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Remarks - California Debt and Investment Advisory Commission: Municipal Debt Essentials Seminar (Responsibilities of Regulated Entities to Municipal Issuers)

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California Debt and Investment Advisory Commission: Municipal Debt Essentials Seminar
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Good morning, everyone:

As is customary, my comments today are provided in my official capacity as Director of the Office of Municipal Securities, but do not necessarily reflect the views of the Commission, the Commissioners, or members of the staff.

I want to start by thanking the California Debt and Investment Advisory Commission (“CDIAC”) for inviting me to speak here today. I also want to thank all the panelists and moderators for their time and effort and to everyone involved with putting together this incredibly important program on municipal debt essentials. I started my public finance career in California and consulted the CDIAC debt primer constantly to learn about how debt offerings work in California. And throughout my career, but especially lately, CDIAC educational offerings have been invaluable to me and other municipal market participants as they address the most timely and meaningful topics in the market. We are lucky to have such a great resource here in California.

I also want to thank all of you for attending this program. As government officers, you play a crucial role in the municipal securities market and are in the unique position of being able to influence the practices of the various professionals that you may choose to hire when issuing bonds. As such, it is also important that you understand the federal protections that exist to help ensure that some of those professionals you may hire fulfill their regulatory duties, including fair dealing and acting in your best interests, particularly when it comes to advising you on big picture decisions such as when and how much to borrow, method of sale and the amount of interest you have to pay on your bonds.

When doing a deal, you may find yourself employing the services of a municipal advisor, various other legal counsel and advisors, and an underwriter. Today, I will be focusing on the duties of municipal advisors but will also touch briefly on the duties of underwriters. For those who may be unfamiliar, a municipal advisor – sometimes imprecisely referred to as a financial advisor – is often engaged by the borrower/issuer (i.e., you) to provide advisory services as to municipal financial products and issuance of municipal securities, and the structuring of such transactions.[1] Currently, there are over 400 registered municipal advisors, ranging from large firms with national coverage to sole proprietorships.[2] An underwriter is typically a firm, or one of a group of firms, that purchase securities from the issuer and then offer them to investors.[3]

1. the Municipal Advisor Rule and Accompanying Protections

Keeping track of the different categories of regulated entities and corresponding regulators can be confusing, so let me start with a brief explanation of who the regulators are and the types of entities that they regulate. Municipal advisors are primarily regulated by the Securities and Exchange Commission (SEC). The SEC also regulates broker-dealers and regulates municipal issuers with respect to disclosure through the operation of the antifraud provisions.[4] In 2010, Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) amended Section 15B of the Securities Exchange Act of 1934 (Exchange Act) to add a new requirement that “municipal advisors” register with the SEC.[5] In 2013, the SEC approved what is known as the Municipal Advisor Rule and it has been effective since 2014.[6] The Municipal Advisor Rule establishes a registration regime for professionals who engage in municipal advisory activities[7] and, among other things, provides that municipal advisors and any person associated with such municipal advisor are deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor.[8]

The Municipal Securities Rulemaking Board (MSRB) (a self-regulatory organization) was established by Congress in 1975 and charged with a mandate to protect investors, municipal entities, obligated persons, and the public interest.[9] Congress initially authorized the MSRB to regulate the activities of broker-dealers and banks that buy, sell, and underwrite municipal securities.[10] In 2010, Congress expanded the MSRB’s authority to include the regulation of municipal advisors.[11] The MSRB does not regulate municipal entities, including issuers of municipal securities.[12] The MSRB is overseen by Congress and the SEC, and MSRB rules generally must be approved by the SEC before becoming effective.[13] The MSRB does not carry out the enforcement of its rules or conduct compliance examinations.[14] Instead, the SEC and the Financial Industry Regulatory Authority (FINRA) share responsibility for enforcement and compliance examinations.[15]

