

NSCP

NATIONAL SOCIETY OF
COMPLIANCE PROFESSIONALS

10g. Municipal Advisor Issues Forum

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Conflicts of Interest

Municipal Advisors must provide full and fair disclosures of material facts, potential and actual conflicts of interest and mitigate those conflicts, where applicable, and in writing.

What Causes Conflicts of Interest?

Generally...

- Legal or disciplinary actions against the municipal advisor
- Financial relationships between the municipal advisor and third parties

Disclosures of Conflicts of Interest cont.

Examination and Enforcement Examples

- Financial Relationships
 - MA representatives are also registered with the underwriting BD
 - Recommending affiliate MA's

Disclosure of Conflicts of Interest

Municipal Advisors must disclose conflicts of interest AND how they plan to mitigate the conflict.

What do you do?

Disclosures of Conflicts of Interest cont.

What are your options?

- Do nothing
- Seek an exemption to continue business as usual (if allowed)
- Additional oversight and review
- Agreement from all impacted parties to continue as usual or avoid certain actions
- Withdrawal of certain parties from business processes
- Restrict access to information
- Relinquish positions and private interests
- Resignation
- Others?

Know Your Client

Municipal Advisors have a “know your client” standard and must document evidence of meeting the standard

- Know the facts about the client and who represents the client
 - What does your client expect?
 - Scope of services and beyond – special instructions
 - Who has authority to act on behalf of the client and in what capacity?
 - Other circumstances?

Suitability

Municipal Advisors must use reasonable diligence to determine whether a transaction is suitable for the client. Documentation

- Know your client
- Inform the client
- Disclose the basis for level of suitability and alternatives

Fiduciary Duty

- Duty of care
- Duty of loyalty

- Know your client
- Know your qualifications
- Be unbiased
- Be unselfish
- Disclose

Fiduciary Duty cont.

Enforcement Examples

- Selection of experienced underwriters
- Pricing of bonds

Recordkeeping

- NAMA recommends developing documentation standards for all facets of your municipal advisory business and recommendations to clients.
- Has the municipal advisor created sufficient books and records?
- Are the records being adequately maintained in accordance with securities rules and regulations?
- Best and worst practices you have come across?

What Have We Learned?

- Don't set yourself up
 - Supervisory and Compliance Procedures Should Focus on MA Activities
 - Target the MA business and risks
 - Is this something that is actually part of your business?
 - Is this something you must do?
 - Implementation
 - Be robust and be realistic
 - Are hard-date deadlines necessary?
 - Not everything falls on the CCO
 - Testing