

Regulatory Notice

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[Rule G-20](#); [Rule G-8](#)

SEC Approves Amendments to MSRB Rule G-20 on Gifts, Gratuities and Non-Cash Compensation and Related Amendments to MSRB Rule G-8

Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on November 6, 2015 of amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation, and MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance that is codified by amended Rule G-20.¹ The amendments, among other things, extend the restrictions regarding gift giving and the related recordkeeping requirements currently applicable to brokers, dealers, and municipal securities dealers (collectively “dealers”) to municipal advisors.

The MSRB, in the exercise of the rulemaking authority granted by the Dodd-Frank Wall Street Reform and Consumer Protection Act, is currently developing a comprehensive regulatory framework for municipal advisors. The amendments to Rules G-20 and G-8, which are primarily designed to address improprieties and conflicts of interest that may arise from the giving of gifts by municipal advisors or their associated persons, represent another important milestone in the development of that framework. The amendments will help ensure common standards in this area for dealers and municipal advisors, and will advance the MSRB’s mission to protect municipal entities, obligated persons, investors, and the public interest.

The rule changes will become effective on May 6, 2016.



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¹ See Exchange Act Release No. 76381 (Nov. 6, 2015), File No. SR-MSRB-2015-09.

Questions about this notice may be directed to Michael L. Post, General Counsel – Regulatory Affairs, Pamela K. Ellis, Associate General Counsel, or Benjamin Tecmire, Counsel, at 703-797-6600.

Summary of Rule Changes

In summary, the amendments to Rule G-20:

- Extend the relevant provisions of Rule G-20 to gifts given in relation to the municipal advisory activities of the recipient's employer, in addition to gifts given in relation to the municipal securities activities of the recipient's employer;
- Consolidate and codify interpretive guidance, including interpretive guidance published by the Financial Industry Regulatory Authority (FINRA) and adopted by the MSRB;
- Extend the relevant provisions of Rule G-20 to municipal advisors and their associated persons; and
- Add a new provision to prohibit expressly the seeking or obtaining of reimbursement by a dealer or municipal advisor of certain entertainment expenses from the proceeds of an offering of municipal securities.

The amendments to Rule G-8, as noted, primarily extend to municipal advisors the recordkeeping requirements related to Rule G-20 that apply to dealers.

Amendments to Rule G-20

A. Changes to Provisions of Rule G-20 Applicable to Dealers and Extension of Relevant Provisions to Municipal Advisors

The amendments to Rule G-20 make various changes to the provisions applicable to dealers, and then extend the relevant provisions identically to municipal advisors. Ultimately, as explained in detail below, amended Rule G-20 extends to municipal advisors and their associated persons: (i) the general prohibition of gifts or gratuities in excess of \$100 per person per year in relation to the municipal securities activities or municipal advisory activities of the recipient's employer (the "\$100 limit") and (ii) the various exclusions from the \$100 limit (including certain consolidations and the codifications of prior interpretive guidance). Amended Rule-20(g) (organized in the existing rule as section (d)), on non-cash compensation in connection with primary offerings, however, is not extended to municipal advisors or their associated persons.

(i) General prohibition of gifts or gratuities in excess of \$100 per person per year

Amended section (c) (based on existing Rule G-20(a)) generally prohibits a municipal advisor and its associated persons, in addition to a dealer and its associated persons, from giving or providing directly or indirectly any thing or service of value, including gratuities (“gifts”), in excess of \$100 per year to a person (other than an employee of the dealer or municipal advisor) where such gifts are in relation to the municipal securities activities or municipal advisory activities of the employer of the recipient.²

(ii) Exclusions from the \$100 limit and codification of relevant interpretive guidance

Amended section (d) (based on existing Rule G-20(b)) excludes several types of gifts from the \$100 limit of section (c). Because these are exclusions from the \$100 limit, which is made applicable under the amendments to municipal advisors and their associated persons, the exclusions are equally available to dealers and municipal advisors and their associated persons. Significantly, section (d) provides that any gift of these types, to be excluded from the \$100 limit, must not give rise to any apparent or actual material conflict of interest. Subsections (d)(i) through (d)(iv) and (d)(vi) consolidate and codify interpretive guidance provided in MSRB Notice 2007-06 (the “2007 MSRB Gifts Notice”),³ including FINRA, then NASD, guidance that the 2007 MSRB Gifts Notice adopted by reference.⁴ Subsection (d)(v) codifies FINRA interpretive guidance relating to bereavement gifts that the MSRB previously had not adopted.⁵ These codifications are intended to (i) enhance the

² The MSRB reminds dealers and municipal advisors that the making of payments that are not restricted by Rule G-20 could be separate violations of MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities, which requires regulated entities, in the conduct of their municipal securities or municipal advisory activities, to deal fairly with all persons and not to engage in any deceptive, dishonest, or unfair practice.

