



NAMA STATEMENT ON RECENT SEC ENFORCEMENT ACTIONS CONCERNING RECORDKEEPING OF ELECTRONIC COMMUNICATIONS (September 17, 2024)

Today the SEC announced charges and penalties against some Municipal Advisory Firms for violations related to maintaining and preserving electronic communications.* These violations found that some MA firms did not keep texts and other electronic communications that were received/sent between MAs and their clients and interoffice texts and electronic communications “related to municipal advisory activities.”

The SEC brought these charges forward as part of an enforcement sweep that it has been conducting over the past two years involving all SEC regulated entities – broker-dealers, investment advisers, and credit rating agencies.*

It is important to note that the violations are solely related to MA firms violating SEC and MSRB recordkeeping rules, and no other violations. None of the violations are for breach of MA’s fiduciary duty or involve client services.

These settlements do not suggest that any one firm had greater violations than others. Additionally, these SEC enforcement actions do not imply that firms unnamed in these settlements do not have similar recordkeeping violations.

MA firms should be aware that any communications, regardless of their format that address “municipal advisory activity” or are “related to municipal advisory activity,” must be maintained, easily accessible for retrieval and have duplicates of the communications stored separately. One of the great difficulties with these cases is that within the MA Rule there is no definition of “related to municipal advisory activity.” NAMA is asking the SEC for clarification of this definition to help members understand which communications need to be maintained. NAMA will also ask the SEC to provide a Risk Alert that details MA recordkeeping responsibilities, as the SEC has done for other regulated entities.

NAMA members should review the updated *Considerations for Recordkeeping and Supervision of Communications Related to MA Activity* for additional information about complying with these recordkeeping rules.

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<https://www.sec.gov/newsroom/press-releases/2024-132>

<https://www.sec.gov/newsroom/press-releases/2024-114>

<https://www.sec.gov/newsroom/press-releases/2024-98>

<https://www.sec.gov/newsroom/press-releases/2024-18>

<https://www.sec.gov/newsroom/press-releases/2023-212>

<https://www.sec.gov/newsroom/press-releases/2023-149>

<https://www.sec.gov/newsroom/press-releases/2023-91>

<https://www.sec.gov/newsroom/press-releases/2022-174>

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SEC MA Rule; § 240.15B(a)(1)

(1) Originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications;

MSRB Rule G-8, Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors, <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-8>

MSRB Rule G-9, Preservation of Records, <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules>

MSRB Rule G-44, Supervisory and Compliance Obligations of Municipal Advisors
<https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-44>

NAMA Updated Compliance Resource – Considerations for Recordkeeping and Supervision of Communications Related to MA Activity

<https://nama2.memberclicks.net/assets/recordkeepingguidancespet2024.pdf>