But back to the Municipal Advisor Rule which, for me, is first and foremost a consumer protection rule, with the consumers being all of you who utilize the services of a municipal advisor. For example, the Municipal Advisor Rule requires any firm that engages in municipal advisory activities to file an initial registration with the SEC to disclose information such as the firm’s direct and indirect ownership, other business activities, and any prior regulatory or criminal actions.[16] Each municipal advisory firm must also file an annual update that includes any changes to any previously filed information.[17] Additionally, the municipal advisory firm must also file a form for each person associated with the firm who is engaged in municipal advisory activities which discloses information on that person’s education and employment history as well as information on any criminal or regulatory actions, investigations, terminations, and customer complaints.[18] These important disclosures are publicly available on the SEC’s EDGAR website,[19] and I encourage all of you to consult that site as you interact with different municipal advisors throughout your business. We continue to see a concerning number of unregistered entities engaging in what appears to be municipal advisory activity[20] and urge you to confirm that any professional providing municipal advisory services to you is properly registered. If you believe someone is not properly registered, please consider submitting a tip on the SEC’s website at <https://www.sec.gov/submit-tip--r-complaint> or reaching out to the Office of Municipal Securities at munis@sec.gov.

Accordingly, you should also be aware of the robust rules in place that municipal advisors must adhere to when providing municipal advisory services to their municipal entity clients. For example, municipal advisors are required to follow certain standards of conduct when engaging with their municipal entity clients.[21] The Exchange Act establishes standards of conduct for municipal advisors engaging in municipal advisory activity.[22] MSRB Rule G-42 also articulates standards of conduct for municipal advisors engaging in municipal advisory activities.[23] When performing municipal advisory activities for a municipal entity client or an obligated person client, a municipal advisor must act in accordance with a duty of care.[24] A municipal advisor acting with a duty of

care must, among other things:

- Possess the degree of knowledge and expertise needed to provide a client informed advice;
- Make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action, such as the issuance of securities;
- Make a reasonable inquiry as to the facts that form the basis for any advice the municipal advisor provides to a client; and
- Have a reasonable basis for any advice provided to a client.[25]

Additionally, and very importantly, municipal advisors to a municipal entity client are also subject to a duty of loyalty.[26] The duty of loyalty requires a municipal advisor to deal honestly and with the utmost good faith and act in its municipal client's best interests without regard to the financial or other interests of the municipal advisor.[27]

Municipal advisors are also required to disclose material conflicts of interest to their clients, and those disclosures are some of the most important protections issuers have in evaluating whether their municipal advisor is acting in the client's best interest.[28] Rule G-42 requires a municipal advisor to make a full and fair disclosure, in writing, of all material conflicts of interest and all legal and disciplinary events that are material to a client's evaluation of a municipal advisor or the integrity of its management and advisory personnel.[29] These disclosures must be provided to the municipal client by the municipal advisor prior to or upon engaging in municipal advisory activities for the municipal client or on the municipal client's behalf.[30]

Municipal advisors are also required to document their municipal advisory relationship with their municipal clients in writing, and the documentation must be dated and delivered to the municipal client prior to, upon, or promptly after the municipal client and the municipal advisor establish their municipal advisory relationship.[31] This also helps ensure that both the municipal issuer client and the municipal advisor have clear expectations about the activities to be performed by the municipal advisor.

2. The Municipal Advisor Rule and Key Decisions in the Issuance Process

The protections just discussed apply to all of the advice provided to you by a municipal advisor. But, I wanted to discuss how these protections work in the context of several key points in the issuance process. First, these protections apply to advice given as to whether to proceed with a bond issuance.[32] In many instances, but particularly in the case of a refunding, one of the first decisions you would have to make is whether it is even necessary or advisable to do the deal. Many times, your municipal advisor (as well as other professionals) will have an inherent conflict of interest because they will only get paid if a deal is done, thus giving them an incentive to recommend borrowing. The SEC recently brought an action against a municipal advisor for recommending a borrowing when the municipal entity had sufficient reserves to cash fund a project.[33] In that case the recommendation to borrow was based on an analysis that led to inaccurate conclusions regarding the relative costs of different options.[34] Commentators have also raised question about the economics of taxable advance refundings and tenders that take the place of traditional refundings.[35] Particularly when the idea to borrow money or refund bonds is not your own, your municipal advisor or underwriter should be presenting you with recommendations that are not based on materially inaccurate or incomplete information.[36] This analysis could include items such as a cost analysis of different funding options.

