SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75628; File No. SR-MSRB-2015-03)

August 6, 2015

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

I. Introduction

On April 24, 2015, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change consisting of proposed new Rule G-42, on duties of non-solicitor municipal advisors, and proposed amendments to Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors. The proposed rule change was published for comment in the Federal Register on May 8, 2015.[3] The Commission received fifteen comment letters on the proposal.[4] On June 16, 2015, the MSRB granted an extension of

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Exchange Act Release No. 74860 (May 4, 2015), 80 FR 26752 ("Notice"). The comment period closed on May 29, 2015.

4 See Letters to Secretary, Commission, from Dustin McDonald, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), dated May 22, 2015 (the "GFOA I Letter"); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated May 28, 2015 (the "SIFMA Letter"); Cristeena Naser, Vice President, Center for Securities, Trust & Investments, American Bankers Association ("ABA"), dated May 29, 2015 (the "ABA Letter"); Terri Heaton, President, National Association of Municipal Advisors ("NAMA"), dated May 29, 2015 (the "NAMA Letter"); Hill A. Feinberg, Chairman and Chief Executive Officer and Michael Bartolotta, Vice Chairman, First Southwest

time for the Commission to act on the filing until August 6, 2015. This order institutes proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described below, the Commission seeks and encourages interested persons to comment on the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice, the MSRB proposed to adopt new Rule G-42, on duties of non-solicitor municipal advisors and proposed amendments to Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors (the "proposed rule change").

Company ("First Southwest"), dated May 29, 2015 (the "First Southwest Letter"); Guy E. Yandel, EVP and Head of Public Finance, et al., George K. Baum & Company ("GKB"), dated May 29, 2015 (the "GKB Letter"); David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated May 29, 2015 (the "FSI Letter"); Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors LLC, ("Wells Fargo"), dated May 29, 2015 (the "Wells Fargo Letter"); Tamara K. Salmon, Associate General Counsel, Investment Company Institute ("ICI"), dated May 29, 2015 (the "ICI Letter"); W. David Hemingway, Executive Vice President, Zions First National Bank ("Zions"), dated May 29, 2015 (the "Zions Letter"); Lindsey K. Bell, Millar Jiles, LLP ("Millar Jiles"), dated May 29, 2015 (the "Millar Jiles Letter"); Michael Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated May 29, 2015 (the "BDA Letter"); Joy A. Howard, WM Financial Strategies ("WM Financial"), dated May 29, 2015 (the "WM Financial Letter"); Leo Karwejna, Managing Director, Chief Compliance Officer, The PFM Group ("PFM"), dated May 29, 2015 (the "PFM Letter"); and Dustin T. McDonald, Director, Federal Liaison Center, GFOA, dated June 15, 2015 (the "GFOA II Letter"). Staff from the Office of Municipal Securities discussed the proposed rule change with representatives from SIFMA on May 21, 2015, representatives from NAMA on June 3, 2015 and representatives from BDA on June 17, 2015.

5 15 U.S.C. 78s(b)(2)(B).

Proposed Rule G-42

Proposed Rule G-42 would establish the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities, other than municipal advisory solicitation activities ("municipal advisors"). In summary, the core provisions of Proposed Rule G-42 would:

- Establish certain standards of conduct consistent with the fiduciary duty owed by a municipal advisor to its municipal entity clients, which includes, without limitation, a duty of care and of loyalty;
- Establish the standard of care owed by a municipal advisor to its obligated person clients;
- Require the full and fair disclosure, in writing, of all material conflicts of interest and legal or disciplinary events that are material to a client's evaluation of a municipal advisor;
- Require the documentation of the municipal advisory relationship, specifying certain aspects of the relationship that must be included in the documentation;
- Require that recommendations made by a municipal advisor are suitable for its clients, or that it determine the suitability of recommendations made by third parties when appropriate; and
- Specifically prohibit a municipal advisor from engaging in certain activities, including, in summary:
    - receiving excessive compensation;
    - delivering inaccurate invoices for fees or expenses;

- making false or misleading representations about the municipal advisor's resources, capacity or knowledge;
- participating in certain fee-splitting arrangements with underwriters;
- participating in any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor;
- making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities, with limited exceptions; and
- entering into certain principal transactions with the municipal advisor's municipal entity clients.

In addition, the proposed rule change would define key terms used in Proposed Rule G-42 and provide supplementary material. The supplementary material would provide additional guidance on the core concepts in the proposed rule, such as the duty of care, the duty of loyalty, suitability of recommendations and "Know Your Client" obligations; provide context for issues such as the scope of an engagement, conflicts of interest disclosures, excessive compensation, the impact of client action that is independent of or contrary to the advice of a municipal advisor, and the applicability of the proposed rule change to 529 college savings plans ("529 plans") and other municipal entities; provide guidance regarding the definition of "engage in a principal transaction;" recognize the continued applicability of state and other laws regarding fiduciary and other duties owed by municipal advisors; and, finally, include information regarding requirements that must be met for a municipal advisor to be relieved of certain provisions of Proposed Rule G-42 in instances when it inadvertently engages in municipal advisory activities.

Standards of Conduct

Section (a) of Proposed Rule G-42 would establish the core standards of conduct and duties applicable to municipal advisors. Subsection (a)(i) of Proposed Rule G-42 would provide that each municipal advisor in the conduct of its municipal advisory activities for an obligated person client is subject to a duty of care. Subsection (a)(ii) would provide that each municipal advisor in the conduct of its municipal advisory activities for a municipal entity client is subject to a fiduciary duty, which includes, without limitation, a duty of loyalty and a duty of care.

