



Municipal Securities Rulemaking Board

February 5, 2015

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

Re: Response to Comments on File No. 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 “proposed rule change”).¹ The SEC published notice of the proposed rule change on December 1, 2014,² and notice was then published in the Federal Register on December 5, 2014.³

The proposed rule change would establish professional qualification requirements for municipal advisors and their associated persons and make certain conforming and technical changes to MSRB rules. The MSRB proposes these rule amendments, in exercise of the authority granted to it by the Securities Exchange Act of 1934 (the “Act”), as part of the development of a regulatory framework for municipal advisors. The proposed rule change would set professional standards for municipal advisors. These professional standards would require municipal advisor professionals to pass an examination to demonstrate that they meet the standards of competence that MSRB deems necessary to engage in municipal advisory activities.⁴ The examination would be designed to measure a candidate’s knowledge of the role and responsibilities of a municipal advisor professional, applicable federal securities law and SEC rules promulgated thereunder, and MSRB rules.

¹ Separately, the MSRB has filed a partial amendment to the proposed rule change to remove proposed rule text 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. The MSRB believes it to be premature to make such changes and may propose them at a later date.

² See Exchange Act Release No. 73708 (Dec. 1, 2014).

³ See 79 FR 72225 (Dec. 5, 2014).

⁴ See Section 15B(b)(2)(A) of the Exchange Act, 15 U.S.C. 78o-4(b)(2)(A).

The SEC received five comment letters in response to the proposed rule change, four of which provide substantive comments.⁵ This letter is in reply to those four comment letters.

The comments focus principally on the requirement that a municipal advisor representative (and a municipal advisor principal) take and pass a basic competency examination to be qualified as a municipal advisor representative or municipal advisor principal. Two of the commenters (ICI and Anonymous) recommend that the MSRB develop two separate tests or modules, rather than one.

ICI, though supportive of the MSRB's effort to require municipal advisor professionals to pass an examination demonstrating a minimum level of competency, suggests that the MSRB develop two examinations, one for municipal advisor representatives who provide advice on municipal fund securities, such as interests in 529 college savings plans, and another for municipal advisor representatives who provide advice on municipal securities other than municipal fund securities. ICI reasons that the knowledge and competencies needed to provide advice on municipal fund securities is sufficiently distinct as to warrant a separate test. Alternatively, ICI recommends that the MSRB waive the test for those persons who have passed or do pass the Series 6 examination.

Anonymous suggests that Chartered Financial Analyst (CFA) charterholders must pass rigorous examinations (CFA Levels I-III), which qualify them to provide advice on the financial aspects of municipal securities. For this reason, Anonymous suggests that the MSRB create two separate examination modules, one to demonstrate competency with fixed income securities and another to demonstrate competency with MSRB rules. Following this approach, CFA charterholders would be exempt from the first module based on their knowledge of fixed income securities but not the second.

SIFMA, while supportive of the MSRB's efforts to set professional qualification standards for municipal advisor professionals, suggests that the MSRB combine content for municipal securities representatives and municipal advisor representatives into one test because, in its view, the knowledge base for these two functions is largely the same. Alternatively, SIFMA recommends that the MSRB grandfather those persons currently qualified to engage in municipal securities activities.

Finally, NAMA supports the MSRB's effort to establish uniform professional qualification standards without grandfathering any municipal advisor professional, noting that the job responsibility of, and regulations governing, a municipal advisor professional is distinct

⁵ Comment letters were submitted to the SEC by the Investment Company Institute ("ICI"), Securities Industry and Financial Markets Association ("SIFMA"), an anonymous commenter (who simply indicated that the proposed rule change was a "good idea"), an anonymous attorney on behalf of a registered investment adviser and municipal advisor ("Anonymous") and the National Association of Municipal Advisors ("NAMA").

from that of other professionals regulated by the MSRB. NAMA does suggest the MSRB consider the use of supplemental or targeted subject area examinations in the future.