Another major decision you will face is whether to do a competitive or negotiated sale.[37] A competitive sale occurs when multiple underwriters compete by submitting purchase bids consisting of coupons, yields, and the underwriter's discount, with the issuer generally selecting the

underwriter with the lowest true cost.[38] By contrast, in a negotiated sale, the issuer selects the underwriter at the outset of the financing, well in advance of the sale of the bonds, usually after an RFP process.[39] Numerous studies[40] suggest that competitive sales are more efficient for the issuer in the majority of transactions. In the last few decades, however, the majority of deals have been negotiated sales.[41] From 2018 through 2022, 46.4% of deals nationwide (representing 26.8% of total par value) were competitive sales.[42] In California, during that same period, the number was even lower: a mere 12.8% of deals were competitive sales.[43] By contrast, in New York, 84.5% of deals during that period were competitive sales.[44] Given that independent research suggests that competitive sales are more efficient with a lower true interest cost (TIC) for the borrower in the majority of transactions,[45] I am concerned about the number of municipal entities still choosing to do negotiated sales and question whether this may be due to municipal entities not being given enough information to make the best decision for themselves on what method sale to utilize. I am not the only one concerned about this issue; just last year the State of California Treasurer's Office gave a presentation to the California Society of Municipal Finance Officers to offer a "fresh look" at competitive sales.[46]

There are a few possible reasons why negotiated sales remain the dominant method of sale despite evidence that competitive sales may result in interest cost savings for issuers in a large number of cases.

The first is that municipal entities are accustomed to doing negotiated sales and are hesitant to stray from their past, established practice.[47] It is just a matter of habit. However, one recent paper from the Chief Economist of the MSRB affirmed that negotiated offerings tend to trade at higher prices than competitive offerings in the secondary market,[48] which suggests that issuers could get lower interest rates on their debt with a competitive sale, depending on the particular facts and circumstances. Given that, I urge you all to not fall into the trap of choosing one method of sale simply because that is the way things have always been done at the expense of the potential interest savings that could be achieved by evaluating your options each time you go to market. To be clear, there is nothing preventing a municipal entity from continuing to prefer negotiated sales. We recognize that issuers may have policy reasons to prefer a negotiated sale, and negotiated sales may continue to be preferable in certain circumstances.[49]

The second possible reason why negotiated sales remain the dominant method of sale is that municipal advisors are failing to even raise with issuers the possibility of a competitive sale. As I mentioned earlier, municipal advisors who provide advice on the issuance of bonds have a fiduciary duty to their clients. But, given the continued prevalence of negotiated sales,[50] it is important to remind municipal advisors of how that duty is implicated when they are providing advice on the method of sale. Municipal advisors should carefully evaluate the sufficiency of the information they provide to issuers before issuers make a choice about what method of sale to use. A municipal advisor may claim that a deal comes to them where this decision is already made, but a non-binding agreement to do a negotiated sale does not absolve a municipal advisor of its fiduciary duty to explore and present alternatives to you.[51] You may worry that municipal advisors will take advantage of this obligation as an excuse to prepare extra, unnecessary reports and run up costs. But remember that it is you – the issuer – who remains in control of the municipal advisor relationship and the bond issuance process. Our goal is simply to make sure that your municipal advisor fulfills its duties to you in the context of that relationship.

In sum, when I see the continued prevalence of negotiated sales, I ask myself whether the appropriate gatekeepers (i.e., municipal advisors) are fulfilling their responsibilities. None of these responsibilities are new. Dodd-Frank[52] was passed almost 13 years ago, the MSRB Rule G-42 standards of conduct are from 2016, and the Municipal Advisor Rule was adopted 10 years ago.[53]

In addition to the two major issues raised above, we will continue to focus on price movement and trading immediately after issuance in negotiated sales and remind municipal advisors and underwriters of their regulatory responsibilities with respect to pricing. This could include comparing the results of negotiated sales not only to other comparable negotiated sales but also to comparable competitive sales. For municipal advisors these responsibilities could also include appropriate responses to oversubscription rates during pricing as well as monitoring post-issuance sales activity.[54] We are not the only ones monitoring price movement and trading; the Chief Economist of the MSRB recently looked at data from January 2019-December 2021 and found that the median trade spread for offerings that trade in the first 30 days post-issuance is -1 basis points for competitive offerings but 11.4 basis points for negotiated offerings.[55] This could reflect that the negotiated sale resulted in a higher than necessary cost of borrowing for the issuer. We encourage you to remain vigilant against decision inertia, and especially to ask questions of your municipal advisor about the major decisions you will make during the issuance process, and know the protections available under the Municipal Advisor Rule.

Again, thank you again to the staff at CDIAC and our municipal market participants for putting this seminar together and thank you for attending.

