



Overview of SEC's Statement - *Municipal Advisors' Role in Municipal Disclosure* and NAMA Compliance Considerations

This document serves as a resource for NAMA members regarding the SEC's recent statement on MAs and issuer disclosures. Firms should consult counsel or make their own determinations on how the statement intersects with the firm's practices.

This document should not be solely relied on for compliance purposes, nor does it constitute legal advice.

Last month the SEC's Office of Municipal Securities released a *Statement on Municipal Advisors' Role in Disclosure*. This Statement discusses the intersection of MA responsibilities when providing various disclosure services to their clients, and the application of securities laws within these contexts.

MAs should review the Statement and determine how it intersects with the way their firm addresses disclosure matters in client engagements/scope of services, disclosure activities performed, and how disclosure services are discussed in the firm's WSP. The document provides helpful discussion on "What Steps Can the MA Take to Ensure That its Obligations are Clear" (pages 18-20).

Brief Summary of Key Items Within the Statement

- There is nothing in SEC rulemaking that requires MAs to participate in the preparation of disclosure documents.
- The regulatory requirements for municipal advisors providing disclosure services vary, depending if MA activity occurs, and the type of disclosure services provided. For instance, clerical and assembling work may not trigger a MA advice and disclosure nexus, while assembling and verifying information in the POS/OS, drafting sections of the POS/OS, drafting the entire POS/OS, reviewing the POS/OS, or editing the POS/OS, may trigger MA activity and disclosure obligations.
- Regardless of whether a firm provides MA services related to disclosure, SEC anti-fraud rules apply (as they do for all parties in the transaction). These include those with a negligence standard (Exchange Act Section 17(a)(2) and 17(a)(3)), and anti-fraud rules requiring scienter (Rule 10b-5, Exchange Act Section 17(a)(1) and Section 10(b)). Specific MA anti-fraud responsibilities per Section B(a)(5) of the Exchange Act also apply.
- In certain circumstances, depending on the nature of the work, MAs may have disclosure responsibilities for information included in the OS that relate to their MA activity services (e.g., timing, terms, structure and other similar matters concerning the issue/financial product)
- In certain circumstances, depending on the nature of the MA work, MA activity that may be material to investors (e.g., conflicts of interest, contingency fees, and certain advice, representations or information provided to clients) may need to be included in issuer disclosures
- MAs in competitive sales may have greater obligations to inquire about the completeness and accuracy of issuer disclosures, than in a negotiated sale.
- MAs cannot use disclaimer language to absolve themselves of anti-fraud responsibilities and liabilities.



NAMA - Preliminary Compliance Considerations

- MAs should clearly identify in their scope of services the type of MA disclosure work performed for clients, including statements, if applicable, that they do not engage in disclosure services.
- MAs should consider having separate agreements for MA and non-MA services, including non-MA disclosure services.
- MAs should be aware of anti-fraud rules that apply regardless if they provide disclosure services. This includes whether the MA knows or should know if information or omission of information contributes to the fraudulent representation of information or if the MA aided and abetted fraudulent activity.
- MAs should review any disclaimer language they use to ensure it does not suggest abdicating anti-fraud obligations.

Link to the SEC OMS Statement - <https://www.sec.gov/newsroom/speeches-statements/oms-statement-non-solicitor-municipal-advisors-091626>