



Municipal Securities Rulemaking Board

February 20, 2015

Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20540-1090

Re: Response to Comments on Amendment No. 1 to SR-MSRB-2014-08

Dear Secretary:

On November 18, 2014, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC”) a proposed rule change consisting of amendments to MSRB Rules G-1, on separately identifiable department or division of a bank; G-2, on standards of professional qualification; G-3, on professional qualification requirements; and D-13, on municipal advisory activities (the “original proposed rule change”). The SEC published notice of the original proposed rule change on December 1, 2014,¹ and notice was then published in the Federal Register on December 5, 2014.² The SEC received five comment letters on the original proposed rule change. On February 5, 2015 the MSRB submitted its response to comments and filed a partial amendment (“Amendment No. 1”) to the original proposed rule change to remove a proposed clause (“subject clause”) in MSRB Rules G-1 and G-3 regarding the provision of financial advisory or consultant services for issuers in connection with the issuance of municipal securities. In response to Amendment No. 1, the SEC received two comment letters.³ This letter is in reply to those comment letters.

Sanchez comments that Amendment No. 1 will effectively create an exemption for municipal securities representatives who engage in financial advisory and consultant services for issuers in connection with the issuance of municipal securities (the “subject activity”) from having to pass the municipal advisor representative qualification examination to qualify as municipal advisor representatives. He notes that the MSRB stated previously in response to comments on the original proposed rule change that such an exemption or “grandfathering” would not be permitted and that, in his view, such an exemption would not be consistent with the Securities Exchange Act of 1934 (the “Act”). Sanchez asserts that the language in the original proposed rule change properly limited the scope of activities that could be performed by municipal securities representatives. Additionally, Sanchez asserts that the MSRB did not adequately elaborate on the foundational rules referenced in Amendment No. 1 and how those foundational rules would impact the definition of municipal advisory activity as set forth by the

¹ See Exchange Act Release No. 73708 (Dec. 1, 2014).

² See 79 FR 72225 (Dec. 5, 2014).

³ Comment letters were submitted to the SEC by Dave A. Sanchez (“Sanchez”) and the National Association of Municipal Advisors (“NAMA”).

Commission. Without knowing the future limitations that might be imposed, he suggests that the language as proposed in Amendment No. 1 would appear to allow municipal securities representatives to have an exemption from the municipal advisor representative qualification examination.

Similarly, NAMA expresses concern that Amendment No. 1 would provide municipal securities representatives who engage in the subject activity an exemption from having to pass the municipal advisor representative qualification examination because the subject activity would be considered municipal securities representative activity. NAMA contends that deletion of the subject clause expands the definition of municipal advisory activity, as provided by the Act and SEC rules, because it would allow municipal securities representatives to engage in municipal advisory activity without proper registration. NAMA also questions whether, by deleting the subject clause, the MSRB is developing a professional qualification examination that adequately tests the distinct job function of municipal advisors – presumably because NAMA believes municipal advisory activities are distinct and therefore all individuals engaged in such activities, including municipal securities representatives, should be required to pass the test.

The MSRB wishes to clarify possible misconceptions regarding the deletion of the subject clause and who would be required to take and pass the municipal advisor representative qualification examination. The deletion of the subject clause would not have the effect of limiting, and was not intended to limit, the applicability of the municipal advisor regulatory regime, including MSRB rules governing the municipal advisory activities of municipal advisors, or to alter the definition of municipal advisory activities. As explained by the SEC in its final rule on registration of municipal advisors, the determination of whether an individual is engaged in municipal advisory activities is based on the scope of the individual's activities, and not the individual's status.⁴ Due to that principle, a dealer and its associated persons could simultaneously be subject to MSRB rules applicable to dealers and MSRB rules applicable to municipal advisors. Indeed, where a municipal securities representative engages in activity that is also municipal advisory activity, such individual would be subject to applicable MSRB rules governing the activities of municipal securities representatives and MSRB rules governing the activities of municipal advisor representatives.

Amendment No. 1 would retain the current language in the MSRB professional qualification rules to prevent any confusion regarding the application of MSRB rules governing dealers to the financial advisory activities of municipal securities representatives while MSRB rules governing municipal advisors are developed and implemented and until the MSRB makes any future determinations regarding the application of such rules.

To be clear, any individual engaged in or supervising municipal advisory activities must comply with the professional qualification requirements for municipal advisor representatives,

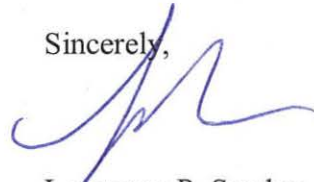
⁴ See Registration of Municipal Advisors, Rel. No. 34-70462 (Sept. 20, 2013), 78 FR 67467, at 67470 (Nov. 12, 2013).

Secretary
February 20, 2015
Page 3

which will include at a future date the taking and passing of the municipal advisor representative qualification examination. The scope of individuals subject to these requirements encompasses municipal securities representatives engaged in the subject activity. Finally, the deletion of the subject clause in Amendment No. 1 has no bearing on the definition of municipal advisory activities.

Should you have any questions regarding this matter, please contact me or Michael Cowart, Assistant General Counsel, at (703) 797-6600.

Sincerely,



Lawrence P. Sandor
Deputy General Counsel