The MSRB carefully considered these same issues when evaluating the comments submitted in response to its Request for Comment on Establishing Professional Qualification Requirements for Municipal Advisors.⁶ ICI and SIFMA raised issues that were substantially identical to the issues they raise in response to the proposed rule change, and the CFA Institute (“CFAI”) raised concerns that were reiterated by Anonymous.

The comments received in response to the 2014 Request for Comment were considered by the MSRB. The three comment letters raise no new substantive issues and, as discussed below, the MSRB proposes no changes in response to the comments.

Securities Industry and Financial Markets Association

SIFMA raises one substantive concern regarding the proposed rule change. It objects to a separate test for municipal advisor representatives. SIFMA also believes that the economic analysis of the proposed rule change was insufficient. While SIFMA raised two other issues, one pertaining to continuing education for municipal advisor professionals and another pertaining to the selection and composition of the MSRB’s Professional Qualifications Advisory Committee (“PQAC”), neither is directly related to the proposed rule change.⁷

Professional Qualifications Examination and Grandfathering

SIFMA believes that persons currently qualified by the MSRB to engage in municipal securities activities should also be qualified to engage in municipal advisory activities. Hence, in its view, there is no need for a new professional qualifications examination for municipal advisors because the knowledge needed to conduct municipal advisory activities is sufficiently tested on the municipal securities representative qualification examination (the Series 52).

Given the new regulatory regime for municipal advisors and the difference in the roles of municipal advisor and securities professionals, the MSRB does not believe the Series 52 examination (or the general securities representative examination that qualified municipal securities representatives before November 7, 2011) would sufficiently determine whether a municipal advisor professional meets a minimal level of competency to engage in municipal advisory activities. The focus of the Series 52 examination is on underwriting, trading, research

⁶ MSRB Notice 2014-08 (March 17, 2014) (the “2014 Request for Comment”).

⁷ SIFMA also noted in footnote 9 of its comment letter that the NAMA sent a letter to the SEC Chair on December 15, 2014 requesting an exemption from broker-dealer registration for municipal advisors engaged in certain activities. As this note pertains to a request made of the SEC unrelated to the proposed rule change, the MSRB is not responding to the note.

and sales, not municipal advisory activities. To the extent the general subject matter covered by the Series 52 examination would be relevant, it is written from the perspective of a municipal securities representative. The questions that are being developed for the municipal advisor representative qualification examination target the job responsibilities of municipal advisor professionals, thus ensuring that municipal advisor representatives have a basic competency to engage in municipal advisory activities. Further, as new rules governing municipal advisory activities are developed, the municipal advisor representative qualification examination would incorporate such rules. Without significant content related to the job responsibilities of, and rules governing, municipal advisor professionals, the MSRB believes passing the Series 52 examination would not establish an individual's basic competency to perform municipal advisory activities.

As the MSRB noted in its rule filing, the job responsibilities of municipal advisor representatives and municipal securities representatives are distinct. The MSRB has adhered to recognized test development standards by performing a job analysis and survey of municipal advisors to determine the appropriate topics to be tested and weighting of such topics on the municipal advisor representative qualification examination. While there will be some similarity in topics covered on both qualification tests, the focus of the questions will be different, given the different roles of such professionals in the marketplace. Moreover, the municipal advisor examination will test knowledge of a new body of rules being developed exclusively for municipal advisors. SIFMA minimizes the importance of the distinction between municipal advisor and securities professionals by suggesting that the key difference is the duty owed to their clients. Such is not the case. Their roles and responsibilities are distinct, and the body of law that applies to each type of professional reflects the differences in such roles and responsibilities.

