



# Municipal Advisory Regulations & Contracts Overview

Training Session

May 2024

**CONFIDENTIAL**

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PFM Financial Advisors  
LLC

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## Presenters

### **Cheryl Maddox** **Chief Legal and Compliance Officer**

Ms. Maddox joined PFM in 2014 and in her role as Chief Legal and Compliance Officer leads the firm's legal and compliance efforts.



## Today's Presenters

### **Rosemarie Hoslyn** **Associate General Counsel**

Ms. Hoslyn joined PFM in 2015 and in her role as Associate General Counsel assists the firm's Chief Legal and Compliance Officer in the management of the firm's legal and compliance matters.



## Today's Presenters

### **Gloria Wells** **Compliance Director**

Gloria Wells joined PFM in 2000 and is currently Compliance Director in the Legal and Compliance Group.

Ms. Wells assists the Chief Legal and Compliance Officer with executing the strategy and overall direction of the municipal advisor compliance program, identifies and mitigates potential risks and conflicts, manages individual and firm registrations and delivers training and support to employees and municipal advisor representatives on compliance matters.



## Practical Areas to Consider

- ◆ How does regulation affect Issuers/Borrowers & Service Providers?
  
- ◆ What is the regulatory context for municipal entities?
  
- ◆ What are the benefits of these regulations?
  - Municipal entities
  - Service providers
  - Investors



# **Regulatory Background and Context**

## **Municipal Advisor Regulation**



## Regulation of Municipal Advisors - SEC



In September 2013, the SEC promulgated a final registration rule (SEC Final Rule) on municipal advisors that:

- ◆ Defined categories of persons considered MAs
- ◆ Established a permanent MA registration regime
- ◆ Established recordkeeping requirements for MAs
- ◆ Examination of municipal advisory firms would be conducted by SEC and FINRA



## Role of the Municipal Advisor - SEC



Fiduciary Duty



Reducing Borrowing  
& Issuance Costs



Better Financing  
Terms



Improve Capital  
Formation



Positive Impact  
on Taxpayers



Regulatory Oversight  
Over Standards

*-Source: SEC Registration of Municipal Advisors Release*





## Regulations on Municipal Advisors - MSRB



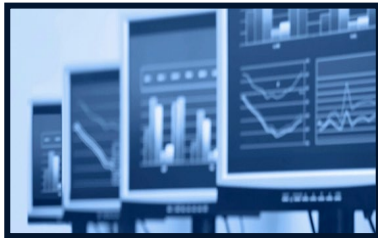
Dodd-Frank charged the MSRB with developing regulatory framework for Municipal Advisors to:

- ◆ Protect entities that engage the services of a municipal advisor
- ◆ Promote a fair and efficient market
- ◆ Preserve municipal market integrity



## Providing Municipal Financial Advice

### ◆ What is advice under Rule 15Ba1-1(d)(1)(ii)



Recommendations of municipal financial products



Recommendations for the issuance of municipal securities



Recommendations based on the structure, timing, and terms of municipal products or issuance of municipal securities



Recommendations particularized to the specific needs, objectives, and/or circumstances of municipal entity or obligated person



## The Primary Additional Market Participants



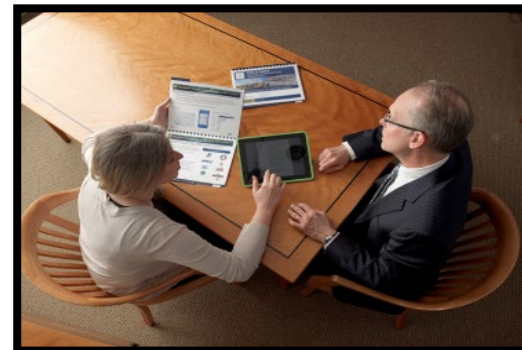
Underwriters & Banks



Registered Investment  
Advisers



Attorneys, Engineers,  
Accountants, Public Officials  
and Employees



Registered Commodity Trading  
Advisors & Swap Dealers



## Helpful Online Resources

### Background and Additional Information:

SEC's Frequently Asked Questions concerning the MA Rule, (last updated 03/20/2023)

