



DISCUSSION DOCUMENT – G-42 CHECKLIST

THE ITEMS BELOW SERVE AS AN OUTLINE OF THE NON-EXHAUSTIVE LIST OF DOCUMENTATION AND ADVISORY CONSIDERATIONS RELATED TO MSRB RULES G-42, DUTIES OF MUNICIPAL ADVISORS, AND G-44, COMPLIANCE OBLIGATIONS, THAT MAs AND MA FIRMS SHOULD CONSIDER WHEN DEVELOPING THEIR OWN POLICIES, PROCEDURES AND PRACTICES AND RECORDKEEPING STANDARDS. MAs ARE ENCOURAGED TO REVIEW THE FULL RULEMAKING AND CONSULT COUNSEL IN THEIR MISSION TO DEVELOP ROBUST POLICIES AND PROCEDURES.

THIS DOCUMENT SHOULD NOT BE VIEWED AS A SAFE HARBOR FOR COMPLIANCE OR PRACTICE PURPOSES.

Client:

Date of Engagement:

FIRM Person Completing Form:

Type of Client: [Obligated Person/Municipal Entity]

Type of Engagement:

Describe Scope of Engagement: [should tie to Engagement Letter]

Review and Documentation

The following pages include various topics listed in Rule G-42 or its supplementary information. The purpose of these questions is to reasonably ensure compliance with Rule G-42 and to provide or reference additional documentation as appropriate. Each section indicates the type of answer that does and does not require additional documentation. Any questions should be directed to the Supervisor and if necessary the Chief Compliance Officer.

A. Identification of Potential Material Conflicts of Interest after reasonable diligence by FIRM

Any YES answers require additional explanation below.

Question/Issue	YES/NO
1. Does FIRM have any affiliate that provides any advice, service, or product to or on behalf of the Client that is directly related to the municipal advisory activities to be performed by FIRM ?	
2. Has FIRM made any payments directly or indirectly to obtain or retain an engagement to perform municipal advisory activities for the Client?	
3. Has FIRM received any payments from a third party to enlist FIRM 's recommendation to the Client of its services, any municipal securities transaction or any municipal financial product?	
4. Are there any fee-splitting arrangements involving FIRM and any provider of investments or services to the Client?	
5. Are there any conflicts of interest arising from compensation for municipal advisory activities to be performed that is <u>contingent on the size or closing</u> of any transaction as to which the municipal advisor is providing advice?	
6. Are there any other actual or potential conflicts of interest, of which FIRM is aware after reasonable inquiry, that could reasonably be anticipated to impair FIRM 's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of MSRB Rule G-42(a) [for Obligated Person Client, duty of care; for Municipal Entity Client, fiduciary duty that includes duty of loyalty and duty of care]?	

Provide an explanation for any questions answered YES:

B. Required Disclosure to Client

Any NO answers require additional explanation below.

Question/Issue	YES/NO
1. Was the Client provided written disclosure of any material conflicts identified above or the lack of any such conflicts prior to or upon engagement? If there are any conflicts identified, such disclosures must be sufficiently detailed to inform the Client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how FIRM addresses or intends to manage or mitigate each conflict.	

Question/Issue	YES/NO
2. Was the Client provided with information regarding any legal or disciplinary event that is material to the Client’s evaluation of FIRM or the integrity of its management or advisory personnel? This may be done by identification of the specific type of event and specific reference to the relevant portions of FIRM ’s most recent Forms MA or MA-1 filed with the SEC if FIRM has provided detailed information specifying where the Client may electronically access such forms.	
3. Is copy of required disclosure in Client electronic file? File Name: _____ Date of written disclosure: _____	

Provide an explanation for any NO answer:

C. Engagement Letter

Any NO answers require additional explanation below.

All **FIRM** engagement letters should include the required information listed here. This list serves as a cross-check for compliance purposes. If for some reason the answer is No, provide additional explanation and documentation, and review with Supervisor and Chief Compliance Officer if necessary.

Question/Issue	YES/NO
Was the Client provided with dated writing or writings prior to, upon or promptly after the establishment of the municipal advisory relationship? Did the writing or writings include all of the following:	
1. The form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed?	
2. The information required to be disclosed related to material conflicts (or lack thereof) or legal or disciplinary proceedings? (note if included in a separate document – must be dated --other than the engagement letter and provide date of that separate document)	
3. A description of the specific type of information regarding legal and disciplinary events requested by the SEC on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access FIRM ’s most recent Form MA and each most recent Form MA-I filed with the SEC?	

Question/Issue	YES/NO
4. The date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-1 filed with the SEC by FIRM and a brief explanation of the basis for the materiality of the change or addition?	
5. The scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement?	
6. The date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none?	
7. Any terms relating to withdrawal from the municipal advisory relationship?	
8. Is copy of Engagement Letter in Client electronic file? File name: _____ Date: _____	

Provide an explanation for any NO answers:

D. Material Changes or Additions to the Client Relationship

Any YES answers to Questions 1 or 2, and any NO answer to Question 3 require additional explanation below.

Question/Issue	YES/NO
1. Were there material changes or additions to the client relationship (this includes any changes or additions that are discovered based on the exercise of reasonable diligence by FIRM)?	
2. If so, was the Engagement Letter promptly amended or supplemented to reflect any material changes or additions and promptly delivered to the client?	
3. If so, is a copy of the amended Engagement Letter or supplement in the Client electronic file? File name: _____ Date or dates of amendments or supplements: _____	

Provide an explanation for any YES answers to Questions 1 and 2, and any NO answer to Question 3:

E. Knowing the Client

Any YES or NO answers require additional explanation below.

