

**OUTLINE OF  
POTENTIALLY PROHIBITED OR PERMITTED ACTIVITIES  
BY BROKER-DEALERS (AND THEIR AFFILIATES)  
ACTING AS MUNICIPAL ADVISORS TO MUNICIPAL ENTITY CLIENTS**

*This document serves as a general outline of activities that broker-dealer firms acting as municipal advisors to municipal entity clients (either as issuers or obligated persons) may be prohibited from engaging in pursuant to MSRB Rule G-42 (and, as applicable, Rule G-23), as well as certain activities that such firm's may be permitted to engage in depending on the specific facts and circumstances. This document is designed for use by firms that have not qualified for or otherwise taken advantage of an exception or exclusion from the definition of municipal advisor provided under SEC Rule 15Ba1-1(d)(2) or (3) since firms that are not deemed to be acting as municipal advisor as a result of any such exception or exclusion are not subject to the prohibitions of Rule G-42 to the extent of such exception or exclusion. Note that a firm's status as a municipal advisor may also give rise to prohibitions on many of the activities listed below for the firm's affiliates, as well as for business units within the firm engaged in activities other than municipal advisory activities. Firms should be mindful that the prohibitions under MSRB Rule G-42 apply even if a firm becomes a municipal advisor inadvertently. **In some cases, an activity that is not specifically prohibited under Rule G-42 and therefore is listed below as permitted activity could nonetheless be effectively prohibited if the firm is unable to manage or mitigate any conflict of interest arising from such activity in a manner that would permit the firm to act in the municipal entity's best interests.** Firms must examine the specific facts and circumstances relevant to each of its engagement to determine whether a particular activity is permitted or prohibited and must not rely solely on the information provided below. In addition, an activity that a firm may be permitted to undertake may be subject to additional qualifications, and in some cases such permitted activity may be viewed as constituting municipal advisory activity. This document does not apply when a firm acts as municipal advisor to a non-municipal entity obligated person.*

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- A. If your firm, or if a municipal advisory affiliate of your firm, is or has been a **municipal advisor to a municipal entity client for an issue of municipal securities** (whether the municipal entity client is the issuer of or obligated person with respect to the issue and regardless of whether the scope of the engagement includes or excludes the provision of advice in connection with municipal financial products related to such issue):
1. **Prohibited Activities** –
    - a. Neither the firm nor any of its affiliates may:
      - i. Except as described below in Item A.2.a.v, act as underwriter or placement agent for the same issue of municipal securities.<sup>1</sup>

<sup>1</sup> For purposes of this document, the term "placement agent" is used to refer to a transaction in which the firm acts as agent for the issuer in arranging the placement of an issue without taking a principal position in the issue. Although serving as a placement agent, as so defined, does not constitute a principal transaction, such placement agent activity is prohibited pursuant to MSRB Rule G-23(d)(i).

- ii. Purchase some or all of the same new issue from the municipal entity client as an investor, such as purchasing into inventory as an investor a maturity of the issue being underwritten.
  - iii. As principal (including as “riskless” principal), buy from or sell to the municipal entity client any security of any kind (e.g., Treasury or agency securities, money market funds, etc.) directly related<sup>2</sup> to the issue of municipal securities, such as in connection with investment or reinvestment of proceeds of municipal securities or funds escrowed to repay municipal securities, including any funds held in the funds and accounts under the indenture as security for the issue.<sup>3</sup>
  - iv. Except as described below in Item A.2.a.vi, act as remarketing agent for the issue of municipal securities.<sup>4</sup>
  - v. Act as swap counterparty to the municipal entity client for a swap directly related to the issue of municipal securities, such as a swap designed to hedge against interest rate or other risks associated with the issue.
  - vi. Enter into a guaranteed investment contract with the municipal entity client directly related to the issue of municipal securities, such as in connection with investment or reinvestment of proceeds of municipal securities or funds escrowed to repay municipal securities.
  - vii. Enter into a “bank loan”<sup>5</sup> of \$1 million or more with the municipal entity client directly related to the issue of municipal securities, such as a bank loan entered into in place of the issue for which the firm was providing advice, or as part of an overall plan of financing involving the issue for which the firm is providing advice.
  - viii. Act as principal for “other similar financial products”<sup>6</sup> with the municipal entity client directly related to the issue of municipal securities.
- b. Selected examples:
- i. If firm A is municipal advisor for a new issue, neither firm A (including its business units not related to municipal advisory business) nor any of its affiliates

<sup>2</sup> The term “directly related” applies to the transaction as a whole and not just to the aspects of the transaction for which the firm provided municipal advisory services. Further, while the MSRB has stated that “the passage of time is a relevant factor in determining whether a principal transaction is ‘directly related’ to a transaction as to which the municipal advisor has provided advice,” it declined to provide further guidance on when a principal transaction may be sufficiently remote in time from the prior transaction to no longer be considered directly related to such prior transaction. Thus, for example, it is not clear that, simply because bond proceeds have been “spent” for purposes of the SEC’s municipal advisor rule as to whether advice on the investment of such spent proceeds would give rise to municipal advisory obligations, a principal transaction entered into with respect to the investment of such spent proceeds at some time thereafter would necessarily be considered to be not “directly related” to the issue.