³ See Dealer Payments in Connection with the Municipal Securities Issuance Process, MSRB Notice 2007-06 (Jan. 29, 2007).

⁴ The 2007 MSRB Gifts Notice states that the National Association of Securities Dealers’ (NASD) guidance provided in NASD Notice to Members 06-69 (Dec. 2006) to assist dealers in complying with NASD Rule 3060 applies as well to comparable provisions of Rule G-20. Because the substance of the referenced NASD (now FINRA) guidance is codified by amended Rule G-20, that portion of the notice is deleted.

⁵ See FINRA Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts), dated December 17, 2007 (stating that FINRA staff agrees that reasonable and customary

understanding of the interpretive guidance related to the exclusions, (ii) foster compliance with the rule, and (iii) result in efficiencies for regulated entities and regulatory enforcement agencies.

Subsection (d)(i) excludes from the \$100 limit, as is the case for dealers under existing Rule G-20, gifts that qualify as “normal business dealings.” As detailed in this provision, these are occasional gifts of meals or tickets to theatrical, sporting, and other entertainment given by a regulated entity or its associated persons, provided that the regulated entity or an associated person hosts the meal or entertainment. Also as detailed in this provision, “normal business dealings” include the sponsoring by the regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses. Gifts qualify as “normal business dealings” excluded from the \$100 limit, however, only if they are not “so frequent or so extensive as to raise any question of propriety.”

Subsections (d)(ii) through (iv) more specifically set forth the exclusions for three categories of gifts that are excluded from the \$100 limit in existing Rule G-20(b) under the broad category of “reminder advertising.” The more specific categories are:

- Gifts commemorative of a business transaction that are solely decorative, such as a customary plaque or Lucite tombstone (subsection (d)(ii));
- Gifts of de minimis value, such as pens and notepads (subsection (d)(iii)); and
- Promotional gifts of nominal value that bear the regulated entity’s corporate or other business logo, with nominal value meaning substantially below the \$100 limit (subsection (d)(iv)).

Subsection (d)(v) excludes from the \$100 limit bereavement gifts that are reasonable and customary under the circumstances. That subsection consolidates and codifies the FINRA bereavement gift guidance.

Finally, subsection (d)(vi) excludes from the \$100 limit personal gifts given upon the occurrence of infrequent life events, such as a wedding gift or a congratulatory gift for the birth of a child. This provision consolidates and codifies the guidance from the 2007 MSRB Gifts Notice currently applicable to dealers. That guidance, incorporating FINRA guidance by reference,

bereavement gifts are not “in relation to the business of the employer of the recipient” under NASD Rule 3060 (“FINRA bereavement gift guidance”).

excludes personal gifts that are not “in relation to the business of the employer of the recipient” from the \$100 limit.⁶ New paragraph .04 of the Supplementary Material, discussed in more detail below, provides guidance on the determination of whether a gift qualifies as personal in nature.

To take better account of the nature of the gifts described in subsections (d)(ii) through (vi), the “frequency” and “extensiveness” limitations (contained in subsection (d)(i) on “normal business dealings”) are not included. Transaction-commemorative gifts, de minimis gifts, promotional gifts, bereavement gifts and personal gifts (as defined) are, by their nature, given infrequently and/or are of such a value that retaining the requirement that such gifts be “not so frequent or so extensive” is unnecessarily duplicative of the description of these gifts.

New paragraph .03 of the Supplementary Material provides guidance regarding promotional gifts and “other business logos.” This paragraph clarifies that the logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of the regulated entity, constitute an “other business logo” under subsection (d)(iv). The promotional items bearing such logos, therefore, are excluded from the \$100 limit so long as they meet all of the other terms of section (d) and subsection (d)(iv), including the requirement that the promotional items not give rise to any apparent or actual material conflict of interest. The clarification that these items qualify as excluded promotional gifts is made because they are as unlikely to result in improper influence as items bearing the corporate or other business logo of the regulated entity itself.

