MSRB
Municipal Securities Rulemaking Board

January 10, 2017

Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Response to Comments on SR-MSRB-2016-15

Dear Secretary:

On November 1, 2016, the Municipal Securities Rulemaking Board (the "MSRB") filed with the U.S. Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change consisting of (i) proposed amendments to MSRB Rule G-10, on delivery of investor brochure, Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers and municipal advisors, and Rule G-9 on preservation of records, and (ii) a proposed Board notice regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings (collectively, the "proposed rule change"). The MSRB believes that the proposed rule change would both advance the Board's development of a comprehensive regulatory framework for municipal advisors as well as more clearly focus the Board's current investor complaint rule on customer and municipal advisory client protection and education. In addition, the Board believes that the proposed enhancements to its related recordkeeping rules would harmonize those rules with the rules of other financial regulators and would enhance the ability of those regulators to conduct more cost-effective and efficient inspections and surveillance of brokers, dealers, municipal securities dealers (collectively, "dealers") and municipal advisors (dealers, together with municipal advisors, "regulated entities"). The SEC published the proposed rule change for comment in the Federal Register on November 18, 2016[1] and received five comment letters.[2]

Commenters generally expressed support for the proposed rule change, but also expressed various concerns or suggested revisions. The MSRB found their input to be highly informative and valuable. This letter responds to the five comment letters received by the Commission. Further, after carefully considering, and in response to, those comments, the MSRB is filing this

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1 Exchange Act Release No. 79295 (Nov. 14, 2016), 81 FR 81837 (Nov. 18, 2016).

2 See letters from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated December 9, 2016 ("BDA"); Matthew J. Gavaghan, Associate General Counsel, Janney Montgomery Scott LLC, dated December 9, 2016 ("Janney"); Marnie Lambert, President, Public Investors Arbitration Bar Association, dated December 9, 2016 ("PIABA"); Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated December 12, 2016 ("NAMA"); and Leo Karwelna, Chief Compliance Officer and Cheryl Maddox, General Counsel, Public Financial Management, Inc. and PFM Financial Advisors LLC, dated December 13, 2016 (collectively, "PFM").

day Amendment No. 1 to SR-MSRB-2016-15 ("Amendment No. 1") to make certain changes as discussed below and in further detail in Amendment No. 1.

Effective Date. BDA urged that the MSRB provide at least 12 months, rather than the six months initially proposed, to provide dealers with adequate time for implementation, especially given the resources required to implement other ongoing regulatory initiatives, such as the transition to T+2. The MSRB recognizes that those other regulatory initiatives require significant attention by compliance and technology staff. In response, the MSRB is filing Amendment No. 1 in which the Board proposes an effective date of nine months after the Commission's approval date of all changes.

Municipal Advisor Terms. NAMA suggested that certain terms used in the proposed amendments to Rule G-8 be revised to more closely reflect terms more commonly used by municipal advisors. In particular, NAMA noted that proposed Rule G-8(h)(v)(i) refers to a municipal advisory client's account. NAMA stated that such a phrase does not "translate" to municipal advisors.[3] After carefully considering NAMA's suggestion, the MSRB is filing Amendment No. 1 that contains minor technical amendments to Rule G-8 to reflect NAMA's suggestions. Amendment No. 1 replaces "account" when used with a municipal advisory client with the phrase "number or code, if any."

Customer and Municipal Advisory Client Brochures. PIABA supported giving investors information about the protections provided by the MSRBs and about how to file a complaint with a regulator because it educates customers or municipal advisory clients before they encounter a problem about the protections provided by MSRB rules and about the ability to file a complaint with a regulator. PFM submitted that the "proposed Rules … unnecessarily impose undue encumbrances of additional brochure delivery."[4] BDA also requested clarity about when a municipal advisor should send the investor brochure to a municipal advisory client, and suggested that it was not necessary to send the investor brochure to an institutional investor.[5] BDA suggested that the Board should develop a brochure that focuses on municipal advisory clients. NAMA and PFM commented that they needed to review the brochure to provide sufficient comment.

Through its proposed rule change, the Board would overhaul Rule G-10 to focus the rule more clearly on customer and municipal advisory client protection and education. The Board agrees

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3 See NAMA letter at 1.

4 See PFM letter at 1-2.

5 BDA states that it "requests clarity with when a municipal advisor should send the G-10 brochure to a municipal advisory client." BDA also stated that "[i]f the MSRB is committed to requiring dealers to send the investor brochure to institutional investors, BDA recommends that MSRB [sic] provide clarity on 'customer' for the purposes of G-10." See BDA letter.

with PIABA that the proposed amendments to Rule G-10 would educate customers or municipal advisory clients about the protections provided by MSRB rules and about filing complaints in advance of any problems that may occur.

