf of certain third-party financial professionals. The first category of municipal advisors is often referred to as non-solicitor municipal advisors, while the latter is sometimes referred to as solicitors. The MSRB developed Rule G-46 to govern the duties and conduct of these solicitors, more specifically defined as “solicitor municipal advisors” under Rule G-46(a)(vi), to establish fundamental protections for municipal entities and obligated persons with whom solicitor municipal advisors interact. This rule change serves as an important bulwark against potential improper practices in the municipal market and also provides greater certainty and transparency to solicitor municipal advisors regarding regulatory expectations.

## Summary of the Amendments

### I. The core provisions of Rule G-46 are summarized as follows:

#### a. Definitions

Rule G-46(a) sets forth a set of definitions for terms used in the rule, including “compensation,” “excluded communications,” “solicitation,” “solicited entity,” “solicitor client,” “solicitor municipal advisor,” and “solicitor relationship.” The most important of these definitions, which are integral to understanding nearly all of the provisions of Rule G-46, include the below terms, the definitions of which are summarized below:

**“Solicitation”** (Rule G-46(a)(iii)): 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).

MSRB Rule G-38 generally prohibits a broker, dealer or municipal securities dealer (individually and collectively, “dealers”) from providing or agreeing to

provide payment to third parties for solicitations of municipal securities business made on behalf of the dealer. As a result, Rule G-46 assumes that such solicitations do not occur.

**“Solicited entity”** (Rule G-46(a)(iv)): any municipal entity or obligated person that 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 Exchange Act and the rules and regulations thereunder.

**“Solicitor client”** (Rule G-46(a)(v)): 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 Exchange Act and the rules and regulations thereunder.

Because of the prohibition set forth in MSRB Rule G-38, Rule G-46 presumes that solicitors do not conduct paid solicitations on behalf of third-party dealers. As a result, the term “solicitor client” as defined in Rule G-46(a)(v) does not include dealers as solicitor clients.

**“Solicitor municipal advisor”** (Rule G-46(a)(vi)): a municipal advisor within the meaning of Section 15B(e)(4) of the Exchange Act and other rules and regulations thereunder; excluding a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(i) of the Exchange Act and the rules and regulations thereunder.

Generally, this means that a solicitor municipal advisor is any municipal advisor that is not a non-solicitor municipal advisor.<sup>2</sup>

#### **b. Disclosure to Solicitor Clients**

Rule G-46(b) requires a solicitor municipal advisor to provide to a client full and fair disclosure in writing of all material conflicts of interest and 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. The disclosures must be provided prior to or upon engaging in municipal advisory activities.

The rule also permits solicitor municipal advisors who are also registered broker-dealers or investment advisers, to reference such information in

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<sup>2</sup> However, as discussed further below, a municipal advisor may be a solicitor municipal advisor with respect to one engagement and a non-solicitor municipal advisor with respect to another engagement.

certain other publicly available information. As a result, such solicitor municipal advisors may identify the specific type of event and make 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.<sup>3</sup> All other municipal advisors may identify the specific type of event and make 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.<sup>4</sup>

**c. Documentation of the Solicitor Relationship**

Rule G-46(c) requires a solicitor municipal advisor to 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) are required to be dated and include, at a minimum:

- 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);
- the terms and amount of the compensation to be received by the solicitor municipal advisor for such activities;
- the date, triggering event, or means for the termination of the relationship, or, if none, a statement that there is none; and
- any terms relating to withdrawal from the relationship.

Supplementary Material .04 provides guidance with respect to the obligation to document the terms and the amount of compensation to be received. Specifically, it provides that the documentation(s) must clearly describe the

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<sup>3</sup> For example, a solicitor municipal advisor could direct a solicitor client to FINRA's BrokerCheck system or the Investment Adviser Public Disclosure website, as applicable; provided, that the direction is accompanied by information as to how to retrieve the firm's specific Form BD or Form ADV and specific reference to the relevant portions of the applicable form.

<sup>4</sup> For example, a solicitor municipal advisor could direct a solicitor client to the SEC's EDGAR system; provided, that the direction is accompanied by information as to how to retrieve the firm's specific form(s) and specific reference to the relevant portions of the applicable form(s).

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 would be required to 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.

#### **d. Representations to Solicited Entities**

Rule G-46(d)(i) prohibits a solicitor municipal advisor 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. Additionally, Rule G-46(d)(ii) requires a solicitor municipal advisor to have a reasonable basis for any material representations it makes to a solicited entity regarding the capacity, resources or knowledge of the solicitor client. Supplementary Material .01 provides further guidance on compliance with the reasonable-basis standard, explaining that, 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 representations.

#### **e. Disclosures to Solicited Entities**

Rule G-46(e) requires a solicitor municipal advisor to disclose to any solicited entity all material facts about the solicitation in the manner specified in section (f) of the rule. This includes an obligation to disclose certain information pertaining to the solicitor municipal advisor's: (i) role and compensation; (ii) conflicts of interest; and (iii) client.

**Role and Compensation:** With respect to the solicitor municipal advisor's role and compensation, required disclosures under G-46(e)(i) include:

- the solicitor municipal advisor's name and the solicitor client's name;
- the type of business being solicited (i.e., municipal advisory business or investment advisory services);

- the material terms of the solicitor municipal advisor’s compensation arrangement,<sup>5</sup> including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor municipal advisor for such solicitation; and
- payments made by the solicitor municipal advisor to another solicitor municipal advisor to facilitate the solicitation.