<http://www.sec.gov/info/municipal/municipal-advisors-faqs.shtml>

SEC Final Municipal Advisor Registration Rule

<http://www.sec.gov/rules/final/2013/34-70462.pdf>

SEC Office of Municipal Securities

<http://www.sec.gov/municipal>

### Registered Municipal Advisors:

SEC Listing of Municipal Advisor Registration

<http://www.sec.gov/edgar/searchedgar/companysearch.html>

MSRB Listing of Registered Municipal Advisors

<http://www.msrb.org/MARegistrants.aspx>

MSRB Information for Municipal Advisory Clients

<http://www.msrb.org>

SEC Enforcement Actions – OMS

<https://www.sec.gov/municipal/oms-enforcement-actions.html>



## Poll Question #1:

***Which of these is not considered "Advice" under the SEC Municipal Advisors Rule?***

- ◆ Recommendations for the issuance of municipal securities
- ◆ Recommendations of municipal financial products
- ◆ Recommendations particularized to the specific needs, objectives, and/ or circumstances of the municipal entity
- ◆ Recommendations based on the structure, timing, and terms of municipal products or issuance
- ◆ All of the above are considered "Advice" under the SEC Municipal Advisors Rule



# Recent SEC Enforcement Actions



## SEC Enforcement Actions - Hot Topics

### □ [SEC Exam Priorities 2024](#) –

- General theme - while compliance teams race to adapt to new and evolving regulatory requirements, they should not lose sight of compliance fundamentals
- Municipal Advisors - fiduciary duty obligation to clients when providing advice regarding the pricing, method of sale, and structure of municipal securities, documentation requirements (including documenting the client relationship via client contracts), disclosures of conflicts of interest, and other requirements such as registration, professional qualifications, continuing education, recordkeeping, and supervision
- Municipal Advisor Solicitors – new MSRB Rule G-46 regarding standards of conduct which became effective 3/1/2024, with exams targeted to begin second half of 2024
- Investment Advisors and Broker-Dealers – regulation best interest, broker-dealer trading practices and financial responsibility rules, suitability, crypto, conflicts of interest, and other areas of focus for these transaction participants



## SEC Enforcement Actions - Hot Topics

- ❑ SEC Investigation In the Matter of Certain Recordkeeping Practices of Municipal Advisors
- ❑ [SEC Charges Fifth Third Securities, Inc. for Violating Municipal Bond Disclosure Law](#)
  - SEC settled charges with Fifth Third Bank that it failed to comply with municipal bond offering disclosure requirements in 79 municipal bond offerings. Fifth Third purported to rely on the limited offering exemption, but it did not take the steps necessary to satisfy the exemption's criteria and did not have any specific policies or procedures reasonably designed to comply with the limited offering exemption. The bank was censured and agreed to pay \$442,465.59 (disgorgement), \$67,506.09 (prejudgment interest), and \$200,000 (civil money penalty)
- ❑ [SEC Charges Citigroup Global Markets Inc. with Recordkeeping Failures concerning Underwriting Expenses](#)
  - SEC alleges that broker-dealer charged indirect fees using “unsubstantiated and unverified” methods to calculate indirect expenses associated with its work as an underwriter based on a fixed percentage of the underwriting fee for each deal where it was the lead U/W. They failed to know (or document) the basis of this indirect expense calculation method and conducted no review or similar process to verify that this method was (or remained) reasonable. The broker-dealer consented to a cease-and-desist order, a censure, and a civil penalty of \$2.9 million
- ❑ Other Recent Actions - charges and allegations of violating the marketing rule ([use of hypotheticals](#) and [inaccurate disclosures](#)) and false and misleading disclosures ([relating to information barriers](#))
- ❑ [SEC Charges Four Investment Advisers for Pay-To-Play Violations Involving Campaign Contributions](#)
  - SEC alleged that four investment advisers violated the pay-to-play rule by continuing to receive compensation from government entities within two years after campaign contributions to elected officials or candidates for elected office who had influence over the selection of investment advisers for advisory services for government entities (or who could appoint someone who had such influence). The parties consented to a cease-and-desist order and to a censure and agreed to pay civil money penalties ranging from \$45,000 through \$95,000