Unlike the current requirements of Rule G-10, the proposed amendments to Rule G-10 would not require that a regulated entity deliver a Rule G-10 brochure to its customer or municipal advisory client. Those amendments require that a regulated entity provide only annual notifications to its customer or municipal advisory client about the availability of the brochure on the MSRB's website.

Further, although BDA requested clarity about when to send the brochure to a municipal advisory client, the Board interprets BDA's request as referring to the annual notifications, discussed in more detail below. After carefully considering BDA's request for clarity regarding the use of the term "promptly" relating to when a municipal advisor must send the annual notifications required by the amendments to Rule G-10 to its municipal advisory client, the Board has provided a technical amendment in Amendment No. 1 to clarify that "promptly" means "promptly, after the establishment of a municipal advisory relationship." Although municipal advisors may elect to provide the first notification earlier, this standard is consistent with the flexibility provided by the proposed rule change to include the proposed annual notifications with other materials, such as the written disclosure documentation required to be given by municipal advisors under Rule 42(b) or relationship documentation under Rule G-42(c).[6]

In addition, although BDA stated that it believed that delivering the investor brochure to institutional investors would not be valuable, the Board interprets BDA's comments as referring to the annual notifications, discussed in more detail below. The MSRB believes that all customers and municipal advisory clients should be aware of the important protections provided by the MSRB's rules, the reminder that regulated entities are registered with the Commission, and the information about how to file a complaint with a regulator. Rule G-10 currently provides no exception from its requirements for institutional investors, and the Board believes that there is no reason why institutional investors should receive less of this information about the protections provided by MSRB rules and education than other investors. As discussed in the proposed rule change, the Board believes that the annual notifications required by Rule G-10 present only a slight burden to regulated entities, but could represent a significant enhancement to customer or municipal advisory client protection and education.

The Board agrees with BDA's view that the Board should use a separate brochure focused on municipal advisory activities. The proposed rule change contemplated a separate brochure focused on municipal advisory activities, and the MSRB will develop such a brochure. However, the Board notes that the content of the current investor brochure was not made part of Rule G-10. Likewise, the content of the future brochures has not been made part of the proposed

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6 See discussion about annual notifications, infra.

amendment text, and the Board is not required to seek, and has not sought, public comment on the brochures to be posted on the MSRB's website.

Product and Problem Codes. BDA, Janney, NAMA and PFM commented on the problem and product codes that would be required by the proposed amendments to Rule G-8 for the electronic customer or municipal advisory client complaint logs. BDA and Janney commented that such codes should harmonize with the problem and product codes required by FINRA Rule 4530, and that the Board should ensure that the requirements of Rule G-8 and FINRA Rule 4530 are not divergent. BDA also commented that it believed that the MSRB and the SEC have existing independent reporting systems that allow municipal entities or obligated persons to file complaints directly to a regulator. BDA stated that those systems are more appropriate systems to monitor complaints than the Board developing an "expansive set of problem codes because they allow more serious complaints to be appropriately addressed and do not attempt to overregulate" interpersonal relationships. BDA, NAMA, and PFM urged that the Board publish the product and problem codes for comment.

Harmonization. To promote consistent and cost-effective compliance, as appropriate, the Board coordinates its rule interpretations and requirements with those of other financial regulators, including FINRA. This coordination has been and is occurring on an ongoing basis with respect to the product and problem codes. The Board is aware that having two different sets of compliance codes for dually registered regulated entities would impose significant compliance and cost burdens, and to lessen such burdens, the Board would coordinate the product and problem codes required by the proposed amendments to Rule G-8 with FINRA. The Board's product and problem codes would be harmonized with the codes required by FINRA Rule 4530.[7] Further, the Board would ensure that how regulated entities determine the appropriate problem and product code would be consistent with how such determinations are made under FINRA Rule 4530.

Electronic complaint log. While the Board appreciates BDA's thoughtful comments and its participation in the comment process, the MSRB believes that it is important to address BDA's statement about the Board's "independent reporting system."[8] BDA states that the MSRB and the SEC have existing independent reporting systems that allow municipal entities or obligated persons to file complaints directly with a regulator. The MSRB's complaint referral system is quite different than, for example, the SEC's well-established and comprehensive independent

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7 Janney commented that if the Board were to create product and problem codes for municipal securities that were not harmonized with FINRA's product and problem codes, that the Board should provide an exemption for FINRA member firms so that those firms would only need to report municipal securities complaints once. Because the product and problem codes to be used with the proposed amendments to Rule G-8 would be harmonized with FINRA's codes, the Board does not believe that such an exemption is necessary.