Premised on its view that the roles of municipal advisor and securities professionals are substantially similar, SIFMA suggests that municipal advisor professionals take the Series 52 examination, thereby avoiding unnecessary delay in testing their basic knowledge of municipal securities. Because the Series 52 was developed by municipal securities professionals based on the activities of such professionals, the MSRB does not believe the examination would test the basic competency of municipal advisor professionals. It is for this reason that the MSRB formed a municipal advisor subcommittee of PQAC to develop a new examination for individuals engaged in municipal advisory activities. The subcommittee has been working expeditiously, and the MSRB intends to file the test content outline with the SEC in February 2015. Shortly thereafter, the MSRB will release a pilot test for purposes of establishing the test's passing grade. Consequently, the MSRB does not agree with SIFMA's assertion that it will take an additional two to three years for municipal advisor professionals to take a professional qualifications test.

SIFMA contends it would be faster and more cost efficient for municipal advisor professionals to take the Series 52 examination. While it is hard to dispute that using an existing exam would be faster and less costly (without significant changes to content to take into account the role of and rules applicable to municipal advisor professionals), such an approach would fail to demonstrate basic competency of municipal advisor professionals to engage in municipal

advisory activities. The costs, timing, and efficiency of the proposed rule change should only be appropriately compared to reasonable regulatory alternatives – a criterion the Series 52 examination does not meet.

SIFMA claims that developing a separate test for municipal advisor professionals is inefficient and unfairly burdens the large percentage of municipal advisor professionals who are associated with municipal securities dealers. The MSRB does not believe that such individuals would be unfairly burdened by a new test. To the contrary, failing to develop a separate test for municipal advisor professionals could place individuals not associated with dealers at a competitive disadvantage and could result in an undue burden on small municipal advisors. The market for municipal advisory services is separate and distinct from the market for the services of municipal securities brokers and dealers. As such, it is both appropriate and reasonable that all professionals providing municipal advisory services should be evaluated according to identical criteria, regardless of the status of their employer.

SIFMA noted that any differences between municipal securities and advisory activities could be tested by adding questions to the Series 52 examination. As the MSRB explained in the rule filing, the Series 52 examination was not designed to test the basic competency of an individual to engage in municipal advisory activities. Therefore, adding additional questions to the Series 52 examination would require the same time, effort and rigor required to develop a new, separate professional qualifications examination. The MSRB would be required to perform a job analysis, deliver and analyze a survey of municipal advisors and determine the topics to be tested, weighting of the topics, and content. Individuals taking a revised Series 52 examination that included an evaluation of competency as a municipal advisor and knowledge of municipal advisor rules would be required to demonstrate knowledge of all content. In other words, individuals associated with dealers that do not offer municipal advisory services would be required to demonstrate knowledge of municipal advisor rules, and individuals associated with non-dealer municipal advisors would be required to demonstrate knowledge of the balance of the Series 52 exam content. This would be inefficient, impose unnecessary costs, and could cause confusion regarding duties and obligations. For these reasons, the MSRB does not believe it appropriate to combine the municipal securities and advisor representative qualification examinations.

In the event a new municipal advisor representative qualification examination is required, SIFMA requests that municipal securities representatives be grandfathered. The MSRB reiterates its view that grandfathering would be inconsistent with the intent of Congress. Requiring municipal advisor professionals to take and pass a basic qualification examination ensures that these individuals possess a minimum level of understanding of the role and responsibilities of municipal advisors and the applicable rules and regulations. Investors, municipal entities and the general public will be better served by a regulatory regime that requires all municipal advisor professionals to pass the same basic competency test.

Economic Analysis

SIFMA requests that a full cost-benefit analysis of the proposed rule change be conducted. The MSRB considered the costs and benefits of the proposed rule change and even utilized the estimate provided by SIFMA of \$5,000 per individual test taker in determining that the likely initial cost to the industry would be approximately \$15 million (\$5,000 x 3,000 initial test takers) and that the likely ongoing expense would be approximately \$4,750,000 per year (\$5,000 x 950 test takers per year). The MSRB has refined its estimate of the initial cost based on the number of Forms MA-I filed with the SEC by municipal advisors (as of January 20, 2015), and now estimates that the initial cost would be approximately \$19 million (\$5,000 x 3765 initial test takers). This estimate is not materially different from the cost estimate used in its economic analysis.