<sup>3</sup> The exception from the principal transaction prohibition under Rule G-42 is not available under these circumstances.

<sup>4</sup> This activity is prohibited pursuant to MSRB Rule G-23(e).

<sup>5</sup> It is not clear what the effect is of the inclusion of the word “bank” in the term “bank loan” – while such term would not appear to apply to a loan if the firm is not a bank, or by any affiliate of the firm that is not a bank, it is possible that a loan made by a non-bank firm or affiliate that is arguably the economic equivalent to the purchase of the municipal entity client’s municipal securities could be considered an “other similar financial product.”

<sup>6</sup> Because the MSRB provides only one explicit example of what it means by “other similar financial product” (i.e., a bank loan), it is not clear how “similar” such other financial product must be to a security, derivative, or guaranteed investment contract – for example, is an insurance product provided by an affiliate of the firm considered an “other similar financial product”, or must it have an economic equivalence with one of the identified products in order to be considered an “other similar financial product”?

may engage in any of the prohibited transactions described above directly related to that new issue.

- ii. If affiliate B of firm A is municipal advisor for a new issue, none of firm A (including its business units not related to municipal advisory business), affiliate B or any other affiliate of firm A may engage in any of the prohibited transactions described above directly related to that new issue.
- iii. If firm A is municipal advisor with respect to a new issue but the scope of services did not include advice with respect to investment of proceeds of the new issue, firm A is nonetheless prohibited from buying or selling securities as principal if such securities constitute investments of proceeds of such new issue.
- iv. If firm A is municipal advisor to a municipal entity client for a proposed new issue to fund a specified capital project, affiliate B of firm A may not enter into a loan transaction with the municipal entity client of \$1 million or more to fund such capital project in place of the proposed new issue.
- v. If firm A is municipal advisor to municipal entity B that is an obligated person with respect to a new issue issued by municipal entity C, neither firm A (including its business units not related to municipal advisory business) nor any of its affiliates may engage in any of the prohibited transactions described above directly related to municipal entity C's new issue.

2. **Permitted Activities –**

- a. The firm or any of its affiliates may, depending on the facts and circumstances:
  - i. Act as underwriter or placement agent for a different issue of municipal securities of the municipal entity so long as the firm is not municipal advisor to the municipal entity client for such different issue.
  - ii. Purchase from the municipal entity client, as an investor, any municipal securities of the municipal entity client, other than securities that are part of the issue for which advice is provided.
  - iii. Purchase securities of the same issue of municipal securities from the underwriter of the issue except if done to circumvent MSRB Rule G-23.<sup>7</sup>
  - iv. Purchase from or sell to any counterparty (*i.e.*, engage in secondary market trading), other than the municipal entity client, any municipal securities of the municipal entity client, including the same issue of municipal securities.
  - v. Act as placement agent<sup>8</sup> for the issue of municipal securities in placing the entire issue with a state, local or federal governmental entity as part of the plan of financing by such entity for or on behalf of the municipal entity client if the firm's compensation is limited to its municipal advisory role and the firm does not act as underwriter for a contemporaneous issue by the state, local or federal governmental entity directly or indirectly related to the issue that is placed, such as in connection with the municipal entity client's participation in a bond bank, a state revolving fund or other governmentally sponsored financing program.
  - vi. Act as successor remarketing agent<sup>9</sup> for the issue of municipal securities so long as the firm's municipal advisory engagement in connection with such issue has been terminated for a period of at least one year prior to the firm or affiliate being selected to serve as successor remarketing agent.
  - vii. As principal, buy from or sell to the municipal entity client any security not directly related to the issue of municipal securities, such as in connection with a different issue of municipal securities for which the firm does not serve as municipal

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<sup>7</sup> This activity is permitted pursuant to MSRB Rule G-23(d)(iii).

<sup>8</sup> This activity is permitted pursuant to MSRB Rule G-23(d)(ii).

<sup>9</sup> This activity is permitted pursuant to MSRB Rule G-23(e).

advisor or in connection with other funds of the municipal entity not related to municipal securities.