8 See BDA letter.

reporting system through its Office of Investor Education and Advocacy. The SEC has a sophisticated web-based system that provides an investor with information about how to file a complaint and a portal for so doing. By contrast, the MSRB's role has been to provide information about how an individual or firm may make a complaint to a regulator. If an individual or a regulated entity is unsure about which regulator the individual or firm should file the complaint with, that individual or firm may submit the complaint with the MSRB, and the MSRB then will forward the complaint to the appropriate regulator. Unlike the Commission, the MSRB neither enforces its own rules nor surveils regulated entities; rather, other financial regulators enforce MSRB rules and perform market surveillance functions.

Further, as to BDA's assertion that the existing independent reporting systems of the MSRB and the SEC are more appropriate to handle complaints, the Board notes that other financial regulators subject to the SEC's jurisdiction currently require that written customer complaints be tracked using an electronic log. The Commission approved FINRA Rule 4530. FINRA Rule 4530 requires, in part, that electronic complaint logs using a standard set of product and problem codes be kept by all FINRA members, including those FINRA members that are registered with the Board.[9] In approving FINRA Rule 4530, the Commission found that the FINRA Rule 4530 was consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder that are applicable to a national securities association.[10] The MSRB believes that both the Commission and FINRA have found electronic complaint logs to be useful.

As to the assertion that the electronic complaint log represents overregulation by the MSRB, dealers that are registered with FINRA are currently using electronic logs to track and code written customer complaints. As previously noted, the Commission, in approving FINRA Rule 4530, found that the rule was consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association. The Commission further stated that FINRA's proposed rule change was "consistent with FINRA's statutory obligations under the Act to protect investors and public interest because it would enhance FINRA's ability to detect and investigate violative conduct and to identify members and associated persons of member firms that may pose a regulatory risk."[11] Similarly, the Board believes that the electronic complaint log requirement not only would assist regulators in enforcing MSRB rules and performing market surveillance, but also that the electronic complaint log would be used as a tool by regulated entities as part of their risk management programs. The MSRB believes it would be, even in the absence of a regulatory requirement, a generally good business practice to use an electronic complaint log with standard codes to track customer or municipal advisory client complaints. The MSRB believes that FINRA, the Commission, and

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9 Exchange Act Rel. No. 63260 (Nov. 5, 2010), 75 FR 69508 (Nov. 12, 2010).

10 Id. at 69513.

11 Id.

numerous FINRA members, including members that are also registered with the MSRB, have found such electronic complaint logs to be valuable.

Public comment on codes. The federal securities laws do not require that the Board solicit public comment on the product and problem codes to be used under the proposed amendments to Rule G-8. As noted previously, FINRA Rule 4530 requires that members use a standard set of product and problem codes to track customer complaints. Those codes assist both FINRA and its dealer members with monitoring complaints and with developing their risk management programs. The Board notes that FINRA recently revised its product and problem codes used for reporting customer complaints under FINRA Rule 4530.[12] FINRA did not seek public comment on the revisions to those product and problem codes; the Board would not seek public comment on the product and problem codes to be used with the proposed amendments to Rule G-8.

Recordkeeping. BDA, NAMA, PIABA, and PFM provided comments and suggestions about the Board's proposed amendments to Rule G-8. Those comments and suggestions related to the regulatory burden caused by the proposed amendments to Rule G-8, guidance as to certain of the terms used in the electronic complaint log, and guidance as to the development of the electronic complaint log itself.

Regulatory burden. PFM asserted that the proposed rule change "unnecessarily impose[s] undue encumbrances of additional brochure delivery and recordkeeping requirements."[13] BDA submitted that it did not think that this type of "complaint and recordkeeping requirement systems is valuable for municipal advisory clients"[14] and NAMA asserted that the electronic complaint log required by the proposed amendments to Rule G-8 are not necessary because of the supervisory requirements set forth in MSRB Rule G-44.

The Board believes that the burden on regulated entities from the proposed rule change would not be significant. The proposed rule change would align Rule G-8 with the customer complaint recordkeeping requirements of other financial regulators. Rule 17a-3(a)(18) under the Act and FINRA Rules 4513 and 4530 require information about customer complaints that is similar to what is required by the proposed rule change.

