

Client Alert

Current Issues Relevant to Our Clients

November 20, 2015

MSRB Adopts New Rule on Gifts, Gratuities and Non-Cash Compensation

The Municipal Securities Rulemaking Board (“MSRB”) recently adopted amendments to MSRB Rule G-20 on gifts, gratuities and non-cash compensation. Among other things, the amendments (1) extend the relevant provisions of Rule G-20 to gifts given in relation to the municipal advisory activities of a recipient’s employer, (2) consolidate and codify interpretive guidance, (3) extend the relevant provisions of Rule G-20 to municipal advisors and their associated persons and (4) add a new provision to prohibit reimbursement for entertainment expenses from offering proceeds. The rule changes become effective on May 6, 2016. The MSRB regulatory notice describing the amendments is available [here](#).

Existing Rule G-20

Existing Rule G-20 prohibits brokers, dealers and municipal securities dealers (collectively “dealers”) from giving gifts or services (including gratuities) exceeding \$100 per year to a person if such gifts or services relate to the municipal securities activities of the employer of the recipient. Exceptions to the current rule include:

- the following “normal business dealings” as long as they are not so frequent or so extensive as to raise any question of propriety:
 - occasional gifts of meals or tickets to theatrical, sporting and other entertainments that are hosted by a dealer;
 - the sponsoring by a dealer of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses; or
 - gifts of reminder advertising; and
- certain compensation for services rendered to a dealer by another person.

Rule G-20 also prohibits dealers from accepting or making payments of non-cash compensation in connection with a primary offering of municipal securities, subject to certain exceptions.

New Rule G-20

The amendments to Rule G-20 extend the relevant provisions of Rule G-20 to gifts and services given in

relation to the municipal *advisory* activities of a recipient’s employer (in addition to municipal *securities* activities). The amendments also extend certain provisions of Rule G-20 to municipal advisors to ensure common standards across entities that operate in the municipal securities market. The amendments also consolidate and codify interpretive guidance, including interpretive guidance published by the Financial Industry Regulatory Authority, Inc. (“*FINRA*”) not previously adopted by the MSRB. The amendments also add a new provision to prohibit dealers and municipal advisors from seeking or obtaining reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities. The proposal to amend Rule G-20 also amended Rule G-8 to make certain clarifying and technical changes to the provisions requiring dealers to keep records of certain compensation arrangements and gifts under Rule G-20, and extended the relevant provisions identically to municipal advisors.

Extension of Rule G-20 to Municipal Advisors

Amended Rule G-20 extends to municipal advisors and their associated persons: (1) 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 and (2) the various exclusions from the \$100 limit (including certain consolidations and the codifications of prior interpretive guidance). Amended Rule G-20 does not extend the prohibitions on non-cash compensation in connection with primary offerings to municipal advisors or their associated persons.

Consolidation of FINRA and MSRB Interpretive Guidance

The amendments retain the exceptions for normal business dealings and compensation and consolidate and codify certain FINRA and MSRB interpretive guidance on gifts and gratuities. The interpretive guidance codified by the amendments provides that certain gifts and gratuities generally would not be subject to the \$100 per person per year limit. Such additional exceptions to the \$100 limit include:

- 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).
- De Minimis Gifts: Gifts of de minimis value (e.g., pens, notepads or modest desk ornaments).
- Promotional Gifts: Promotional items of nominal value displaying the dealer or municipal advisor's corporate or other business logo. The value of the item must be substantially below the \$100 limit to be considered of nominal value.
- Bereavement Gifts: Bereavement gifts that are reasonable and customary for the circumstances.
- 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).

The "frequency" and "extensiveness" limitations applicable to the "normal business dealings" exception do not apply to the exceptions described above because these gifts are, by their nature, given infrequently and/or are not of a value that necessitates duplication of these limitations.

Amended Rule G-20 contains supplemental material that consolidates and codifies certain existing FINRA interpretive guidance previously adopted by the MSRB and incorporates additional relevant FINRA interpretive guidance that has not previously been adopted by the MSRB. This includes guidance regarding the valuation and aggregation of gifts given by a dealer or municipal advisor in addition to a statement that Rule G-20 does not supersede any more restrictive provisions of state or other laws.

Additional newly incorporated guidance clarifies that the logos of a product or service being offered by a dealer or municipal advisor, for or on behalf of a client or an affiliate of the dealer or municipal advisor, would constitute an "other business logo" under the new exception. The supplemental material also provides factors to be considered in determining whether a gift is personal in

nature. These factors include, but are not limited to, (1) the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and (2) whether the dealer or municipal advisor, rather than the associated person, paid for the gift.

Prohibition of Reimbursement for Entertainment Expenses from Offering Proceeds

Amended Rule G-20 prohibits municipal advisors and dealers from requesting or obtaining reimbursement for certain "entertainment expenses" from the proceeds of an offering of municipal securities. The term "entertainment expenses," for purposes of the prohibition, does not include ordinary and reasonable expenses for meals hosted by the municipal advisor or dealer and directly related to the offering for which the entity was retained. This allows the continuation of the generally accepted market practice of a dealer or municipal advisor 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 (e.g., bond rating trips) and obtaining reimbursement for those costs. The MSRB noted that 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.

For More Information

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