- viii. As agent,<sup>10</sup> buy or sell on behalf of the municipal entity client any security, whether or not directly related to the issue of municipal securities.
  - ix. Act as swap counterparty to the municipal entity client for a swap not directly related to the issue of municipal securities, such as in connection with a different issue of municipal securities for which the firm does not serve as municipal advisor or in connection with commodities unrelated to municipal securities.
  - x. Enter into a guaranteed investment contract with the municipal entity client not directly related to the issue of municipal securities, such as in connection with a different issue of municipal securities for which the firm does not serve as municipal advisor or in connection with other funds of the municipal entity not related to municipal securities.
  - xi. Enter into a bank loan not directly related to the issue of municipal securities.
  - xii. Enter into a bank loan of less than \$1 million that is directly related to the issue of municipal securities.
  - xiii. Engage in any other principal transaction with the municipal entity client not directly related to the issue of municipal securities.
  - xiv. Engage in any principal transaction with a non-municipal entity obligated person for the issue, whether or not directly related to the issuance of municipal securities.
- b. Selected examples:
- i. If firm A is municipal advisor for new issue B, firm A or affiliate C may act as underwriter for new issue D so long as neither firm A or affiliate C act as municipal advisor to the municipal entity client for new issue D.
  - ii. If firm A is municipal advisor for a new issue, firm A or affiliate C may generally place an order with the underwriter for the new issue unless such order, if filled, would be tantamount to serving as an underwriter to the new issue.
  - iii. If firm A is municipal advisor for a new issue, the trading desk of firm A or of any affiliate may place an order with a member of the underwriting syndicate to purchase securities of the new issue on the same basis as other market participants.
  - iv. If firm A is municipal advisor to a municipal entity client for a new issue to fund a specified capital project, affiliate B of firm A may enter into a loan transaction with the municipal entity client of any size to fund a different unrelated capital project of the municipal entity client.
  - v. If firm A is municipal advisor to municipal entity B with respect to municipal entity B's role as borrower of proceeds from municipal entity C's state revolving fund issue of municipal securities, firm A may act as underwriter for any separate issue of municipal securities issued by either municipal entity B or municipal entity C that is not directly related to the particular state revolving fund issue.
  - vi. If firm A is municipal advisor to a municipal entity for a new issue, firm A or its affiliate may act as bidding agent or otherwise execute transactions, as agent, for municipal financial products related to such issue.

B. If your firm, or if a municipal advisory affiliate of your firm, is or has been a ***municipal advisor to a municipal entity client in connection with a municipal financial product*** without also providing advice in connection with an issue of municipal securities related to such municipal financial product:

1. **Prohibited Activities –**

- a. Neither the firm nor any of its affiliates may:

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<sup>10</sup> Agency transactions do not include “riskless” principal transactions. See Item A.1.a.iii above.

- i. Except as described below in Item B.2.a.iv, act as underwriter or placement agent for an issue of municipal securities directly related to the municipal financial product, such as an issue the proceeds of which are to be invested in the municipal financial product or for which the municipal financial product is entered into (*e.g.*, an issue hedged by a swap for which the firm acts as municipal advisor).
  - ii. Purchase from the municipal entity client, as principal (*e.g.*, as an investor), some or all of an issue of municipal securities directly related to the municipal financial product.
  - iii. Except as described below in Item B.2.a.vii, as principal (including as “riskless” principal), buy from or sell to the municipal entity client any security of any kind (*e.g.*, Treasury or agency securities, money market funds, etc.) that is, or that is directly related to, the municipal financial product.
  - iv. Act as swap counterparty to the municipal entity client for a swap that is, or that is directly related to, the municipal financial product.
  - v. Enter into a guaranteed investment contract with the municipal entity client that is, or that is directly related to, the municipal financial product.
  - vi. Enter into a “bank loan” of \$1 million or more with the municipal entity client directly related to the municipal financial product, such as a bank loan entered into as part of an overall plan of financing involving an issue of municipal securities and the municipal financial product for which advice is provided relates to the combined investment of bond proceeds and proceeds of the bank loan.
  - vii. Act as principal for “other similar financial products” with the municipal entity client directly related to the municipal financial product.
- b. Selected examples:
- i. If firm A is municipal advisor to a municipal entity solely with respect to the investment of proceeds of a new issue, neither firm A (including its business units not related to municipal advisory business) nor any of its affiliates may underwrite such new issue or act as principal in connection with the acquisition of municipal escrow investments funded from such bond proceeds.
  - ii. If firm A is municipal advisor to a municipal entity with respect to the investment of proceeds of a new issue, neither firm A (including its business units not related to municipal advisory business) nor any of its affiliates may act as counterparty on a swap related to such new issue.
  - iii. If firm A is municipal advisor to a municipal entity with respect to municipal escrow investments to partially fund a refunding escrow, firm A’s affiliate may not, as principal, sell additional municipal escrow investments to the municipal entity to fund the balance of the refunding escrow.