A dealer that is a FINRA member currently must record its written customer complaints using an electronic complaint log. The requirements for that electronic complaint log are substantially similar to the requirements for the electronic complaint log that the Board would require under the proposed rule change. As discussed in "Product and problem codes" above, the Board

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12 In 2014, FINRA updated FINRA Rule 4530's problem and product codes and provided a six-month implementation date. See Regulatory Notice 14-20 (May 7, 2014).

13 See PFM letter at 1. The brochure delivery requirements are discussed above.

14 See BDA letter.

would, if the amendments were to be approved, harmonize its product and problem codes with those required by FINRA Rule 4530. For dealers, the proposed rule change would represent additional guidance as to how to track complaints about municipal securities.

Although the proposed rule change would represent a new recordkeeping burden on municipal advisors, the MSRB believes that it would not be a significant burden. As discussed above, the Board submits that it is generally a good business practice, especially for the development of a regulated entity's risk management systems, to track written complaints using standard codes in an electronic complaint log. Any regulatory burden imposed by the proposed rulemaking is, in part, dependent upon the municipal advisor and the number of municipal advisory client complaints that the municipal advisor receives. The MSRB anticipates that smaller municipal advisors would have fewer clients and accordingly may be likely to receive fewer complaints than larger municipal advisors. Further, the Board mitigates that regulatory burden by providing flexibility as to how those electronic records may be kept.[15]

The MSRB believes that an electronic log of complaints is necessary, and that such need is not lessened by the supervisory and compliance obligations of municipal advisors set forth in Rule G-44. The proposed amendments to Rule G-8 would require that all regulated entities keep electronic logs of customer or municipal advisory client complaints using a standard electronic format. That standard electronic format would enhance the ability of financial regulators to conduct more cost-effective and efficient inspections and surveillance of regulated entities. Although under Rule G-44 a municipal advisor may adopt procedures to address municipal advisory client complaints, that rule does not require that records of those complaints be kept in a standard electronic format across all regulated entities. Further, the MSRB notes that many dealers that have been subject to Rule G-27, on supervision, a rule that is similar to Rule G-44, also have been subject to FINRA's electronic customer complaint recordkeeping requirements. The MSRB believes that the FINRA electronic customer complaint log requirements have proven useful in addition to general supervisory obligations.

Guidance relating to terms used with electronic complaint log. NAMA requested guidance about the meaning of certain terms to be used in the electronic complaint log. The Board believes that the titles of the codes, as well as the brief description of those codes published by the Board, as appropriate, would provide guidance as to the terms used with the electronic complaint log.[16] Further, as discussed above under "Product and problem codes," the MSRB would harmonize the product and problem terms used for the electronic log of customer and municipal advisory client complaints with the codes required by FINRA Rule 4530. The MSRB

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15 For example, a regulated entity may keep its electronic complaint log using an Excel spreadsheet.

16 In addition, the MSRB anticipates that it would publish the codes to be used with the electronic customer complaint log in advance of the proposed rule change's effective date to allow regulated entities to review such codes.

believes that those two factors should provide sufficient guidance as to the meaning of those terms for the electronic municipal advisory client complaint log.

Guidance relating to the development of an electronic complaint log. NAMA requested guidance as to how a municipal advisor should create an electronic complaint log. Proposed Supplementary Material .01 broadly defines electronic format to include "any computer software program that is used for storing, organizing and/or manipulating data that can be provided promptly upon request to a regulatory authority."[17] The MSRB has considered NAMA's comment, and has determined that the degree of flexibility the MSRB is providing with the proposed rule change about the format of the electronic complaint log is preferable at this juncture.

Record Retention. NAMA and PFM commented about the municipal advisor record retention requirements set forth in the proposed amendments to Rule G-9. NAMA commented that municipal advisor records should be kept for five years and not six years, and that any requirement in Rule G-9 that requires municipal advisors to keep records for six years should be amended so that those records only are kept for five years. PFM commented that the Board lacked statutory authority to extend the record retention period for municipal advisors for one year and expressed "genuine concern regarding the misalignment regarding the proposed MSRB Rule changes and current Exchange Act requirements."[18]

Six-year record retention period. After carefully considering the comments, the Board has determined that the important reasons for retaining records of municipal advisory client complaints for six years remain valid. As discussed in the proposed rule change, such retention period would assist other financial regulators with their inspections of municipal advisors (those inspections may not occur for several years after the municipal advisory client submitted the complaint) and with their surveillance of municipal advisors.

