

Disclosure Obligations of Municipal Advisors and Municipal Fund Securities Disclosure

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Introduction

This Hawkins Update discusses recent publications by the Securities and Exchange Commission Office of Municipal Securities staff (the “SEC”, “OMS” and the “OMS Staff”), addressing disclosure undertakings and obligations of municipal advisors (the “OMS Statement”)[[1](#)] and by the Municipal Securities Rulemaking Board (the “MSRB”), requesting comments on its proposal to amend MSRB Rule G-32 to permit electronic access to municipal fund disclosure documents without physical delivery (the “MSRB Request”). [[2](#)]

The Office of Municipal Securities Staff Statement

The OMS Statement follows publication by OMS earlier this year of an update to its posted frequently asked questions (“FAQs”) addressing non-solicitor municipal advisors that included new specific guidance as to the scope of municipal advisory activity in the context of public-private partnerships, [[3](#)] which was discussed in the July 31, 2026 *Hawkins Update*. [[4](#)] As with the revisions to the FAQs, the OMS Statement addresses the scope and implications of municipal advisor activities (in this case in connection with disclosure). Each of the FAQs and the OMS Statement provides an overview of factors that OMS Staff may be expected to take into account in considering recommendations relative to enforcement or regulatory actions, rather than rules, regulations, or statements approved by the SEC that permit legal reliance.

The OMS Statement recognizes that not all municipal advisory activity requires a municipal advisor to undertake disclosure responsibilities and that not all participation in the preparation of disclosure documents by an entity that is acting as a municipal advisor in connection with the related bond issue constitutes regulated municipal advisory activity. The OMS Statement notes that MSRB Rule G-42(c) requires a municipal advisor to document its municipal advisory relationships in writing that identifies the specific municipal advisory activities that it expects to undertake and any limitations on their scope, but that the presence of limiting language in such a written statement should not be conclusive if a broader set of undertakings is evidenced by actual activities. [[5](#)] It also notes that ambiguity may arise from a written statement that is not executed and returned by the client, by subsequent oral statements that may be deemed to modify the scope of the written undertaking or by a pre-existing course of dealing, any of which may evidence an expansion of the scope described in the written statement. [[6](#)] Accordingly, a municipal advisor’s failure either to: (i) address the scope of its municipal advisory activity undertakings relative to disclosure in a writing that complies with Rule G-42(c); or (ii) maintain a scope of actual activity that is consistent with any such applicable writing may constitute both an MSRB rule violation and a factor in an OMS Staff assessment of the scope of such undertakings. Where such a writing does exist, an OMS Staff assessment of the scope of such undertakings that differs from that described in the writing may suggest a potential Rule violation, separate and apart from any disclosure issues resulting from the advisor’s participation in disclosure preparation. Such an assessment might be based on evidence of actual activity, as well as the other factors noted in this paragraph.

In connection with the preparation of disclosure, the OMS Statement recognizes that the nature of an advisor’s participation may range from no activity or inconsequential ministerial actions, where municipal advisory activity is unlikely to be found, to actions that are sufficient to establish an undertaking of responsibilities for drafting or reviewing disclosure as municipal advisory activity or actions that themselves constitute a form of advice as to substantive matters of the type that may be the subject of municipal advisory activity. In this connection, the OMS Statement notes that the SEC

has recognized a non-exclusive list of such matters.^[7] It also indicates that participation in the preparation of disclosure that includes the exercise of discretion as to disclosure text relating to such matters as the structure, timing, and terms of municipal financial products or municipal securities is more likely to include an advisory component than would similar assistance with respect to text that is descriptive of other more general matters.^[8] The OMS Statement notes that a statement contained in a disclosure document addressing the advisor's participation in its preparation may also be considered to the extent not inconsistent with other indications of the advisor's undertaking with respect to disclosure.^[9]