2. **Permitted Activities –**

- a. The firm or any of its affiliates may, depending on the facts and circumstances:
  - i. Act as underwriter or placement agent for an issue of municipal securities unrelated to the municipal financial product.
  - ii. Purchase from the municipal entity client, as an investor, any municipal securities of the municipal entity client, other than securities that are part of an issue directly related to the municipal financial product for which advice is provided.
  - iii. Purchase from or sell to any counterparty (*i.e.*, engage in secondary market trading), other than the municipal entity client, any municipal securities of the municipal entity client, including the same issue of municipal securities.
  - iv. Act as underwriter or placement agent for an issue of municipal securities related to the municipal financial product for which advice is provided, but only if the requirements of Rule G-23, as interpreted by the MSRB’s November 27, 2011 “Guidance on the Prohibition on Underwriting Issues of Municipal Securities for

Which a Financial Advisory Relationship Exists Under Rule G-23” (including in particular the last sentence thereof) (the “2011 Guidance”), are complied with.

- v. As principal, buy from or sell to the municipal entity client any security not directly related to the municipal financial product, such as in connection with any security relating to an issue of municipal securities unrelated to the municipal financial product or in connection with other funds of the municipal entity not related to municipal securities.
  - vi. As agent, buy or sell on behalf of the municipal entity client any security, whether or not directly related to the municipal financial product or any issue of municipal securities.
  - vii. With respect to the firm only (*i.e.*, not an affiliate of the firm), and solely if the only municipal advisory activities with the municipal entity by the firm or its affiliates are described in this Item B.2.a.vii, buy from or sell to the municipal entity client, as principal, any U.S. Treasury security, agency debt security, or corporate debt security directly constituting municipal financial products, such as in connection with investment or reinvestment of proceeds of municipal securities, but NOT in connection with funds escrowed to repay municipal securities, so long as paragraph .14 of the Supplementary Materials to Rule G-42 are complied with.<sup>11</sup>
  - viii. Act as swap counterparty to the municipal entity client for a swap not directly related to the municipal financial product or any issue of municipal securities related to the municipal financial product, such as in connection with a different issue of municipal securities for which the firm does not serve as municipal advisor or in connection with commodities unrelated to municipal securities.
  - ix. Enter into a guaranteed investment contract with the municipal entity client not directly related to the municipal financial product or any issue of municipal securities related to the municipal financial product, such as in connection with a different issue of municipal securities for which the firm does not serve as municipal advisor or in connection with other funds of the municipal entity not related to municipal securities.
  - x. Enter into a bank loan not directly related to the municipal financial product or any issue of municipal securities related to the municipal financial product.
  - xi. Enter into a bank loan of less than \$1 million that is directly related to the municipal financial product or any issue of municipal securities related to the municipal financial product.
  - xii. Engage in any other principal transaction with the municipal entity client not directly related to the municipal financial product or any issue of municipal securities related to the municipal financial product.
- b. Selected examples:
- i. If firm A acts as underwriter for a new issue of municipal securities, firm A may provide advice with respect to the investment of the proceeds of the issue, municipal derivatives integrally related to the issue, or other similar matters

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<sup>11</sup> The MSRB’s exception from the principal transaction prohibition for transactions in specified fixed income securities establishes a series of specific requirements in addition to those described above. Such requirements include (a) that the firm be a broker-dealer registered under Section 15 of the Securities Exchange Act, and each account as to which the firm relies on the exception is a brokerage account as to which the municipal advisor exercises no investment discretion except as granted by a municipal entity client on a temporary or limited basis, and (b) either (1) discloses to the municipal entity client in writing before the completion of the transaction the capacity in which the municipal advisor is acting and obtains the consent of the municipal entity client to such transaction or (2) executes the transaction subject to several additional requirements as set forth in paragraph .14 of the Supplementary Materials to Rule G-42.

concerning the issue, and firm A may be deemed to be a municipal advisor with respect to such advice, so long as firm A remains fully in compliance with the 2011 Guidance.

- ii. If neither firm A nor any of its affiliates provides any other municipal advisory services to a municipal entity with regard to a particular issue of municipal securities or municipal financial product, firm A (but not any of its affiliates) may sell, as principal, one or more U.S. Treasury securities, agency debt securities, or corporate debt securities to the municipal entity for investment of proceeds of such issue so long as firm A is fully in compliance with paragraph .14 of the Supplementary Materials to Rule G-42.
- iii. If firm A is municipal advisor to a municipal entity solely with respect to the investment of proceeds of a new issue, firm A or its affiliate may act as bidding agent or otherwise execute transactions, as agent, for municipal financial products.