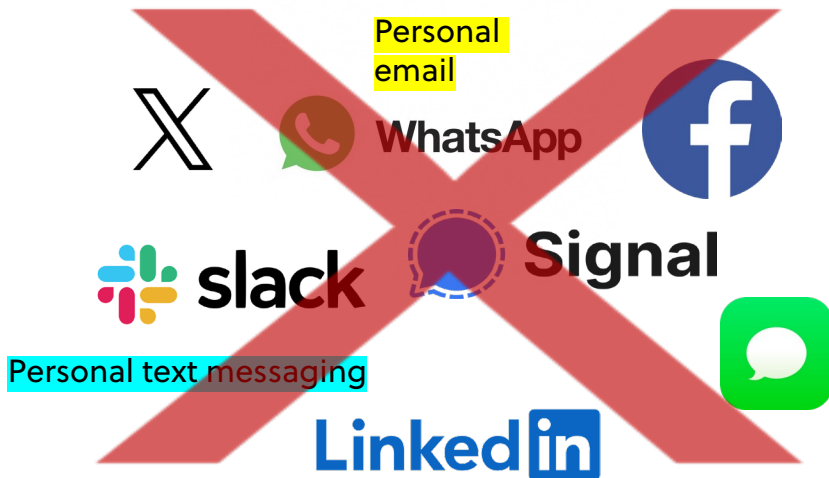


## Communication with Clients and Others - Correspondence



All written correspondence relating to the Firm's business and clients, including municipal advisory activities, in whatever format (physical or electronic), to or from any person both internal and external to the Firm, whether using a PFM-issued or personally owned device must be made and retained in accordance with SEC and MSRB requirements.