The MSRB would also note that baseline against which benefits and costs should be evaluated includes the Congressional recognition, as expressed in the Act, that the market for municipal advisory services was in need of federal regulation. In so doing, Congress established that the municipal advisory services market was distinct, that the existing regulatory framework was insufficient, and that the MSRB should develop a body of rules and professional standards governing municipal advisors. New regulation necessarily has costs. Therefore, the appropriate test of the proposed rule change is not whether there are associated costs, to include the development and testing of professional qualifications, but rather whether the MSRB has acted consistent with the intent of Congress. The MSRB concluded that a separate municipal advisor examination was necessary and commenters have not provided evidence to the contrary. The MSRB believes its economic analysis was sound and that no further analysis is warranted.

Continuing Education for Municipal Advisors

SIFMA suggests that the MSRB develop continuing education requirements for municipal advisors. While not relevant to the proposed rule change, the MSRB notes that the Act requires the MSRB to provide continuing education requirements for municipal advisors and it will likely consider rulemaking on this topic in the near future.

Professional Qualification Advisory Committee

SIFMA requests that the MSRB make the process for nomination to PQAC fully transparent and publish the names of PQAC members on the MSRB's website. The MSRB understands the concern raised by SIFMA that professional qualification examinations be developed in a fair, even-handed manner, and the MSRB believes that its examinations are developed in such a manner.

The MSRB has contemplated publishing the names of PQAC members. While the MSRB advocates transparency, it is concerned that such transparency will undermine the test development process. If the identity of the committee members is known, potential test takers may seek to learn confidential information regarding test questions. The MSRB wishes to avoid

scenarios in which PQAC members would be subject to questions or inquiries that should be addressed directly to the MSRB. On balance, given the importance of confidentiality and the integrity of the process, the MSRB believes that it is not appropriate to publish the names of PQAC members. The MSRB contracts with an external testing professional to ensure the overall integrity of the test development process, including the selection of PQAC members, is fair and in accordance with accepted standards for professional test development. Nevertheless, the MSRB will consider providing more information about the selection process and the criteria used by the MSRB to select PQAC members.

Investment Company Institute

ICI recommends that the MSRB reconsider its proposal to develop a single qualification examination for municipal advisor representatives. In ICI's view a single examination will result in an examination that does not sufficiently test competencies relevant to the business of a municipal advisor professional. ICI suggests that the MSRB tailor the examination to the type of advice each municipal advisor professional will render. While ICI recognizes that this approach may impose additional burdens on the MSRB, it recommends that the MSRB develop two qualification examinations for municipal advisors; one for municipal advisors whose advisory activities are limited to municipal fund securities and another for representatives whose advice is limited to municipal securities other than municipal fund securities. Alternatively, ICI offers that the MSRB could recognize the Series 6 as the required qualification examination.

As noted in the rule filing, the MSRB believes that individuals who engage in municipal advisory activities regarding municipal fund securities should demonstrate knowledge of all of the rules and regulations governing municipal advisors. These rules and regulations generally will apply to all municipal advisors, regardless of the product that is the subject of the advice provided. Many MSRB rules are principles-based and all municipal advisors should be aware of the rules and the principles that underlie them. For example, MSRB Rule G-44 is primarily a principles-based rule that requires municipal advisors to, among other requirements, establish a supervisory system, draft written supervisory procedures, and establish compliance processes. While it is true that municipal advisors may provide advice on a variety of topics, including the issuance of municipal securities, municipal derivatives, and municipal fund securities, all municipal advisors should have knowledge of the regulatory framework and the basic obligations of municipal advisors. Whether they provide advice on structuring a 529 college savings plan or a primary offering of municipal bonds, they would be required to establish the supervisory and compliance controls outlined in Rule G-44.