Lastly, I invite you to visit OMS's (sec.gov/municipal), MSRB's, and FINRA's websites for regulatory and compliance information and helpful updates. Our website in particular contains a host of information and guidance on the Municipal Advisor Rule, and frequently updates its information for market participants. My hope is that you will consult those resources now and throughout your careers to understand the protections afforded to your municipal entities. Our Office also runs a help line and email inbox which can be found on our website. If you ever have any questions at all, please don't hesitate to call or email our Office.

[1] See 15 U.S.C. 78o-4(e)(4).

[2] See SEC, Information About Registered Municipal Advisors, available at <https://www.sec.gov/about/foiadocsmuniadvisors>. See also MSRB, MSRB-Registered Municipal Advisor Firms and Qualified Representatives and Principals, available at <https://www.msrb.org/Municipal-Advisors>.

[3] See 15 U.S.C. 78c(a)(20); 15 U.S.C. 80b-2(a)(20). See also MSRB, The Underwriting Process, available at <https://www.msrb.org/Underwriting-Process>.

[4] See 15 U.S.C. 77q(a)(1)-(3), 15 U.S.C. 78j(b), and 17 CFR 240.10b-5.

[5] See 15 U.S.C. 78o-4(a)(1)(B).

[6] See Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013).

[7] See Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013). Pursuant to Rule 15Ba1-1(e) (15 CFR § 240.15Ba1-1(e)), "municipal advisory activities" include, but are not limited to, "[p]roviding advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues").

[8] See 15 U.S.C. 78o-4(c)(1). Exchange Act Section 15B(c)(1) does not provide that municipal

advisors are deemed to have a fiduciary duty insofar as their advice is to non-municipal entity obligated person clients. MSRB Rule G-42 establishes the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities. See MSRB Rule G-42(a)-(e).

[9] See 15 U.S.C. 78o-4(b)(2). See also MSRB, The Role and Jurisdiction of the MSRB, pg. 2, available at <https://www.msrb.org/sites/default/files/2022-09/Role-and-Jurisdiction-of-MSRB.pdf>.

[10] See 15 U.S.C. 78o-4(b)(2). See also MSRB, The Role and Jurisdiction of the MSRB, pg. 2, available at <https://www.msrb.org/sites/default/files/2022-09/Role-and-Jurisdiction-of-MSRB.pdf>.

[11] See 15 U.S.C. 78o-4(b)(2). See also MSRB, The Creation of the MSRB, available at <https://www.msrb.org/MSRB-News/Creation-MSRB>.

[12] See 15 U.S.C. 78o-4(d).

[13] See 15 U.S.C. 78s(b).

[14] See 15 U.S.C. 78o-4(b)(4).

[15] See MSRB, The Role and Jurisdiction of the MSRB, pg. 2, available at <https://www.msrb.org/sites/default/files/2022-09/Role-and-Jurisdiction-of-MSRB.pdf>.

[16] See SEC, Instructions for the Form MA Series, available at <https://www.sec.gov/files/formmadata.pdf>.

[17] See SEC, Instructions for the Form MA Series, available at <https://www.sec.gov/files/formmadata.pdf>.

[18] See SEC, Instructions for the Form MA Series, available at <https://www.sec.gov/files/formmadata.pdf>.

[19] See SEC, Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, available at <https://www.sec.gov/edgar/search>.

[20] See SEC, Unregistered Municipal Advisor Enforcement Actions, available at <https://www.sec.gov/about/divisions-offices/office-municipal-securities/unregistered-municipal-advisor-enforcement-actions>.

[21] See MSRB Rule G-42.

[22] See 15 U.S.C. 78o-4(c)(1).

[23] See MSRB Rule G-42.

[24] See MSRB Rule G-42(a).

[25] See e.g., MSRB Rule G-42(a), Supplemental Material .01; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[26] See e.g., MSRB Rule G-42(a)(ii), Supplemental Material .02; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[27] See e.g., MSRB Rule G-42(a)(ii), Supplemental Material .02 and .03; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[28] See e.g., MSRB Rule G-42(b), Supplemental Material .05; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[29] See e.g., MSRB Rule G-42(b), Supplemental Material .05; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[30] See e.g., MSRB Rule G-42(b)-(c), Supplemental Material .05 and .06; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[31] See e.g., MSRB Rule G-42(c), Supplemental Material .06; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf>.