**OFF-CHANNEL COMMUNICATIONS ARE PROHIBITED!**





## Enforcement Actions - Recordkeeping

### ➤ SEC

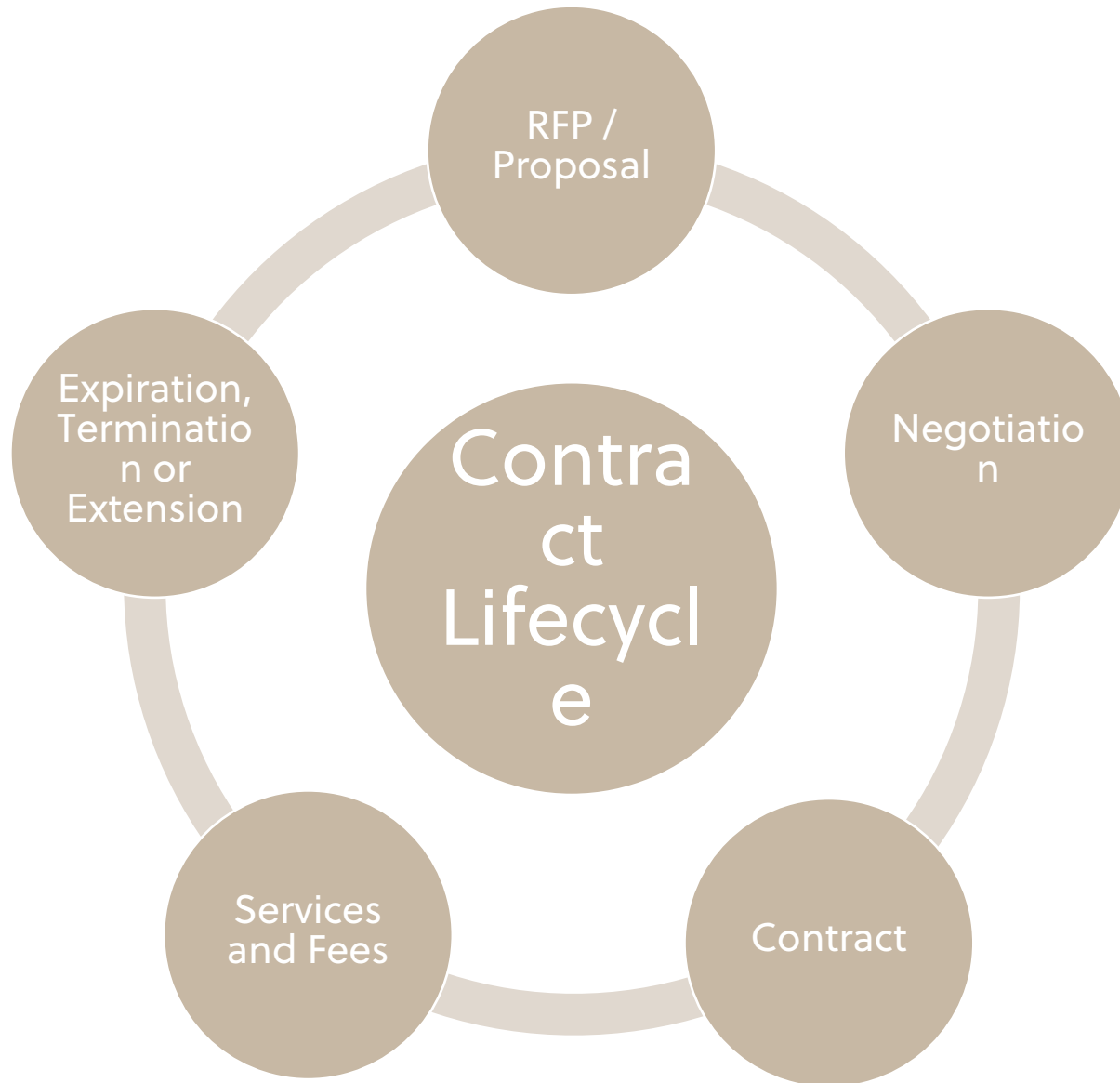
- SEC Investigation In the Matter of Certain Recordkeeping Practices
  - [Sixteen Firms to Pay More Than \\$81 Million Combined to Settle Charges for Widespread Recordkeeping Failures](#) (SEC Press Release 2024-18, Feb. 9, 2024)
  - [SEC Charges 10 Firms with Widespread Recordkeeping Failures](#) – Firms admit to wrongdoing and agreed to pay combined penalties of \$79 million (SEC Press Release 2023-212, Sept. 29, 2023)
  - [SEC Charges 11 Wall Street Firms with Widespread Recordkeeping Failures](#) - Firms admit to wrongdoing and agree to pay penalties totaling \$289 million (SEC Press Release 2023-149, Aug. 8, 2023)
  - [SEC Charges HSBC and Scotia Capital with Widespread Recordkeeping Failures](#) – Firms admit to wrongdoing and agreed to pay penalties of \$15 million and \$7.5 million, respectively (SEC Press Release 2023-91, May 11, 2023)
  - [SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures](#) - Firms admit to wrongdoing and agree to pay penalties totaling more than \$1.1 billion (SEC Press Release 2022-174, Sept. 27, 2022)
  - [JPMorgan Admits to Widespread Recordkeeping Failures and Agrees to Pay \\$125 Million Penalty to Resolve SEC Charges](#) (SEC Press Release 2021-262, Dec. 17, 2021)



# Key Contract Considerations



# Contract Lifecycle





## Documentation of MA Relationships – MSRB Rule G-42

- ◆ When **beginning a municipal advisory relationship with a client, municipal advisors must put into writing the details of the relationship**, including compensation structure, scope of activities, required disclosures and any means for terminating the relationship.
- ◆ The **documentation can take the form of a contract, engagement letter or other writing.**





