

November 16, 2018

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

Re: Response to Comments on SR-MSRB-2018-07

Dear Secretary:

On September 19, 2018, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the U.S. Securities and Exchange Commission (the "SEC" or "Commission"), a proposed rule change consisting of amendments to MSRB Rule G-3, on professional qualification requirements, to (i) require persons who meet the definition of a municipal advisor principal, as defined under Rule G-3(e)(i), to pass the Municipal Advisor Principal Qualification Examination ("Series 54 examination") in order to become appropriately qualified as a municipal advisor principal; (ii) specify that such persons who cease to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor principal must requalify by examination unless a waiver is granted; (iii) add the Series 54 examination to the list of qualification examinations for which a waiver can be sought; (iv) provide that municipal advisor representatives may function as a principal for 120 calendar days without being qualified with the Series 54 examination; and (v) make a technical amendment to Rule G-3(e) to clarify that a municipal advisor principal must pass the Municipal Advisor Representative Qualification Examination ("Series 50 examination") as a prerequisite to becoming qualified as a municipal advisor principal (collectively the "proposed rule change").¹

The SEC published notice of the proposed rule change on October 2, 2018, and the notice was then published in the Federal Register on October 9, 2018.² One comment letter was received in response to this notice and this letter is in reply to that comment letter.³

The commenter raised the concern that a firm that is principally an interest rate swap broker that is also registered as a municipal advisor should not have to take a qualification examination that is not specifically targeted to their niche business model. The commenter suggested that only 5% of the questions on the Series 50 examination were related to swaps, and the rest had nothing to do with the firm's services. The commenter asserts that, "the

¹ File No. SR-MSRB-2018-07.

² See Exchange Act Release No. 84341 (October 2, 2018), 83 FR 50708 (October 9, 2018).

³ Letter from Elaine M. Philbrick, Principal, Derivative Advisor.

proposed amendments to Rule G-3 requires yet an additional exam that is completely unrelated to our firm,” and that in order to pass the Series 54 examination, each principal will need to spend hundreds of hours to learn and master unfamiliar new material that does not serve the firm’s customers or business.⁴ The commenter also suggested, it may consider exiting the business of advising municipalities due to the investment of time and effort. Lastly, the commenter stressed that the Series 54 examination for municipal advisors that are strictly swap brokers is not in the public interest and does not benefit investors, municipal entities or obligated persons and, therefore believes that swap brokers should be exempt under the proposed requirement to have each municipal advisor principal take and pass the Series 54 examination.

The MSRB is charged with setting professional qualification standards for municipal advisors. Section 15B(b)(2)(A) of the Act⁵ authorizes the MSRB to prescribe “standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.” The establishment of the Series 54 examination is consistent with the intent of the establishment of the Series 50 examination “to mitigate problems associated with advice by those individuals without adequate training or qualification,”⁶ in that municipal advisor principals should be appropriately qualified to supervise such activities of municipal advisor representatives. As noted in the rule filing, the creation of a principal-level examination furthers the stated objective of Section 15B(b)(2)(C) of the Act⁷ to foster the prevention of fraudulent practices by enhancing the overall professional qualification standards of municipal advisor principals – recognizing that proper supervision of a municipal advisor’s activities and that of its associated persons play in the protection of the municipal securities market.

The MSRB believes that an associated person of a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons (“municipal advisor principal”) should demonstrate knowledge of the rules and regulations governing municipal advisors. As a principal qualification examination, the Series 54 examination is designed to measure a candidate’s knowledge of the regulatory requirements under federal securities laws, including MSRB rules applicable to municipal advisors. These rules and regulations generally apply to all municipal advisors and the range of activities that a municipal advisor is permitted to engage in, regardless of the niche business a municipal advisor may opt to engage in. All municipal advisors are required to adhere to federal securities laws, including MSRB rules applicable to municipal advisors, including, but not limited to, those governing registration and qualification requirements, recordkeeping requirements and pay-to-play prohibitions.

⁴ The firm currently has one associated person qualified with the Series 50 examination.

⁵ 15 U.S.C. 78o-4(b)(2)(A).

⁶ See Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225 (December 5, 2014) (SR-MSRB-2014-08) (Notice of Filing of a Proposed Rule Change).

⁷ 15 U.S.C. 78o-4(b)(2)(C).

Accordingly, the MSRB does not believe it is prudent to establish an exemption from the qualification requirements for those municipal advisors that opt to limit the scope of their municipal advisory activities.

Furthermore, the MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁸ The MSRB has considered whether it is possible that the costs associated with preparing for and taking the Series 54 examination, relative to the baseline of no principal-level examination, may affect the competitive landscape by leading some municipal advisors to exit the market rather than incur the burden of meeting the qualification requirements. The MSRB recognizes that meeting professional qualification requirements results in municipal advisors incurring programmatic costs, including costs to study for and take the applicable examinations. The MSRB believes the benefit of having associated persons of municipal advisors who engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons to demonstrate specified level of competency necessary to supervise municipal advisory activities, outweighs the potential burden imposed. As noted in the filing, to minimize disruption to a municipal advisor's operation, the MSRB proposes a one-year grace period from the effective date of the Series 54 examination to afford time for associated persons of a municipal advisor who are directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons to take and pass the Series 54 examination and become appropriately qualified as municipal advisor principals. During this one-year grace period, a person functioning as a municipal advisor principal would be permitted to continue to engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, so long as such person is qualified with the Series 50 examination.

Should you have any questions regarding this matter, please contact me or my colleague, Bri Joiner, Manager, Professional Qualifications, at [REDACTED].

Sincerely,



Gail Marshall
Chief Compliance Officer

⁸ See *supra* note 5.