Whether a municipal advisor's participation in preparing or reviewing disclosure constitutes municipal advisory activity may substantially affect the legal standard that will apply to the participation in several regards. While all persons involved in the preparation of disclosure are subject to the antifraud provisions of the federal securities laws that apply to the offer or sale of securities under Section 17 of the Securities Act or to the purchase or sale of securities under Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, participation in the preparation or review of disclosure that is within the scope of municipal advisory activities may be subject, as well, to additional requirements that are specific to municipal advisors. These include: (i) a broader prohibition on engagement in fraudulent, deceptive or manipulative conduct that may extend to issuers, and potentially to other financing participants, as well as to investors;^[10] (ii) a statutory fiduciary duty applicable to municipal advisory activities performed for municipal entity clients that the OMS Staff interprets to include duties of loyalty and care that may require the advisor to disclose certain facts to its client and to inquire in a manner that is appropriate under the specific facts and circumstances into the accuracy and completeness of disclosure documents in order to develop a reasonable basis for its advice;^[11] and (iii) MSRB Rules G-17 and G-42, which impose separate, but generally analogous, requirements of fair dealing and due care that are applicable to municipal advisory activities performed for both municipal entity and other clients.^[12] Registered Municipal advisors are also subject to various other MSRB rules that are applicable to certain municipal advisory activities, which are dependent on the specifics of the activities. The applicability of these requirements permits disclosure related enforcement actions to be brought against municipal advisors, with respect to facts that can be found to be within the scope of their municipal advisory activities, without reliance upon secondary liability theories.

The SEC's regulatory authority over municipal advisors dates back only to 2013.^[13] The OMS Statement relies heavily upon the results of enforcement actions relating to municipal financial advisors that were brought by the SEC with respect to activities that occurred prior to this period on the basis of the general antifraud provisions of the federal securities laws, while noting that several enforcement actions based upon the statutory fiduciary standard it discusses are pending.^[14] Publication of the OMS Statement gives municipal advisors, issuers and obligated persons an opportunity to review their contracting and disclosure preparation and review procedures in light of current OMS Staff views without awaiting the outcome of these pending actions. Such reviews should pay particular attention to the description of any anticipated advisor participation in the preparation and review of disclosure contained in written statements of municipal advisory activities and to procedures for assuring: (i) that the advisor's actual participation does not diverge from the initially intended scope without appropriate documentation or from any descriptive statement within the resulting disclosure; and (ii) that such participation discharges the municipal advisor's fiduciary duties, to the extent that these apply.

The Municipal Securities Rulemaking Board Request

The MSRB Request invites comments, to be received through December 14, 2026, on proposed changes intended to extend the "access equals delivery" standards that have been applicable to municipal debt securities since 2009 to a municipal dealer's obligation under MSRB Rule G-32 to deliver disclosure documents in connection with the sale of municipal fund securities. Initially, these had not been extended to municipal fund securities because their underlying assets are often registered mutual funds, which were then required to comply with a paper-based disclosure delivery requirement.^[15] The MSRB Request follows a 2024 concept release,^[16] which itself followed a 2011 request for comments concerning application of an electronic delivery standard to tuition savings plans and a related 2012 concept proposal.^[17]

Municipal fund securities are generally defined as securities issued by an entity that would be deemed to be subject to regulation as an investment company if the issuer were not exempt from the Investment Company Act of 1940 as a State, a political subdivision of a State, or an agency, authority or instrumentality of either. Three categories of municipal fund securities have been recognized to date, including both the relatively recently introduced state-sponsored tuition savings plan accounts and ABLE plan accounts that offer individual investors a means to save for specific purposes on a federally tax-advantaged basis, subject to Internal Revenue Code and plan limits as to amount, as well as the more institutional local government investment pools that have been traditionally established by States to provide efficient funds management to constituent entities. [\[18\]](#)