## Practical Areas for Discussion

- ◆ Appropriate uses of contract templates and standard language
- ◆ The process for contract review
- ◆ Contract elements that may cause concern
- ◆ Determining when contract amendments are necessary
- ◆ Contract renewal or extension process



## Poll Question #2:

***True or False***

***MSRB Rule G-42***

***requires a Municipal Advisor to put in writing all of these at the beginning of a client relationship.***

- ◆ Compensation structure
- ◆ Scope of activities
- ◆ Required disclosures
- ◆ Means for terminating the client relationship



# **The “IRMA exemption” Who, What, Why, and How?**





## IRMA exemption – Who? & What?

### Who will likely most often rely on an IRMA exemption?

- ❖ Underwriters & Banks
- ❖ Attorneys, Engineers, Accountants
- ❖ Registered Commodity Trading Advisors & Swap Dealers

### What is an IRMA exemption to MA Rule registration?

- ❖ An “IRMA” is an “independent registered municipal advisor”
- ❖ The SEC has defined within the MA Rule an “IRMA exemption”
- ❖ An “IRMA exemption” exempts from the definition of an MA anyone engaging in municipal advisory activities if the client [municipal entity/ obligated person] is represented by an “IRMA,” provided that certain requirements are met
- ❖ The IRMA exemption may still apply even if the IRMA’s advice is not followed as long as the IRMA’s analysis has been considered and all other requirements are satisfied



## IRMA exemption – Why?

- ◆ SEC Rule Release states that if a municipal entity/obligated person is represented by an independent registered MA (an “IRMA”), then that municipal entity/obligated person may receive advice from an entity other than an MA (i.e., from an underwriter)
  - ❖ Such interaction is deemed to be consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act.
  
- ◆ The SEC believes that the IRMA exemption allows parties to a municipal securities transaction and others who are not registered municipal advisors to share advice with municipal entities/obligated persons as long as the municipal entity/obligated person is represented by an IRMA with a fiduciary obligation.



## IRMA exemption – Why?

- ◆ Engagement of an IRMA (an independent registered municipal advisor) by a municipal entity/ obligated person indicates that the municipal entity / obligated person intends to rely on the advice of that advisor.
- ◆ So long as a municipal entity/obligated person is represented by and relies on an IRMA, the SEC believes it is appropriate to allow municipal entities/obligated persons to receive as much advice and information as possible from a variety of sources, even if the providers of such advice are not subject to a fiduciary duty.



## IRMA exemption – How?

### ◆ **How** the IRMA exemption applies:

- ❖ IRMA (independent registered municipal advisor) must be providing advice on the same topic or transaction as the entity seeking to rely on the IRMA exemption.
- ❖ A person (i.e. an underwriter) seeking to rely on an IRMA exemption must receive from the municipal entity/obligated person a representation in writing that it is represented by, and will rely on the advice of, an IRMA;
  - The municipal entity/obligated person should review its representations from time to time to maintain accurate information
- ❖ Such person (i.e. an underwriter) must provide the required disclosures to the municipal entity/ obligated person, and provide a copy to the municipal entity/ obligated person's IRMA.
- ❖ All parties involved in the municipal advisory activities (IRMA entity and its employees as well as the market participant seeking exemption and its employees ) must be independent from one another.



### Poll Question #3:

***Which of these  
Service Providers  
are not likely to rely  
upon the IRMA  
exemption to  
provide "Advice"?***

- ◆ Underwriters and Banks
- ◆ Attorneys and Accountants
- ◆ Registered Municipal Advisors
- ◆ Engineers and Consultants
- ◆ Municipal Entity Employees



# Concluding Remarks



## Affirmative Actions for Issuers / Borrowers



**Monitor the Market and Regulatory Environment**



**Seek Legal Counsel**



**Engage Financial Team Early**



# Disclosures

## ABOUT PFM

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