ICI suggests there is a long-standing self-regulatory organization practice of developing discrete examinations based on the nature of the business conducted. While it is true that self-regulatory organizations have developed a number of qualification examinations, most of these examinations are focused on the role of the investment professional, such as compliance officer (Series 14), investment adviser (Series 65), operations professional (Series 99), research analyst (Series 86 and 87), equity trader (Series 55), financial and operations principal (Series 27), general securities principal (Series 24), general securities sales supervisor (Series 9 and 10), and

general securities representative (Series 7). For each of these examinations, a test taker may be required to demonstrate knowledge of a variety of products, consistent with the role of the individual. For example, the Series 7 examination covers concepts related to equities, options, corporate securities, municipal securities, including municipal fund securities, direct participation programs, investment company products and variable contracts. Even where an examination is limited, such as the examination for investment company products/variable contracts limited representative (Series 6), a candidate is expected to be familiar with a variety of products, such as mutual funds, variable annuities and 529 college savings plans. Consequently, the MSRB believes its approach to the municipal advisor representative qualification examination is consistent with its prior practice and the practice of other self-regulatory organizations.

CFA Charterholders

Anonymous commented that the MSRB should adopt a proposal advanced by CFAI in response to the 2014 Request for Comment where the MSRB would create two examination modules - one focusing on knowledge of the municipal advisory business and another covering the rules and regulations governing municipal advisors. CFAI requested that CFA charterholders be granted a waiver from the first module covering knowledge of municipal advisory business. Anonymous stated that with "minimal effort" the MSRB could divide the municipal advisor representative qualification examination into the two modules and suggested that it would be unduly burdensome for CFA charterholders to take the basic qualification test. Anonymous concluded that the new test could drive some CFA charterholders out of the municipal advisory business.

The MSRB recognizes the requirements established by CFAI for CFA charterholders and understands that fixed income securities are covered on its examinations. Nevertheless, as the MSRB has explained, the municipal advisor representative qualification test will focus on the role and responsibilities of municipal advisor professionals and the rules and regulations governing their conduct. It will not solely test a candidate's knowledge of municipal securities. Anonymous has not provided any evidence that the CFA examinations (Levels I, II or III) test an individual's knowledge of the role and responsibilities of a municipal advisor. Rather, the MSRB understands that the CFA examinations cover concepts such as types of fixed-income securities and their characteristics.

The MSRB views the assertion that CFA charterholders may be driven out of the market because of the new test as purely speculative. Anonymous offers no information regarding the number of CFA charterholders that are engaged in municipal advisory activities or why they would be in any different position than individuals who passed other qualification examinations. Moreover, given that the costs and time associated with receiving and maintaining a CFA charter exceed any reasonable estimate of the costs to complete a new municipal advisor examination, the MSRB expects that the new exam would add only marginally to a CFA charterholder's

professional qualification expenses. For these reasons, the MSRB does not believe that a modular examination for municipal advisor professionals would be appropriate.

National Association of Municipal Advisors

NAMA supports the MSRB's efforts to set professional qualification standards for municipal advisor professionals and believes the MSRB has taken the most cost-effective approach at this time. Additionally, NAMA supports the uniform requirement that all municipal advisor professionals pass a basic competency examination, even those who have passed another MSRB-owned or MSRB-recognized professional qualification examination. Consistent with the proposed rule change, NAMA does not believe that the MSRB should grandfather individuals who have passed such examinations. While supportive of a single municipal advisor representative qualification examination at this time, NAMA suggests that the MSRB continue to evaluate the feasibility and wisdom of supplemental or targeted subject matter examinations. Although the MSRB does not believe that a supplemental or targeted subject area examination approach is appropriate, it has a demonstrated commitment to seeking ways to improve regulatory efficiency generally and would be open to assessing alternative approaches to the assessment of professional qualifications once the municipal advisor regulatory framework is fully implemented.

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

Sincerely,



Lawrence P. Sandor
Deputy General Counsel