New paragraph .04 identifies factors that will be considered in determining whether a gift is personal in nature and not in relation to the municipal securities or municipal advisory activities of the employer of the recipient. The factors include, but are not limited to, the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether either the associated person or the regulated entity with which he or she is associated paid for the gift. Paragraph .04 also states that a gift is presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the recipient when a regulated entity bears the cost of the gift, either directly or indirectly by reimbursing an associated person.

⁶ NASD Notice to Members 06-69 (Dec. 2006).

Amended section (f) (based on existing Rule G-20(c)) preserves for dealers and extends to municipal advisors the exclusion from the \$100 limit for compensation paid as a result of a contract of employment with or for services rendered by another person. For the compensation to be excluded, the services must be rendered pursuant to a prior written agreement between the regulated entity and the person who is to perform such services that includes the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

B. Consolidation and Codification of Additional MSRB Interpretive Guidance

In addition to the interpretive guidance discussed above, new paragraphs .01 and .02 of the Supplementary Material codify MSRB interpretive guidance regarding the aggregation of gifts for purposes of Rule G-20, which the 2007 MSRB Gifts Notice adopted by reference to FINRA guidance. Paragraph .01 states that a gift's value must be determined generally according to the higher of its cost or market value. Paragraph .02 states that regulated entities must aggregate all gifts that are subject to the \$100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient over the course of a year. Paragraph .02 also states that the type of "year" used can be selected by the regulated entity (*i.e.*, calendar year, fiscal year, or rolling basis beginning with the first gift to any recipient).

New paragraph .05 of the Supplementary Material provides that amended Rule G-20 does not supersede any more restrictive provisions of state or other laws applicable to regulated entities or their associated persons. Accordingly, this paragraph expressly alerts or reminds regulated entities and their associated persons that, in addition to the requirements of amended Rule G-20, they may be subject to other duties, restrictions, or obligations in this area under state or other laws.⁷

C. Prohibition of Reimbursement for Entertainment Expenses from Offering Proceeds

New section (e) of amended Rule G-20 provides that a regulated entity is prohibited from requesting or obtaining reimbursement for certain entertainment expenses from the proceeds of an offering of municipal

⁷ The MSRB previously had provided this alert or reminder through interpretive guidance. See 2007 MSRB Gifts Notice (noting that state and local laws also may limit or proscribe activities of the type addressed by the notice).

securities. This provision addresses an issue highlighted by a recent FINRA enforcement action.⁸ Specifically, section (e) clarifies and provides clear notice that a regulated entity that engages in municipal securities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of the offering.

The term “entertainment expenses,” for purposes of the prohibition, does not include “ordinary and reasonable expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained.” Thus, section (e) allows the continuation of the generally accepted market practice of a regulated entity advancing normal travel costs (*e.g.*, reasonable airfare and hotel accommodations) to personnel of a municipal entity or obligated person for business travel related to a municipal securities issuance and obtaining reimbursement for such costs (*e.g.*, bond rating trips). Some examples of “entertainment expenses” that may not be reimbursed are tickets to theater, sporting or other recreational spectator events, sightseeing tours, and transportation related to attending such entertainment events.

D. Additional Amendments to Rule G-20

Amended Rule G-20 also includes (i) a revised rule title, (ii) a new provision stating the rule’s purpose (section (a)), (iii) a re-ordering of existing provisions to improve the readability of the rule, and (iv) additional defined terms.

The additional terms that are defined for purposes of Rule G-20 are: “regulated entity,” meaning a broker, dealer, municipal securities dealer or municipal advisor, but excluding the associated persons of such entities; “municipal advisor,” having the same meaning as in Section 15B(e)(4) of the Securities Exchange Act of 1934;⁹ and “person,” meaning a natural person, codifying the MSRB’s existing interpretive guidance stating the same.¹⁰

⁸ Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Philip Gardnyr Hunt, Jr., FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014).

⁹ 15 U.S.C. 78o-4(e)(4).

¹⁰ See MSRB Interpretive Letter “Person” (Mar. 19, 1980).

Amendments to Rule G-8

Rule G-8 specifies the books and records that must be made and kept current by dealers and municipal advisors. The amendments to Rule G-8 make clarifying and technical changes to the gift-related provisions applicable to dealers, and then extend the relevant provisions identically to municipal advisors. With respect to dealers, the amendments to Rule G-8(a)(xvii)(A) clarify that a separate record of a gift or gratuity is required only for a gift or gratuity that is “subject to” the general limitation on value in amended Rule G-20(c). The amendments to Rule G-8(a)(xvii)(B) make a technical correction to specify that dealers must make and keep current “records of” all compensation paid as a result of all agreements referred to in amended Rule G-20(f). The additional amendments to Rule G-8(a)(xvii)(A), (B) and (C) simply revise the cross-references to Rule G-20 to conform to the amendments made to Rule G-20.