While local government investment pools differ materially from tuition savings and ABLE plan accounts in the number and character of investors and in other ways, none of these investment types fit neatly into a regulatory schema that is designed for the initial issuance and secondary market transactions of municipal bonds and notes. All three types of municipal fund securities typically may only be acquired from the issuer through a continuous offering and are open-ended investment plans permitting account owners to deposit or withdraw funds on an ongoing basis, rather than fixed income securities with stated principal amounts and maturities. [\[19\]](#) Tuition savings and ABLE plan account owners are overwhelmingly individuals. Most of these accounts are established with small, often very small, balances and are unlikely to grow substantially without further account owner contributions. Both the number of tuition savings plan accounts and the average balance of such accounts have grown substantially since the 2011 request for comments. The more recently established ABLE plan accounts appear to have broadly similar size and growth characteristics. [\[20\]](#)

Disclosure content is further complicated by the fact that account owners typically select among investment alternatives offered by the plan with respect to their contributions. These investment alternatives often provide for investment in mutual funds. In such cases, a substantial portion of plan disclosure must be derived from underlying fund disclosure. Such alternatives, and the underlying investments, may have a broadly differing range of material investment considerations. Moreover, alternatives and underlying investments may be changed by the plan sponsor from time to time and account owners may periodically change their account allocations among then-offered alternatives.

The large number of tuition savings and ABLE plan accounts, the manner of offering these accounts, and the need to periodically update disclosure documents, result in substantial distribution costs if disclosure must be distributed in physical form, especially relative to the average account size. Moreover, reliance upon periodic supplements to update disclosure results in needs for dealers to remain prepared to provide potentially voluminous paper sets of disclosure materials to account owners and for account owners who receive disclosure in physical form to maintain files of such materials.

The MSRB's existing general electronic communications guidance has not proven sufficiently explicit, as applied in the context of municipal fund securities, to permit dealers to utilize electronic delivery for a tuition savings or ABLE accounts without affirmative written approval from the account owner. [\[21\]](#) The draft Rule amendments described in the MSRB Request are primarily intended to replace the default paper delivery standard under the existing guidance with reliable electronic "access equals delivery" procedures that would be articulated in MSRB Rules to permit dealers to choose between advising account owners of the availability of disclosure on the MSRB's Electronic Municipal Market Access system ("EMMA") or providing physical delivery. [\[22\]](#) The ability of dealers to choose between delivery methods would also apply to amendments and supplements to originally delivered disclosure documents that were delivered electronically or to account owners that had subsequently opted into electronic delivery. [\[23\]](#)

It seems likely that tuition savings and ABLE account issuers and dealers will primarily evaluate the proposed amendments on the basis of the savings that may be expected to result from disclosure dissemination through EMMA. Other, more technical, aspects may be worth close attention. One example is the open question of how the SEC would address municipal fund disclosure that is filed through EMMA in the context of its still pending rulemaking to implement the Financial Data Transparency Act ("FDTA"). [\[24\]](#) SEC rulemaking in response to its FDFTA mandates, which has been discussed in the context of debt issuance related information in several *Hawkins Updates*, is currently expected to

continue well into 2028. [25] Another area of potential concern may be the time requirements for posting municipal fund disclosure information that is derived from underlying mutual fund disclosure.

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[1] See The Office of Municipal Securities, SEC, “*Statement on Non-Solicitor Municipal Advisors’ Role in Disclosure*”, (September 16, 2026), <https://www.sec.gov/newsroom/speeches-statements/oms-statement-non-solicitor-municipal-advisors-091626>.

[2] See MSRB Notice 2026-09, “*Request for Comment on Draft Amendments to MSRB Rule G-32 to Modernize Municipal Fund Securities Disclosure Obligations*” (September 10, 2026), <https://www.msrb.org/sites/default/files/2026-09/MSRB-Notice-2026-09%20.pdf>.

[3] See Press Release, “*SEC Office of Municipal Securities Updates FAQs for Registration of Municipal Advisors*”, (July 10, 2026), <https://www.sec.gov/newsroom/press-releases/2026-66-sec-office-municipal-securities-updates-faqs-registration-municipal-advisors> with the full set of this guidance available at <https://www.sec.gov/about/divisions-offices/office-municipal-securities/registration-municipal-advisors>.

