

# Bond Case Briefs

*Municipal Finance Law Since 1971*

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## SEC Informational Bulletin: What Charter Schools Should Know About Municipal Advisor Regulation

*The SEC's Office of Municipal Securities and Division of Enforcement, Public Finance Abuse Unit, are issuing this Informational Bulletin to help educate those who make financial decisions on behalf of charter schools—including charter school applicants, charter school administrators, charter school management organizations or operators, and charter school governing boards—on important considerations when working with anyone who provides advice on the issuance of municipal securities (e.g., municipal bonds) or other related topics but is not registered as a "municipal advisor."*

### **Who Are "Municipal Advisors?"**

Are you looking to acquire charter school facilities? Are you considering constructing a facility, purchasing a completed facility, or renovating an existing facility? Are you considering refinancing debt previously incurred with respect to a facility?

If so, you may be approached by—and ultimately choose to hire—an outside "consultant," "financial advisor," "real estate developer," support specialist," or other self-described "expert" who says they can help you arrange funding for your charter school facilities. This advisor may provide services such as developing a financing plan and evaluating different financing options and structures, including the use of municipal bonds. If you consider raising funds through the issuance of municipal bonds, this advisor might help you select other parties to a financing such as lawyers and underwriters, prepare a disclosure document describing the terms of the financing, evaluate and negotiate financing terms, or recommend how funds raised through a municipal bond offering should be invested if you do not plan to spend all funds immediately. While not an exhaustive list, any person providing services involving advice with respect to the issuance of municipal securities would be engaging in "municipal advisory activity."

When a person provides you with advice on the issuance of municipal bonds or other related topics (e.g., evaluating different financing options and structures or on the selection of other parties to the financing), they may be considered a "municipal advisor" or "MA"—a category of financial professionals regulated by the SEC under federal law. A municipal advisor owes a fiduciary duty to its municipal entity clients.[1] An MA may provide valuable services to your charter school. The SEC regulates MAs in part to protect both issuers of municipal bonds and those who borrow the proceeds of municipal bonds, including charter schools, from potential abuses such as undisclosed conflicts of interest, advice rendered without adequate training or qualifications, and placing their own interests ahead of their clients' interests, all of which could cause harm to your charter school, including but not limited to increased financing costs.

### **A Wide Range of People May Be Considered MAs**

A person may be considered an MA regardless of the title they use (such as the various titles above), the other professional statuses they may hold, or the type of business they are affiliated with (which

may or may not be financial in nature). For instance, a charter school could potentially receive advice—and therefore be dealing with an MA—from a wide range of actors, including: (a) a firm that is not necessarily financial in nature, such as a charter school consulting firm, a real estate development firm, or a construction firm; (b) a financing firm that offers bridge financing, loans, and/or grants to charter schools; or (c) in the most straightforward case, a standalone MA firm that plainly markets itself as a “municipal advisor” or “financial advisor.”

The takeaway is this—any person engaging in municipal advisory activities is considered an MA (unless specific exclusions/exemptions apply)[2] and therefore must be registered before engaging in those activities.

### **Federal Law Requires MAs to Register with the SEC and MSRB**

Under federal law, a person must register with both the SEC and the Municipal Securities Rulemaking Board (“MSRB”) prior to engaging in “municipal advisory activities.” A person generally must register with the SEC by filing forms that disclose a variety of information which may be pertinent to clients or potential clients, such as information about its business and disciplinary history. These forms, each of which include “MA” in the name, are available to the public for review, free of charge, on the SEC’s [EDGAR website](#).

MAs are also subject to conduct rules that provide significant protections to their clients, including charter schools. A [summary of these rules](#) may be found in the MA client brochure posted on the MSRB website.

### **Charter Schools Are Strongly Encouraged to Work with Only Registered MAs**

A charter school should be concerned about the risks of working with an unlawfully unregistered firm or individual because such unregistered firm or individual:

- Could be operating a business in violation of federal law;
- May have a history of legal violations or conflicts of interest that are unknown to regulators and potential clients; or
- May have not taken or passed the necessary professional qualification exams, may not receive continuing education training, and may not be supervised by qualified personnel.

These risks mean that a charter school working with an unregistered individual or firm might receive inadequate advice and potentially even conflicted advice. This could result in negative outcomes including, but not limited to, a charter school choosing a method of financing that is costlier and less desirable than another option, unfair pricing in a municipal bond issuance, or other financial, reputational, and legal harms.

SEC staff is concerned that charter schools are particularly vulnerable to potential harm from unregistered MAs. Although the requirement to register as an MA has been in place for over ten years, the SEC has filed a number of enforcement actions that involve unregistered firms and individuals who provided MA services to charter schools (see, e.g., [summaries of SEC enforcement actions against charter school advisors](#)).

### **How Can Charter Schools Confirm an Individual or Firm Is a Registered MA?**

- Interested parties can find the [names of all SEC-registered MAs](#).
- A [list of MSRB-registered MA firms](#) and their associated qualified representatives.

### **Charter Schools Are Strongly Encouraged to Report Potential Unregistered MA Activity or**

## **Other Potential MA Misconduct to the SEC**

If you become aware of potential unregistered MA activity or other potential MA misconduct, SEC staff strongly encourages you to submit a tip, complaint, or referral (“TCR”) to the SEC by [following the instructions](#). A TCR may lead to a SEC enforcement action and may be submitted anonymously.

## **Where Can Charter Schools Find More Information About MAs?**

More information about the SEC’s regulation of MAs is available at the [Office of Municipal Securities website](#).

The MSRB also provides educational material on various topics related to MAs at its [Education Center website](#) that may be helpful to charter schools seeking additional information.

For additional information, call the Office of Municipal Securities at 202-551-5680, or email us at [Munis@SEC.gov](mailto:Munis@SEC.gov).

*This Informational Bulletin represents the views of the staff of the Office of Municipal Securities and the Division of Enforcement, Public Finance Abuse Unit. It is not a rule, regulation, or statement of the Securities and Exchange Commission (“Commission”). The Commission has neither approved nor disapproved its content. This Bulletin, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.*

[1] Charter schools are generally considered municipal entities because they are public schools and derive their charter from a political subdivision of a state. See Registration of Municipal Advisors, SEC Release No. 34-70462 (Sept. 20, 2013), 78 FR 67468, 67486 (Nov. 12, 2013).

[2] These exclusions include but are not limited to: (i) certain public officials and employees providing advice within the scope of their official capacity or employment; (ii) broker-dealers serving as an underwriter; (iii) certain investment advisers providing investment advice; (iv) banks engaging in traditional banking activity; and (v) attorneys offering legal advice or providing services of a traditional legal nature. There is also an exemption for accountants providing audit or other attest services or preparation of financial statements.