The amendments extend the dealer recordkeeping requirements in amended Rule G-8(a)(xvii)(A) and (B) to municipal advisors through the addition of Rule G-8(h)(ii)(A) and (B). As a result, municipal advisors are required to make and maintain records of all gifts and gratuities that are subject to the \$100 limit, all agreements of employment with or for compensation for services rendered by another person, and records of all compensation paid as a result of those agreements.¹¹ Amended Rule G-8 helps ensure common standards for dealers and municipal advisors, and assists in the enforcement of amended Rule G-20 by requiring that all MSRB-regulated entities create and maintain records related to their compliance with amended Rule G-20.

November 9, 2015

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¹¹ MSRB Rule G-9(h) generally requires municipal advisors to preserve the books and records described in MSRB Rule G-8(h) for a period of not less than five years, to be consistent with the SEC’s five-year record preservation requirement for municipal advisors under Exchange Act Rule 15Ba1-8. See Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (File No. SR-MSRB-2014-06) (order approving new MSRB Rule G-44 and related amendments to Rules G-8 and G-9).

Text of Amendments¹²

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

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

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

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

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

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

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

(v) "Person" means a natural person.

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

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

~~(a)(c)~~ General Limitation on Value of Gifts and Gratuities. No ~~broker, dealer or municipal securities dealer~~ regulated entity or any of its associated persons shall, directly or indirectly, give or provide or permit to be

¹² Underlining indicates new language; strikethrough denotes deletions.

given or provided any thing or service of value, including gratuities, in excess of \$100 per year to a person (other than an employee or partner of such ~~broker, dealer or municipal securities dealer~~, regulated entity), if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service. For purposes of this rule the term "employer" shall include a principal for whom the recipient of a payment or service is acting as agent or representative.

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

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

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

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

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

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

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

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

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

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

(i) - (ii) No change.

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

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

(B) No change.

(C) No change.

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

(iv) No change.

(v) contributions by any person other than the broker, dealer or municipal securities dealer to a non-cash compensation arrangement between a broker, dealer or municipal securities dealer and its associated persons, provided that the arrangement meets the criteria in ~~paragraph (d)~~ subsection (g)(iv).

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

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

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

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

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

Supplementary Material

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

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

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

.04 Personal Gifts. A gift that is personal in nature under subsection (d)(vi) is not subject to the general limitation of section (c) of this rule because that limitation applies only to payments or services that are in

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

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

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Rule G-20 Interpretations

Dealer Payments in Connection With the Municipal Securities Issuance Process

January 29, 2007

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

Rule G-20, among other things, prohibits dealers from giving, directly or indirectly, any thing or service of value, including gratuities, in excess of \$100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient’s employer. The rule provides an exception from the \$100 annual limit for “normal business dealings,” which includes occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the dealer (*i.e.*, if dealer personnel accompany the recipient to the meal, sporting or other event), legitimate business functions sponsored by the dealer that are recognized by the Internal Revenue Service as a deductible business expense, or gifts of reminder advertising. However, these “gifts” must not be “so frequent or so extensive as to raise any question of propriety.” Rule G-17 provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice.

Dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which

dealers seek reimbursement from bond proceeds, comport with the requirements of these rules. Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities. Thus, for example, a dealer acting as a financial advisor or underwriter may violate Rule G-20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering (such as may be incurred for rating agency trips, bond closing dinners and other functions) that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.

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

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

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

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

~~Finally, the MSRB notes that NASD recently published guidance to assist dealers in complying with NASD Rule 3060 on influencing or rewarding employees or others. NASD's guidance relates to personal gifts/exclusions; de minimis and promotional items; aggregation of gifts; valuation of gifts; gifts incidental to business entertainment; and supervision and recordkeeping.¹ This guidance applies as well to the comparable provisions of MSRB Rule G-20.~~

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

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

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

(i) - (xvi) No change.

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

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

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

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

(xviii) - (xxvi) No change.

(b) - (g) No change.

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

(i) No change.

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

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

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

(iii) - (v) No change.