Question/Issue	YES/NO
1. Did FIRM use reasonable diligence to know and retain the essential facts concerning the client and the authority of each person acting on behalf of such client? These facts include those required to (a) effectively service the municipal advisory relationship with the client, (b) act in accordance with any special directions from the client, (c) understand the authority of each person acting on behalf of the client, and (d) comply with applicable laws, regulations and rules.	
2. Did FIRM rely on counsel for authority? If so, who was counsel?	
3. Did FIRM review applicable laws, articles, by-laws and board vote(s)?	
4. Does client have a debt and/or swap policy?	
5. Did FIRM review other material debt management policies of the client?	
6. If so, were they reviewed by FIRM ?	

Provide an explanation for any YES and NO answers, including dates of when diligence was conducted:

F. Recommendations and Review of Recommendations of Other Parties

Any YES or NO answers require additional explanation below.

Question/Issue	YES/NO
1. Did FIRM make a recommendation of a municipal securities transaction or municipal financial product to the client?	
2. Did it have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client based on the information obtained through the reasonable diligence of FIRM ? (see below)	
3. Did FIRM review the recommendation of another party for the client?	
4. If so, did FIRM determine, based on the information obtained through the reasonable diligence of FIRM , whether the municipal securities transaction or municipal financial product is or is not suitable for the client?	
5. Does the Client electronic file contain any memos or presentations or other writings that show any recommendations made to the client? File name: _____ Date(s): _____	

Provide an explanation for any YES and NO answers:

*Note: A determination of suitability must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client’s financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by **FIRM** about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.*

Indicate YES or NO regarding extent of inquiry:

Question/Issue	YES/NO
1. Reviewed audited financials?	
2. Reviewed unaudited financial statements?	
3. Reviewed draft official statement or credit memo?	
4. Reviewed credit rating report(s)?	
5. Reviewed existing debt documents?	
6. Reviewed swap documents?	
7. Other material documents?	
8. Discussion with client regarding financial situation and needs, objectives, risk tolerance, liquidity needs, experience and financial capacity to withstand changes in market conditions.	
9. Are the items you answered YES to in Questions 1-7, and notes on discussions with Client in the Client electronic file? File name: _____	

Provide explanation or elaboration of extent of inquiry as needed, including date(s) of inquiries:

Did **FIRM** inform the client of each of the following:

Question/Issue	YES/NO
1. FIRM 's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product?	
2. The basis upon which FIRM reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client?	
3. Whether FIRM has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives?	
4. Were presentations or memos or other writings prepared for the Client?	
5. If so, are they in the electronic client file? File name: _____ Date(s): _____	
6. If done via conversation with client, are the notes contained in the electronic client file? Date(s): _____	

Provide explanation as needed:

G. Documentation of Duty of Care

Any YES or NO answers may require additional explanation below.

Question/Issue	YES/NO
1. Did FIRM possess the degree of knowledge and expertise needed to provide the Client with informed advice?	
2. Did FIRM make a reasonable inquiry as to the facts that are relevant to the Client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client?	
3. Did FIRM undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information?	
4. Did FIRM have a reasonable basis for any advice provided to the Client?	
5. Did FIRM have a reasonable basis for any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or	

Question/Issue	YES/NO
investors in the municipal entity client's securities or securities secured by payments from an obligated person client?	
6. Did FIRM have a reasonable basis for any information provided to the Client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which FIRM is advising?	

Provide explanation as needed, including dates and extent of inquiries:

H. Documentation of Duty of Loyalty (applicable for Municipal Entity Clients)

A NO answer requires additional explanation below.

Question/Issue	YES/NO
1. Did FIRM deal honestly and with the utmost good faith with the municipal entity client and act in the client's best interests without regarding to the financial or other interests of FIRM ?	

Provide an explanation for a NO answer:

I. Specific Prohibitions

Any YES answers require additional explanation below.

Did **FIRM**:

Question/Issue	YES/NO
1. Receive compensation that is excessive in relation to the municipal advisory activities actually performed? Factors to take into consideration: FIRM 's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and	

Question/Issue	YES/NO
whether FIRM is paying any other relevant costs related to the municipal securities transaction or municipal financial product.	
2. Deliver 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?	
3. Make any representation or the submission of any information that FIRM 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 FIRM , in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities?	
4. Make, or participate in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of FIRM ?	
5. Make payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of FIRM for a direct or indirect communication with a municipal entity or obligated person on behalf of FIRM 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 SEC and the MSRB for making such a communication as described in subparagraph (1); and (3) payments that are permissible “normal business dealings” as described in Rule G-20?	

Provide an explanation for any YES answers:

J. Only applicable if the client is a Municipal Entity:

Any YES answers require additional explanation below.

Question/Issue	YES/NO
1. Did FIRM or any affiliate of FIRM engage with the Municipal Entity client in a principal transaction that is the same, or directly related to the, issue of municipal securities or municipal financial product as to which FIRM is providing or has provided advice to the Municipal Entity client?	N/A

Provide an explanation for any YES answers:

Definitions – see Rule G-42

Affiliate of FIRM – any person directly or indirectly controlling, controlled by, or under common control with **FIRM**

Principal Transaction – when acting as principal for one’s own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

RESOURCES

NAMA Resource: [Developing Policies and Procedures](#)

[MSRB Rule G-42](#)

MSRB [MA Compliance Advisory](#)

Many thanks to Linda Port and SJ Advisories for sharing these discussion items with NAMA.