Further, by requiring that municipal advisors retain records of municipal advisory client complaints for six years, the Board would be "leveling the playing field" between dealers and municipal advisors and between dealer municipal advisors and non-dealer municipal advisors. Dealers, including dealer municipal advisors, are required to retain records of customer complaints for six years under current Board rules.

After considering NAMA's suggestion that all municipal advisor records be kept for five years, the Board has determined not to propose amendments to Rule G-9 to address NAMA's suggestion. Specifically, certain municipal advisor records relating to Rule G-44 and Rule G-37 must be kept for six years. As the Board explained, and as approved or deemed approved by the

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17 See n.15, supra.

18 See PFM letter at 3-4.

Commission, there are significant reasons why municipal advisors should keep the records required by those rules for six years.[19] Those significant reasons continue to exist.

Statutory basis. The MSRB disagrees with PFM's assertions that the Board lacks statutory authority to develop a record retention period under the Act for municipal advisor records, and that the proposed amendment to Rule G-9 would cause misalignment with the record retention requirements set forth in the Act. Section 15B(b)(2)(g) of the Act specifically requires that the Board prescribe the records that are to be made and kept by dealers and municipal advisors and to prescribe the length of time the records are to be kept. In fact, the Commission has approved as consistent with the Exchange Act the MSRB's several previous municipal advisor recordkeeping proposals, including select six-year retentions periods.[20]

Annual notifications. The Commission received several comments about the annual notifications concerning the municipal advisor's registration, the MSRB's website address, and availability of a municipal advisory client brochure about the protections provided by the MSRB's rules and information about filing a complaint with a financial regulator required by the proposed amendments to Rule G-10 (the "annual notifications"). Those comments concerned the location of those annual notifications and the ability to include the annual notifications with other materials. NAMA suggested that in lieu of providing the written annual notifications to their municipal advisory clients, municipal advisors should have the option to post the annual notifications on their websites. NAMA and PFM suggested that the annual notifications be included with the written disclosure of all material conflicts of interest and other information required to be made by a municipal advisor by Rule G-42(b).[21]

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19 See Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (approving Rule G-44 and amendments to Rules G-8 and G-9, finding, in part, that the six-year record retention period for certain supervisory personnel important in later ascertaining the identity of responsible persons during particular periods of time, consistent with Rule G-9 for records of similar designations by dealers, and consistent with the Act); Exchange Act Release No. 76763 (Dec. 23, 2015), File No. SR-MSRB-2015-14 (Dec. 30, 2015) (notice of proposed rule change consisting of amendments to Rule G-37, Rule G-8, Rule G-9, and Forms G-37 and G-37x; requiring a six-year record retention period to promote compliance and enforcement of Rule G-37 and noting that the six-year retention period is consistent with the analogous record retention requirement in Rule G-9 for dealers).

20 See, e.g., Exchange Act Release No. 76753 (Dec. 23, 2015), 80 FR 81614 (Dec. 30, 2015) (approving Rule G-42 and amendments to Rule G-8); Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (approving Rule G-44 and amendments to Rules G-8 and G-9).

21 Rule G-42(b) provides, in part:

The MSRB has carefully considered commenters' suggestions, and has determined that a municipal advisor should not have the option to post the annual notifications on its website in lieu of sending those notifications to its municipal advisory client. The purpose of overhauling Rule G-10 is to more clearly focus Rule G-10 on customer and municipal advisory client protection and education. The Board believes that this purpose is best achieved by individual annual notifications to a customer or municipal advisor client. Nonetheless, if a regulated entity would like to post the annual notifications on its website, in addition to sending the written annual notifications to its customers or municipal advisory clients, the regulated entity may do so as long as the information on the regulated entity's website complies with Board and any other applicable laws, rules and regulations.

As proposed, the amendments to Rule G-10 would provide a regulated entity with the flexibility to include the written annual notifications with other materials. Those other materials may include the written disclosure of material conflicts of interest and other information required to be provided by a municipal advisor under Rule G-42(b). Because the proposed rule change would provide municipal advisors with the option to include the annual notifications with the written disclosure of material conflicts of interest and other information required by Rule G-42(b), the MSRB believes that the rule language, as proposed, provides sufficient flexibility to address NAMA's and PFM's suggestion that the annual notifications be included with the written disclosures required under Rule G-42(b).