[4] See Hawkins Update, “*Tender Offers, Municipal Advisor FAQs, and Tokenization*” (July 31, 2026). The ongoing development of the SEC’s municipal advisor framework has been discussed in several prior Hawkins Updates. See: (i) “*SEC Approves Municipal Advisor Rules*” (October 3, 2013); (ii) “*Municipal Advisor Rules – SEC Staff posts FAQs; SEC Delays Effective Date*” (January 24, 2014); (iii) “*SEC Staff Posts Additional FAQs and Related Responses Regarding Municipal Advisor Rules*” (May 30, 2014); (iv) “*MSRB Rule G-42*” (June 23, 2016); and (v) “*Current SEC Municipal Advisor Concerns*” (August 7, 2025).

[5] OMS Statement footnote 5.

[6] OMS Statement at footnote 63-71.

[7] OMS Statement at footnotes 7-12.

[8] OMS Statement at footnotes 11-21.

[9] OMS Statement at footnotes 86-92

[10] OMS Statement at footnotes 28 and 60-61.

[11] OMS Statement at footnotes 30-32, 77-80 and 96-98.

[12] OMS Statement at footnote 33.

[13] The statutory category of municipal advisors as regulated entities was established by Dodd-Frank Wall Street Reform and Consumer Protection Act § 975, 15 U.S.C.S. § 78o-4 (2026).

[14] OMS Statement at footnote 62.

[15] MSRB Request at footnote 14.

[16] See MSRB Notice 2024-15, *Concept Release: MSRB Requests Comment on Potential Modernization of Municipal Fund Securities Disclosure Obligations*, (December 11, 2024), https://www.msrb.org/sites/default/files/2024-12/MSRB-Notice-2024-15_1.pdf.

[17] Id. at footnotes 23-26.

[18] Tuition savings plans were first broadly established after the Small Business Job Protection Act of 1996 added Section 529 to the Internal Revenue Code (the “Code”) and ABLE plans after the Stephen Beck, Jr. Achieving a Better Life Experience Act (ABLE Act) added Section 529A to the Code in 2014. Although the 1996 legislation and Code Section 529 also provide federal tax benefits for tuition prepayment plans, the MSRB Request recognizes that tuition credits in these plans generally do not constitute securities. See MSRB Request at footnote 4. It remains possible that additional municipal fund securities may be recognized in the future. See MSRB Request at footnote 5.

[19] MSRB Request at footnote 19.

[20] The College Savings Plan Network estimates that, as of the end of 2024, the approximately 16.96 million tuition savings accounts had an average balance of approximately \$30,961 and that approximately 38% of account owners had authorized automated periodic contributions. See: <https://nast.org/wp-content/uploads/cspn-529-factsheet-march2025-1.pdf>. The ABLE National Resource Center estimates that, as of March 31, 2026, the approximately 246,000 ABLE accounts have an average balance of \$13,200. See: <https://www.ablenrc.org/achievable-newsletter-june-2026-issue/>. Although neither publishes a median account size estimate, in each case the rapid growth in the number of accounts in both types of plans and fact that accounts are established to be drawn down for targeted costs suggest that the median account may be substantially smaller than the average.

[21] MSRB Request at footnotes 15-18.

[22] MSRB Request at footnotes 26-27

[23] MSRB Request at footnotes 28-30.

[24] Financial Data Transparency Act of 2022, P. L. 117-263, Div. E, Title LVIII, 136 Stat. 3421, (December 23, 2022), <https://www.congress.gov/117/plaws/publ263/PLAW-117publ263.pdf>.

[25] See Hawkins Updates, “*Update on the Municipal Securities Market—Financial Data Transparency Act*” (January 25, 2023), “*Municipal Securities Market Update—SEC Municipal Disclosure Conference—FDTA Implementation*” (July 21, 2023), “*Initial Municipal Market Responses to Proposed Financial Data Transparency Act Joint Data Standards*” (December 6, 2024) and “*SEC Regulatory and Enforcement Update--First Step in FDTA Rulemaking*” (June 24, 2026).

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