The solicitor municipal advisor is also required to disclose the following statements:

- 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
- 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.<sup>6</sup>

Supplementary Material .02 provides additional guidance regarding the relationship between Rule G-46, fair dealing obligations under Rule G-17, and the application of the federal fiduciary duty to a solicitor municipal advisor’s solicitations of solicited entities.

**Conflicts of Interest:** Rule G-46(e)(ii) requires a solicitor municipal advisor to disclose any material conflicts of interest,<sup>7</sup> 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

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<sup>5</sup> Supplementary Material .04 provides additional guidance with respect to the obligation to disclose the material terms of the solicitor municipal advisor’s compensation arrangement.

<sup>6</sup> While the rule text uses the defined term “solicitor municipal advisor,” to facilitate a more plain-language disclosure, the MSRB expects that solicitor municipal advisors would insert their name in place of the term “solicitor municipal advisor.”

<sup>7</sup> If a reasonable solicited entity would consider a particular conflict of interest on the part of the solicitor municipal advisor to be material to the decision to choose the solicitor municipal advisor’s client, then such conflict of interest should be disclosed.

material conflict of interest. The solicitor municipal advisor also is required to 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.

Solicitor Client Disclosures: Rule G-46(e)(iii) requires a solicitor municipal advisor to provide to the solicited entity the following information regarding the solicitor client:

- 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
- 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 Disclosure to Solicited Entities**

Rule G-46(f) provides that any disclosures required under section (e) of the rule (on disclosures to solicited entities) must be made in writing. The rule also provides for a dual-disclosure requirement, such that solicitations that result in a solicited entity engaging a solicitor client would receive the requisite disclosures twice: (i) once at the time of the first communication giving rise to the solicitation, and (ii) again at the time that engagement documentation pertaining to the solicited entity's engagement of the solicitor client is delivered (or promptly thereafter).

Initial Disclosure at the Time of the First Communication: The disclosures are required to be delivered at the time of the first communication (as that term is used in the definition of "solicitation") with a solicited entity on behalf of a specific solicitor client.<sup>8</sup> Specifically, the disclosures are required to be provided to the solicited entity representative with whom such communication is made. In the case of an indirect solicitation—a solicitation of an intermediary who represents a municipal entity or obligated person—

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<sup>8</sup> A solicitor municipal advisor is expected to provide separate disclosures for each of its engagements. For example, assume that a solicitor municipal advisor solicits a municipal entity on behalf of a municipal advisor client to provide municipal advisory services to the municipal entity. One week later, the solicitor municipal advisor solicits the municipal entity again—this time to obtain an engagement for the solicitor municipal advisor's investment advisory client to provide investment advisory services to the municipal entity. The solicitor municipal advisor would be expected to provide its disclosures to the municipal entity again in connection with the second solicitation.

the disclosures must be provided to the intermediary with whom such communication is made.<sup>9</sup>

Second Disclosure at the Time of the Solicitor Client’s Engagement with the 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) are required to be provided at the time that such engagement documentation is delivered to the solicited entity or promptly thereafter. This is the case even if there are no changes between the initial set of disclosures and the second set of disclosures. Rule G-46 provides solicitor municipal advisors flexibility in determining how to deliver the second set of disclosures, which may be provided by either the solicitor client or the solicitor municipal advisor.

**g. Specified Prohibitions**

Rule G-46(g) expressly prohibits a solicitor municipal advisor 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, subject to three specified exceptions discussed further below.

These prohibitions do not apply to the following:

- payments to an affiliate 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;
- reasonable fees paid to another municipal advisor registered as such with the Commission and the MSRB for making a communication for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; and
- payments that are permissible “normal business dealings” as described in Rule G-20, on gifts, gratuities, non-cash compensation and expenses of issuance.

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<sup>9</sup> For example, a solicitor municipal advisor presentation to an investment consultant hired by a public pension plan may be an indirect solicitation of that public pension plan. In such a case, the disclosure would be provided to the investment consultant.



#### **h. Supplementary Material to Rule G-46:**

Rule G-46 sets forth four supplementary material sections that:

- Explain the MSRB's expectations with respect to the reasonable basis a solicitor municipal advisor must have for certain of its representations;
- Explain the relationship between a solicitor municipal advisor's fair dealing obligations and a federal fiduciary duty for municipal advisors;
- Explain the relationship between a municipal advisor's obligations under Rule G-46 and Rule G-42, including that municipal advisors may be, simultaneously, both a solicitor municipal advisor for purposes of Rule G-46 with respect to one engagement and a non-solicitor municipal advisor for purposes of Rule G-42 with respect to another engagement; and
- Provide additional explanation applicable to a solicitor municipal advisor's obligation to document its compensation arrangement and make related disclosures.

#### **II. Amendments to MSRB Rule G-8**

The amendments to Rule G-8 add specific recordkeeping obligations designed to help facilitate and document compliance with new Rule G-46. They add new subsection (ix) requiring solicitor municipal advisors to make and keep books and records evidencing compliance with disclosure and documentation requirements of G-46(b) through (f).

Questions about this notice should be directed to Saliha Olgun, Interim Chief Regulatory Officer, William Otto, Assistant Director, or Prairie Douglas, Assistant Director, Market Regulation at 202-838-1500.

March 30, 2023

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## Text of Rule G-46 and Related Amendments to Rule G-8\*

### 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 G46(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

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\* Underlining indicates new language; strikethrough denotes deletions.

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.

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#### **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.