Sufficiency of the Commission's comment period. BDA, NAMA, and PFM commented that the Board did not solicit public comment on the proposed rule change before the Board filed the proposed rule change with the Commission. BDA submitted that the MSRB is proceeding with "unnecessary haste" and that if the MSRB issued a request for comment on the proposed rule change, it could have "received feedback and tailored these rule amendments to the activities of municipal advisors." NAMA commented that the municipal advisor community should be afforded the same opportunity to comment prior to a proposal being sent to the SEC that the dealer community is afforded and submitted that municipal advisors would have flagged some of the vague and duplicative provisions of the proposed rulemaking as well as use of clearly inapplicable terminology.[22] PFM stated that it was "a bit dismayed" that the MSRB did not publish a request for comment before filing the proposed rule change with the Commission, and

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> *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:
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> (i) all material conflicts of interest . . . [and]
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> (ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel....

22 See NAMA letter.

suggested that without such a prior comment opportunity, PFM did not have "adequate opportunity for review and written comment."[23]

The Commission provided market participants with the fulsome comment period generally required under the federal securities laws – those laws do not require the Board to seek public comment before submitting a rulemaking proposal to the Commission. Market participants provided comment on the proposed rule change, and as noted earlier, in response to those comments, the Board is filing Amendment No. 1.

Further, in this case, not only did market participants request the proposed rule change, but every commenter supported the purposes of the proposed rule change.[24] The proposed rule change would enhance the Board's ability to protect and educate customers and municipal advisory clients. That customer and municipal advisory client protection and education are vital to the Board's mission. The proposed rule change also would harmonize the Board's customer complaint rule with that of other financial regulators – a goal that is important both to the Board and to market participants.

Electronic Guidance. BDA submitted that the Board's Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers - November 20, 1998 (the "1998 Notice") should not apply to municipal advisory relationships. BDA stated that "[a]s with attorney-client relationships . . . , municipal entities and obligated persons know exactly how they prefer to communicate and there is no need for a Federal regulator to regulate electronic communications in those relationships."[25]

The 1998 Notice provides dealers with the Board's interpretation about the use of electronic media to deliver and receive information under Board rules. The proposed rule change would extend that interpretation to municipal advisors. Without that extension, some vagueness might exist regarding municipal advisors' ability to use electronic media to deliver and receive information required under Board rules. The Board believes it is important to extend the 1998 Notice to municipal advisors to provide clarity and as such, is retaining the electronic guidance under Rule G-32 in the proposed rule change.

Other comments. The other suggestions that the Commission received about the proposed rule change related to (i) expansion of the proposed rule change, (ii) concerns about the complaint

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23 See PFM letter at 2.

24 PIABA noted that a common problem faced by victims of investment fraud or inappropriate investment advice is that those investors do not realize that they are afforded protections by self-regulatory agencies. The proposed rule change addresses that problem. See PIABA letter.

25 See BDA letter.

process, and (iii) concerns about the economic impact of the proposed rule change on small municipal advisors. PIABA supported the proposed rule change, but also suggested that the proposed rule change "go a step further" to provide investors with access to the electronic complaint logs. NAMA expressed concern that the proposed rule change would require that a municipal advisory client make its complaint directly with the municipal advisor instead of with a regulator. NAMA also suggested that the Board consider the economic impact of the proposed rule change, and the cumulative effect of all Board rules on small municipal advisors.

The Board recognizes that market transparency is important for investors. However, the Board is concerned that requiring electronic complaint logs to be available to customers and municipal advisory clients may not only mislead them because certain complaints may not be as material as others, but also may have a chilling effect on a regulated entity's reporting of written customer or client complaints, which could undermine the goals of the rule. The Board also notes that other financial regulators have not required that complaint records be made available in this way. Accordingly, the Board has determined that the electronic complaint log required by the proposed amendments to Rule G-8 would not be required to be made available to customers and clients.

In addition, the proposed amendments to Rule G-10 do not set forth any requirement that a municipal advisory client make a complaint to its municipal advisor nor do those proposed amendments require that a municipal advisory client submit any complaint that it may have to a particular regulator. A municipal advisory client would continue to be able to submit its complaint to any party it considers appropriate, based on, among other things, the notifications and educational materials it receives.

Further, Section 15B(b)(2)(L)(iv) of the Act[26] provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. As discussed in the proposed rule change, in determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.[27] In accordance with that policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change.

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26 15 U.S.C. 78o-4(b)(2)(L)(iv).

27 Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.

The MSRB does not believe that the proposed rule change would impose any burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Act.

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If you have any questions, please feel free to contact me at [redacted].

Sincerely,

Pamela K. Ellis

Pamela K. Ellis
Associate General Counsel