[32] See *In the Matter of Fieldman Rolapp & Assoc., Inc., and Anna Sarabian* (settled action), Exchange Act Release. No. 98510 (September 25, 2023). See also MSRB Rule G-42.

[33] See *In the Matter of Fieldman Rolapp & Assoc., Inc., and Anna Sarabian* (settled action), Exchange Act Release. No. 98510 (September 25, 2023).

[34] See *In the Matter of Fieldman Rolapp & Assoc., Inc., and Anna Sarabian* (settled action), Exchange Act Release. No. 98510 (September 25, 2023).

[35] See generally Andrew Kalotay, *Taxable Advance Refundings: A Critical Examination*, 39 J. Tax'n Inv. 49 (2021); Kalotay, Andrew and Luby, Martin, *Savings Lost: The Damage of Taxable Advance Refundings to Taxpayers* (September 28, 2023), available at <https://ssrn.com/abstract=4586951>.

[36] See e.g., MSRB Rule G-42, Supplemental Material .01; MSRB, Municipal Advisors Understanding Standard of Conduct, (April 2016) available at <https://www.msrb.org/sites/default/files/2022-08/MSRB-Rule-G-42-for-Municipal-Advisors.pdf> (setting forth the “reasonable basis” requirement that a municipal advisor must fulfill when making a recommendation to a client).

[37] See 15 U.S.C. 78o-4(c)(1). See also Rule 15Ba1-1(e) (15 CFR § 240.15Ba1-1(e)) which defines “municipal advisory activities” to include “[p]roviding advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues”).

[38] See CDIAC, *Understanding Methods of Sale* (October 28, 2016), available at <https://www.treasurer.ca.gov/cdiac/seminars/2016/20161026/day3/2.pdf>.

[39] See CDIAC, *Understanding Methods of Sale* (October 28, 2016), available at <https://www.treasurer.ca.gov/cdiac/seminars/2016/20161026/day3/2.pdf>.

[40] See, e.g., Liu, Gao, *Self-Selection Bias or Decision Inertia? Explaining the Municipal Bond ‘Competitive Sale Dilemma’* (March 2018), available at <https://ssrn.com/abstract=3014183>; Cestau,

Dario and Green, Richard C. and Hollifield, Burton and Schuerhoff, Norman, The Cost Burden of Negotiated Sales Restrictions: A Natural Experiment Using Heterogeneous State Laws (November 2017), available at <https://www.brookings.edu/wp-content/uploads/2017/11/wp363.pdf>; Moldogaziev, Tima and Tatyana Guzman, Which Bonds Are More Expensive? The Cost Differentials by Debt Issue Purpose and the Method of Sale: An Empirical Analysis (Fall 2012), available at <https://doi.org/10.1111/j.1540-5850.2012.01013.x>.

[41] See Wu, Simon, Competitive Bidding for Primary Offerings of Municipal Securities: More Bids, Better Pricing for Issuers? (July 2020), available at <https://www.msrb.org/sites/default/files/MSRB-Competitive-Bidding.pdf>; Bergstresser, Daniel and Cohen, Randolph, Competitive Bids and Post-Issuance Price Performance in the Municipal Bond Market (March 2015), available at https://people.brandeis.edu/~dberg/papers/competitive_20150303.pdf (Table 1).

[42] See CSMFO, Competitive vs. Negotiated Methods of Bond Sale: A Fresh Look (Feb. 1, 2023), available at <https://cdn.ymaws.com/csmfo.org/resource/resmgr/conference/presentations/2023/Competitive-vs-Negotiated-Me.pdf>.

[43] See CSMFO, Competitive vs. Negotiated Methods of Bond Sale: A Fresh Look (Feb. 1, 2023), available at <https://cdn.ymaws.com/csmfo.org/resource/resmgr/conference/presentations/2023/Competitive-vs-Negotiated-Me.pdf>.

[44] See CSMFO, Competitive vs. Negotiated Methods of Bond Sale: A Fresh Look (Feb. 1, 2023), available at <https://cdn.ymaws.com/csmfo.org/resource/resmgr/conference/presentations/2023/Competitive-vs-Negotiated-Me.pdf>.

