

VIA ELECTRONIC MAIL

August 26, 2014

Elizabeth M. Murphy
Secretary
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-MSRB-2014-05, Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-3, on Professional Qualification Requirements, Regarding Continuing Education Requirements

Dear Ms. Murphy:

On July 22, 2014, the Municipal Securities Rulemaking Board (MSRB) filed a proposed rule change consisting of amendments to MSRB Rule G-3,¹ on professional qualification requirements (“Proposed Rule Change”). The Proposed Rule Change would require brokers, dealers, and municipal securities dealers to conduct annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities. This Proposed Rule Change follows MSRB’s December 13, 2013 request for public comment on additional continuing education requirements (“Request for Comment”).² FSI and several other commenters provided responses to the Request for Comment.³

The Financial Services Institute⁴ (FSI) appreciates the opportunity to comment on this important proposal. While FSI supported the proposed rule text provided by MSRB in the Request for Comment, the Proposed Rule Change includes proposed rule text that deviates from the language in MSRB’s initial Request for Comment. Notably, MSRB’s original proposed rule text expanded annual municipal securities training to associated persons who “primarily engage” in municipal securities activities, while the language in MSRB’s Proposed Rule Change applies to registered persons who “regularly engage” in municipal securities activities. For this, and several other reasons discussed below, FSI cannot support the Proposed Rule Change in its current form.

¹ Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-3, on Professional Qualification Requirements, Regarding Continuing Education Requirements, 79 Fed. Reg. 45,529 (Aug. 5, 2014).

² MSRB, Proposed Changes to Continuing Education Program, MSRB Notice 2013-22 (Dec. 13, 2013).

³ See e.g., Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, FSI, to Ronald W. Smith, Corporate Secretary, MSRB (January 13, 2014), available at <http://www.msrb.org/RFC/2013-22/Financial-Services-Institute.pdf>.

⁴ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.⁵ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁶ Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI appreciates the opportunity to comment on the MSRB's Proposed Rule Change. FSI fully supports MSRB's goal to ensure that certain professionals, including middle and back-office professionals, understand their responsibilities and the applicable regulations related to municipal securities activities.

⁵ Cerulli Associates at <http://www.cerulli.com/>.

⁶ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

Training those who supervise and are responsible for identifying and escalating indication of wrongdoing is also immensely important. The Proposed Rule Change, however, lacks clarity with respect to which professionals would be required to undergo this training, and may inadvertently result in professionals who do not primarily engage in municipal securities activities being subject to this requirement. While FSI supported the proposed rule text MSRB included in its original Request for Comment, the amended text in the Proposed Rule Change now lacks the clarity provided in the original. We expand on these concerns, and others, below.

- **MSRB's Proposed Rule Text Lacks Clarity** – FSI supported the proposed rule text in MSRB's original Request for Comment due to an understanding among members that it was well-designed to solely apply to securities professionals primarily engaged in municipal securities activities while not imposing additional continuing education requirements on associated persons of a broker-dealer firms for whom this additional training would be unnecessary and would provide no additional investor protection. However, MSRB in its Proposed Rule Change has amended the language to apply to registered persons who “regularly engage in municipal securities activities.” While this change may appear relatively minor, the impact to firms and compliance personnel responsible for creating policies to implement the rule is significant. Imposing the requirements on associated persons who are “primarily engaged in municipal securities activities” was an appropriate approach, as it would have ensured that professionals whose job duties and responsibilities require substantial understanding and training receive additional continuing education. Changing the rule text to apply to registered persons who “regularly engage in municipal securities activities” raises substantial questions regarding the types and volume of activities undertaken by registered persons that would meet this threshold. In the Proposed Rule Change, MSRB indicates that “dealers would have the flexibility to determine who participates in such training, so long as they have a reasonable basis for determining which registered persons regularly engage in or supervise municipal securities activities.” This flexibility, however, does not provide firms sufficient clarity, and in fact leads to more confusion. This will inevitably lead to a situation where firms broadly apply this additional continuing education requirement to registered persons for whom this requirement would be unnecessary. FSI urges MSRB to reconsider these changes and to provide additional clarity.
- **MSRB Should Harmonize Continuing Education Requirements with FINRA Rules** – FSI has previously expressed its support for the harmonization of FINRA and MSRB rules and appreciates MSRB's efforts to achieve such harmonization.⁷ Currently, MSRB Rule G-3(h)(ii)(A) is harmonized with FINRA's Rule 1250(b) Firm Element Continuing Education Requirements. As such, broker-dealers can easily determine which individuals are subject to Firm Element training. However, the Proposed Rule Change would alter this harmonized language. These changes have created some confusion among FSI members regarding which individuals are now subject to certain Firm Element training. FSI encourages MSRB to reconsider amending the rule so as to not create confusion among broker-dealers. Absent such reconsideration, FSI members would appreciate additional guidance explaining, at a minimum, whether all registered persons previously covered are still covered under the “regularly engage” standard. Alternatively, FSI proposes that perhaps MSRB's continuing

⁷ See e.g., Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, FSI, to Ronald W. Smith, Corporate Secretary, MSRB (May 6, 2013), available at: <http://www.msrb.org/RFC/2013-07/fsi.pdf>.

education goal is better met by including the training in FINRA's Regulatory Element Program as opposed to individual Firm Element trainings.

- **Municipal Advisors Should be Subject to Separate Continuing Education Requirements Tailored to their Advisory Activities** – While FSI supports MSRB's efforts to establish standards of conduct for municipal advisors, FSI members are concerned that registered persons will be required to receive the same training as municipal advisors if a specific requirement is not imposed. FSI encourages MSRB to establish continuing education requirements for municipal advisors that are specific to the activities they engage in on behalf of municipal clients. To that end, FSI encourages MSRB to develop specific regulations regarding municipal advisor continuing education while continuing to allow firms to maintain flexibility in determining training content based on the specific activities conducted by other registered persons. This would ensure appropriate personnel obtain adequate and relevant training and the requirements would continue to provide the intended investor protection.

Conclusion

We remain committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with MSRB and the SEC on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at

[REDACTED].

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by the name "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel