

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72425; File No. SR-MSRB-2014-04)

June 18, 2014

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-3, on Classification of Principals and Representatives, Numerical Requirements, Testing, Continuing Education Requirements; Rule G-7, on Information Concerning Associated Persons; and Rule G-27, on Supervision

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 6, 2014, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of proposed amendments to Rule G-3, on classification of principals and representatives, numerical requirements, testing, continuing education requirements; Rule G-7, on information concerning associated persons; and Rule G-27, on supervision (the “proposed rule change”). The effective date of the proposed rule change will be 60 days following the date of SEC approval.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would: (1) amend MSRB Rule G-3(a) to limit the scope of permitted activities of a limited representative - investment company and variable contracts products ("Limited Representative") to sales to and purchases from customers of municipal fund securities; (2) eliminate the Financial and Operations Principal ("FINOP") classification, qualification and numerical requirements in MSRB Rule G-3(d); (3) clarify in Supplementary Material .01 to Rule G-3 that references to sales include the solicitation of sales of municipal securities; and (4) make certain technical amendments to (i) re-title Rule G-3 and its subparagraph (a) and define the Limited Representative classification, (ii) reorganize Rules G-3 and G-7(a), and (iii) remove references to the FINOP in Rules G-7 and G-27.

Permissible Activities of a Limited Representative

The proposed rule change would better align the activities permitted of Limited Representatives with the competencies tested in the Limited Representative - Investment Company and Variable Contracts Products Examination ("Series 6 examination") administered

by the Financial Industry Regulatory Authority (“FINRA”).³

MSRB Rule G-3(a) establishes the municipal securities representative professional qualification classification, as well as two sub-classifications: (1) municipal securities sales limited representative and (2) Limited Representative.

Currently, Limited Representatives are individuals whose activities, with respect to municipal fund securities,⁴ may include (1) underwriting or sales; (2) research or investment advice with regard to underwriting or sales; or (3) any other activities that involve communication, directly or indirectly, with public investors with regard to underwriting or sales. Limited Representatives qualify as such by, among other requirements, passing the Series 6 examination.

The proposed rule change would narrow the activities permitted of Limited Representatives exclusively to sales to and purchases from customers of municipal fund securities. The MSRB believes the proposed rule change is appropriate because the Series 6 examination focuses on purchases and sales activities, commensurate with the scope of

³ In a 2013 filing with the SEC, FINRA noted that the Series 6 examination covers four areas that relate to the major job functions of Series 6 limited representatives and are tested by the examination’s 100 multiple choice questions. These job functions include (a) having knowledge of regulatory fundamentals and business development (22 questions); (b) evaluating customers’ financial information, identifying investment objectives, providing information on investment products, and making suitable recommendations (47 questions); (c) opening, maintaining, transferring and closing accounts and retaining appropriate account records (21 questions); and (d) obtaining, verifying, and confirming customer purchase and sale instructions (10 questions). See SEC Release No. 34-70744 (Oct. 23, 2013); 78 FR 64566 (Oct. 29, 2013); File No. SR-FINRA-2013-045 (Oct. 23, 2013).

⁴ Under MSRB Rule D-12, “municipal fund security shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.”

permissible activities under NASD Rule 1032(b).⁵ Individuals engaging in activities other than sales of municipal fund securities should be required to take and pass the Municipal Securities Representative Qualification Examination (“Series 52 exam”), which tests the basic competency to perform the activities described in MSRB Rule G-3(a)(i)(A). As noted above, the limitation proposed by the MSRB is consistent with the approach taken by FINRA. Under NASD Rule 1032(b), individuals who have taken and passed the Series 6 examination may only engage in sales activity related to investment company and variable contracts products. The proposed rule change would harmonize MSRB and FINRA rules by limiting the activities of individuals solely qualified by having passed the Series 6 examination to sales-related activities and, under MSRB rules, exclusively to municipal fund securities sales-related activities.

The MSRB understands that, in practice, the activities of Limited Representatives typically are limited to sales-related activities, rather than investment banking or other activities permitted under Rule G-3(a)(i)(A). Therefore, it is expected that the proposed rule change would have minimal impact on the day-to-day activities of Limited Representatives.

Rule G-3 Supplementary Material .01

In addition to limiting the scope of a Limited Representative’s activities to sales to and purchases from customers of municipal fund securities, the proposed rule change includes supplementary material clarifying that such activities may include the solicitation of purchases from and sales to customers of municipal fund securities. Market participants have asked whether the term “sales” in Rule G-3 also includes the solicitation of sales. Supplementary Material .01 makes clear that it does. It would apply to all references to sales in the rule and would serve to clarify the permissible activities of municipal securities professionals that are

⁵ NASD Rule 1032(b) has been incorporated in the FINRA Manual and continues to be referred to as an NASD rule.

appropriately registered to engage in, or to supervise,⁶ sales to and purchases from customers of municipal securities.

Elimination of MSRB's FINOP Requirement

Pursuant to Section 15B(b)(2)(A) of the Act, which authorizes the Board to classify municipal securities dealers and their associated persons, the proposed rule change also would eliminate the MSRB FINOP classification and the requirement that certain dealers designate at least one such principal (collectively referred to herein as the "FINOP requirement").⁷ After conducting a review of the professional qualification requirements in Rule G-3, the MSRB has determined that the FINOP requirement in Rule G-3(d) is unnecessary and duplicative of other regulations, such as NASD Rule 1022(b).⁸ The responsibilities and duties of FINOPs pertaining to municipal securities are not unique, and FINRA rules establish general responsibilities and duties for such individuals. The MSRB believes that FINRA's regulation of FINOPs is more

⁶ Supplementary Material .01 would clarify that municipal securities principals or municipal securities sales principals may supervise the solicitation of sales to and purchases from customers of municipal securities. Further, Municipal Fund Securities Limited Principals may supervise the solicitation of sales to and purchases from customers of municipal fund securities.

⁷ MSRB Rule G-3(b)(iii) sets forth the numerical requirements for municipal securities principals.

⁸ NASD Rule 1022(b)(2) provides that the duties of a "Limited Principal—Financial and Operations" include: "(A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived; (E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or (G) any other matter involving the financial and operational management of the member." MSRB Rule G-3(d)(i) describes substantially similar duties for a MSRB FINOP.

appropriate in that the core responsibilities of a FINOP pertain to the dealer's financial reports and supervision of the dealer's activities under the financial responsibility rules. Consequently, dealers that are FINRA members and are engaging in municipal securities activities would remain subject to FINRA's registration requirements pertaining to the "Limited Principal-Financial and Operations."⁹

Currently, MSRB Rule G-3(d) requires that every dealer, excluding bank dealers or certain other dealers identified by reference to the SEC net capital rule, designate at least one FINOP, including its chief financial officer.¹⁰ Given the exclusions in the rule, only a limited number of dealers are required by the MSRB to designate an individual as a FINOP, and under Rule G-3(d)(ii) these individuals must be qualified in accordance with FINRA rules. Therefore, individuals seeking qualification as a FINOP must pass the Financial and Operations Principal Qualification Examination ("Series 27 examination") administered by FINRA. The Series 27 examination focuses primarily on financial reporting requirements, net capital requirements, customer protection rules, and other regulations relevant to the role of a chief financial officer or similar financial officer at an investment firm. The examination tests few concepts specifically related to MSRB rules or municipal securities, and the MSRB believes that adding additional municipal securities content to the examination would likely be at odds with regulatory priorities.

Furthermore, while the FINOP requirement would be eliminated in Rule G-3 by the proposed rule change, a dealer's municipal securities principal would remain responsible for

⁹ These rules include NASD Rules 1021(e) and 1022(b).

¹⁰ MSRB Rule G-3(d)(i) excludes from the financial and operations principal requirement, any "bank dealer or a broker, dealer or municipal securities dealer meeting the requirements of subparagraph (a)(2)(iv), (v) or (vi) of rule 15c3-1 under the Act or exempted from the requirements of Rule 15c3-1 in accordance with paragraph (b)(3) thereof."

supervising its municipal securities activities, including its operations (such as processing, clearance and safekeeping of municipal securities), pursuant to Rule G-3(b)(i) and G-27(b)(ii)(C). The MSRB believes that the municipal securities principal requirement ensures sufficient oversight of the operations activities of dealers pertaining to municipal securities transactions.

Technical and Conforming Amendments

In order to clarify certain MSRB rules and to conform other rules to the rules amended by the proposed rule change, the MSRB is proposing several technical amendments.

First, the MSRB is proposing to simplify the title of Rule G-3 by changing it to the more self-explanatory: “Professional Qualification Requirements.”

Second, the heading of Rule G-3(a) would be changed to incorporate the Limited Representative classification. Paragraph (a)(i)(C) of Rule G-3 would be added to define the Limited Representative classification, and paragraph (a)(ii)(C) would be renumbered as new paragraph (a)(ii)(B)(3), with slight modification to make it consistent with paragraph (a)(i)(C). Also, the introductory paragraph preceding Rule G-3(a) would be amended to eliminate the reference to the FINOP while also adding references to municipal securities sales limited representatives, limited representative - investment company and variable contracts products, and municipal fund securities limited principals so that it is clear that these individuals must meet the applicable requirements established by Rule G-3 to be properly qualified. The MSRB believes that these non-substantive changes will provide clarity and promote a better understanding of MSRB rules.

Third, Rule G-7(a) would be amended to add Limited Representatives and general securities principals to the list of associated persons. Limited Representatives are properly

classified as associated persons because they are permitted to effect transactions in municipal fund securities as discussed above. General securities principals are associated persons for purposes of the rule as well because they are permitted to supervise certain municipal securities activities under Rule G-27(b)(ii)(C). This amendment would be non-substantive because such individuals are currently deemed associated persons by virtue of the activities they are currently conducting.

Fourth, the MSRB proposes to delete Rule G-3(g)(ii), waiver of qualification requirements with respect to the FINOP, as such an exemption would be rendered moot by the elimination of the FINOP classification.

Finally, the proposed rule change would make conforming changes by eliminating all references in MSRB rules to the FINOP. Specifically, the MSRB is proposing to remove references to the FINOP in MSRB Rule G-27 and Rule G-7.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,¹¹ which provides that the MSRB's rules shall:

provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the

¹¹ 15 U.S.C. 78o-4(b)(2)(A).

protection of investors and municipal entities or obligated persons. In connection with the definition and application of such standards the Board may—

(i) appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors;

(ii) specify that all or any portion of such standards shall be applicable to any such class; and

(iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section.

As discussed above, the proposed rule change would reduce regulatory duplication and improve market efficiencies by eliminating the FINOP requirement. The MSRB believes that the protection afforded to investors and other market participants will not be eroded by the proposed rule change because FINRA has a substantially similar classification for dealers that are FINRA members and dealers that are FINRA members and are engaging in municipal securities activities would remain subject to FINRA's registration requirement pertaining to the "Limited Principal-Financial and Operations." Further, municipal securities principals would continue to be responsible for the overall supervision of the municipal securities activities of dealers.

In addition, the MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹² which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

¹² 15 U.S.C. 78o-4(b)(2)(C).

settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that limiting the permissible activities of Limited Representatives to sales to and purchases from customers of municipal fund securities better aligns the responsibilities of Limited Representatives with the competencies tested in the Series 6 examination. Furthermore, the proposed rule change would result in consistent regulatory treatment of Limited Representatives by the MSRB and FINRA, thereby reducing potential dealer confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

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 since it would apply equally to all dealers. In addition, the MSRB believes, as discussed above, that the proposed rule change will ease burdens on dealers and reduce compliance costs by clarifying dealer obligations and eliminating regulatory redundancy. Also, the MSRB believes that the restriction on permissible Limited Representative activities will have a minimal impact on Limited Representatives because the MSRB understands that Limited Representatives do not typically engage in activities other than customer sales-related activity.