[45] See, e.g., Liu, Gao, Self-Selection Bias or Decision Inertia? Explaining the Municipal Bond ‘Competitive Sale Dilemma’ (March 2018), available at <https://ssrn.com/abstract=3014183>; Cestau, Dario and Green, Richard C. and Hollifield, Burton and Schuerhoff, Norman, The Cost Burden of Negotiated Sales Restrictions: A Natural Experiment Using Heterogeneous State Laws (November 2017), available at <https://www.brookings.edu/wp-content/uploads/2017/11/wp363.pdf>; Moldogaziev, Tima and Tatyana Guzman, Which Bonds Are More Expensive? The Cost Differentials by Debt Issue Purpose and the Method of Sale: An Empirical Analysis (Fall 2012) available at <https://doi.org/10.1111/j.1540-5850.2012.01013.x>.

[46] See Competitive vs. Negotiated Methods of Bond Sale: A Fresh Look (Feb. 1, 2023), available at <https://cdn.ymaws.com/csmfo.org/resource/resmgr/conference/presentations/2023/Competitive-vs-Negotiated-Me.pdf>.

[47] See, e.g., Liu, Gao, Self-Selection Bias or Decision Inertia? Explaining the Municipal Bond ‘Competitive Sale Dilemma’ (March 2018), available at <https://ssrn.com/abstract=3014183>.

[48] See, e.g., Wu, Simon and Ostroy, Nicholas, Primary Offerings of Municipal Securities: Impact of COVID-19 Crisis on Competitive and Negotiated Offerings (October 2022), available at <https://www.msrb.org/sites/default/files/2022-10/Competitive-and-Negotiated-Offerings.pdf>. This study considered data from January 2019-December 2021 which included the disruptive “COVID Period” of March-May 2020.

[49] But see Competitive vs. Negotiated Methods of Bond Sale: A Fresh Look (Feb. 1, 2023), available at

<https://cdn.ymaws.com/csmfo.org/resource/resmgr/conference/presentations/2023/Competitive-vs-Negotiated-Me.pdf> (debunking some of the common situations where issuers might believe a negotiated sale is preferable); Cestau, Dario and Green, Richard C. and Hollifield, Burton and Schuerhoff, Norman, *The Cost Burden of Negotiated Sales Restrictions: A Natural Experiment Using Heterogeneous State Laws* (November 2017), available at <https://www.brookings.edu/wp-content/uploads/2017/11/wp363.pdf>.

[50] See Wu, Simon, *Competitive Bidding for Primary Offerings of Municipal Securities: More Bids, Better Pricing for Issuers?* (July 2020), available at <https://www.msrb.org/sites/default/files/MSRB-Competitive-Bidding.pdf>; Bergstresser, Daniel and Cohen, Randolph, *Competitive Bids and Post-Issuance Price Performance in the Municipal Bond Market* (March 2015), available at https://people.brandeis.edu/~dberg/papers/competitive_20150303.pdf (Table 1).

[51] See generally *Comer Capital Group, LLC and Brandon L. Comer, SEC, Lit. Rel. No. 25945*, Jan. 31, 2024, available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25935> (Comer Capital Group, LLC and Brandon L. Comer consented to entry of a final judgment without admitting or denying the allegations in the SEC's complaint); see also *SEC v. Comer Cap. Group et al*, No. 19-civ-04324 (N.D. Ill.) filed June 27, 2019.

[52] Pub. L. 111-203, 124 Stat. 1376.

[53] See *Registration of Municipal Advisors*, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013).

[54] These responsibilities may be agreed to or accepted through a course of conduct. See generally, MSRB, *Considerations for Assessing Written Supervisory Procedures for Municipal Advisory Services* (including the Process for New Issue Pricing), (November 2022) available at <https://www.msrb.org/sites/default/files/2022-11/MA-Pricing.pdf>. This guidance resource is not a rule, has not been filed with SEC, and has not been approved nor disapproved by the SEC. Regulated entities, examining authorities and others should not interpret this resource as a rule or establishing new or additional obligations for any person. See also MSRB Rule G-42(a), Supplemental Material .01.

[55] See, e.g., Wu, Simon and Ostroy, Nicholas, *Primary Offerings of Municipal Securities: Impact of COVID-19 Crisis on Competitive and Negotiated Offerings* (October 2022), available at <https://www.msrb.org/sites/default/files/2022-10/Competitive-and-Negotiated-Offerings.pdf> (examining data from January 2019–December 2021 which included the disruptive “COVID Period” of March–May 2020). See also MMA, *Municipal Strategist* (June 20, 2024) (comparing secondary trade breaks in competitive sales versus negotiated sales for the years 2018–2024).