The MSRB notes that several commenters indicate that the proposed rule change would likely improve the municipal securities market and its efficient operation, and that potential burdens created by the proposed rule change are to be likely outweighed by the benefits, as further discussed below.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not solicited for the proposed rule change. However, in response to an MSRB request for comment on a separate rule proposal,¹³ the MSRB invited comment on the elements of the proposed rule change. The MSRB received six letters that reference the proposed rule change.¹⁴

Following are summaries of the comment letters:

- Support and Potential Cost for Limiting the Activities of Limited Representatives
SIFMA, BDA, FSI, NSCP and ICI express support for limiting the activities of Limited Representatives to sales to and purchases from customers of municipal fund securities. In expressing its support for the proposed rule change, BDA states that the proposed rule change would harmonize the MSRB’s rules with FINRA’s rules “so that both sets of rules are straightforward, understandable, and manageable by compliance and enforcement staff.” ICI echoes the BDA’s sentiment that the proposed rule change would add consistency between MSRB and FINRA rules on the permissible activities of Limited Representatives. FSI states that it “supports efforts by the MSRB and other regulators that seek to increase efficiency.” NSCP writes that the proposed rule change “is an appropriate change which will reduce confusion as to the appropriate activities to be engaged in by [Limited Representatives]. Finally, SIFMA expresses its support for modifying the scope of permissible activities of Limited Representatives.

¹³ See MSRB Notice 2013-22 (Dec. 13, 2013) (the “December Notice”).

¹⁴ Comment letters referencing the proposed rule change were received from: Bond Dealers of America (“BDA”); Financial Services Institute (“FSI”); Investment Company Institute (“ICI”); The National Society of Compliance Professionals (“NSCP”); Securities Industry and Financial Markets Association (“SIFMA”); and Wulff, Hansen & Co. (“Wulff”).

However, while supportive of the proposed rule change, BDA also states that limiting the permissible activities of Limited Representatives may result in additional costs to MSRB registrants. Specifically, BDA cautions that compliance with the proposed rule change may require MSRB registrants to expend resources on “updating, redrafting and establishing written supervisory procedures” and hiring additional personnel to perform the now prohibited activities of Limited Representatives.

In formulating the proposed rule change the MSRB considered the potential costs and benefits to MSRB registrants, the municipal securities market and investors. The MSRB believes that the benefits of the proposed rule change outweigh the potential costs, given that FINRA already limits the activity of individuals who are registered by virtue of having passed the Series 6 examination to customer sales activity related to investment company and variable contract products. It is unlikely that such individuals were engaged in activities other than sales of municipal fund securities. The MSRB believes that establishing consistency between MSRB and FINRA professional qualification rules pertaining to the activities of Limited Representatives will make it easier for dealers to monitor and supervise the activities of such individuals and, hence, will promote efficiency. Moreover, the Series 6 examination focuses on customer sales-related activities, rather than activities such as investment banking. The MSRB believes the proposed rule change will better protect investors by aligning the permitted activities of a Limited Representative to the basic competencies tested by the Series 6 examination.

- Support for Eliminating FINOP Requirement

SIFMA, NSCP, ICI and Wulff also support the elimination of the FINOP requirement.

NSCP and Wulff state that each is in support of rule changes that eliminate redundant regulatory requirements. In expressing its support for the proposed rule change, ICI states that it “commends the MSRB for its interest in avoiding unnecessary regulatory costs and duplication and proposing this amendment in furtherance of such interest.”

- Request for Clarification of Permitted Activities of Limited Representatives

NSCP seeks clarification that the ‘limited representative’ referenced in the December Notice is the ‘limited representative’ that is qualified by virtue of having taken and passed the Series 6 examination.

The reference to Limited Representative in the December Notice is a reference to individuals qualified by virtue of having taken and passed the Series 6 examination.

The text of the proposed rule change has been amended to clarify the permitted activities of a Limited Representative.

- Suggestions for Additional Clarification of Rule G-3(a)(ii)

ICI suggests that the MSRB amend Rule G-3(a)(ii) to expressly state that Limited Representatives are permitted to engage in the solicitation of sales to and purchases from customers of municipal fund securities.

The MSRB has included Supplementary Material .01 in the proposed rule change to clarify that the reference in Rule G-3 to sales to and purchases from customers also includes the solicitation of sales to and purchases from customers and the supervision of the solicitation of sales to and purchases from customers.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2014-04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2014-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2014-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).