Proposed supplementary material would provide guidance on the duty of care and the duty of loyalty. Paragraph .01 of the Supplementary Material would describe the duty of care to require, without limitation, a municipal advisor to: (1) exercise due care in performing its municipal advisory activities; (2) possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice; (3) make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client; and (4) undertake a reasonable investigation to determine that the municipal advisor is not basing any recommendation on materially inaccurate or incomplete information. The duty of care that would be established in section (a) of Proposed Rule G-42 would also require the municipal advisor to have a reasonable basis for: any advice provided to or on behalf of a client; any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and, any information provided to the client or other parties involved in

the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the advisor is advising.

Paragraph .02 of the Supplementary Material would describe the duty of loyalty to require, without limitation, a municipal advisor, when engaging in municipal advisory activities for a municipal entity, to deal honestly and with the utmost good faith with the client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. Paragraph .02 would also provide that the duty of loyalty would preclude a municipal advisor from engaging in municipal advisory activities with a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

Paragraph .03 of the Supplementary Material would specify that a municipal advisor is not required to disengage from a municipal advisory relationship if a municipal entity client or an obligated person client elects a course of action that is independent of or contrary to advice provided by the municipal advisor.

Paragraph .04 of the Supplementary Material would specify that a municipal advisor could limit the scope of the municipal advisory activities to be performed to certain specified activities or services if requested or expressly consented to by the client, but could not alter the standards of conduct or impose limitations on any of the duties prescribed by Proposed Rule G-42. Paragraph .04 would provide that, if a municipal advisor engages in a course of conduct that is inconsistent with the mutually agreed limitations to the scope of the engagement, it may result in negating the effectiveness of the limitations.

Paragraph .07 of the Supplementary Material would state, as a general matter, that, municipal advisors may be subject to fiduciary or other duties under state or other laws and

nothing in Proposed Rule G-42 would supersede any more restrictive provision of state or other laws applicable to municipal advisory activities.

Disclosure of Conflicts of Interest and Other Information

Section (b) of Proposed Rule G-42 would require a municipal advisor to fully and fairly disclose to its client in writing all material conflicts of interest, and to do so prior to or upon engaging in municipal advisory activities. The provision would set forth a non-exhaustive list of scenarios under which a material conflict of interest would arise or be deemed to exist and that would require a municipal advisor to provide written disclosures to its client.

Subsection (b)(i)(A) would require a municipal advisor to disclose any actual or potential conflicts of interest of which the municipal advisor becomes aware after reasonable inquiry that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the applicable standards of conduct (i.e., a duty of care or a fiduciary duty). Subsections (b)(i)(B) through (F) would provide more specific scenarios that give rise to conflicts of interest that would be deemed to be material and require proper disclosure to a municipal advisor's client. Under the proposed rule change, a material conflict of interest would always include: any affiliate of the municipal advisor that provides any advice, service or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor; any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client; any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendations to the client of its services, any municipal securities transaction or any municipal financial product; any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the

client; and any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice. Subsection (b)(i)(G) would require municipal advisors to disclose any other engagements or relationships of the municipal advisor that could reasonably be anticipated to impair its ability to provide advice to or on behalf of its client in accordance with the applicable standards of conduct established by section (a) of the proposed rule.

Under subsection (b)(i), if a municipal advisor were to conclude, based on the exercise of reasonable diligence, that it had no known material conflicts of interest, the municipal advisor would be required to provide a written statement to the client to that effect.

Subsection (b)(ii) would require disclosure of any legal or disciplinary event that would be material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel. A municipal advisor would be permitted to fulfill this disclosure obligation by identifying the specific type of event and specifically referring the client to the relevant portions of the municipal advisor's most recent SEC Forms MA or MA-I[6] filed with the Commission, if the municipal advisor provides detailed information specifying where the client could access such forms electronically.

Paragraph .05 of the Supplementary Material would provide that the required conflicts of interest disclosures must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict and must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.[7]

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6 See 17 CFR 249.1300 (SEC Form MA); 17 CFR 249.1310 (SEC Form MA-I).

7 The MSRB believes that this requirement is analogous to the requirement of Form ADV (17 CFR 279.1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) that obligates an investment adviser to describe how it addresses certain conflicts of interest

Paragraph .06 of the Supplementary Material would provide that a municipal advisor that inadvertently engages in municipal advisory activities but does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship[8] would not be required to comply with sections (b) and (c) of Proposed Rule G-42 (relating to disclosure of conflicts of interest and documentation of the relationship), if the municipal advisor takes the prescribed actions listed under paragraph .06 promptly after it discovers its provision of inadvertent advice. The municipal advisor would be required to provide to the client a dated document that would include: a disclaimer stating that the municipal advisor did not intend to provide advice and that, effective immediately, the municipal advisor has ceased engaging in municipal advisory activities with respect to that client in regard to all transactions and municipal financial products as to which advice was inadvertently provided; a notification that the client should be aware that the municipal advisor has not provided the disclosure of material conflicts of interest and other information required under section (b); an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and a request that the municipal entity or obligated person acknowledge receipt of the document. The municipal

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with its clients. See, e.g., Form ADV, Part 2, Item 5.E.1 of Part 2A (requiring an investment adviser to describe how it will address conflicts of interest that arise in regards to fees and compensation it receives, including the investment adviser's procedures for disclosing the conflicts of interest with its client). See also, Form ADV, Part 2A Items 6, 10, 11, 14 and 17.

8 Under subsection (f)(vi) of Proposed Rule G-42, the MSRB notes that a municipal advisory relationship would be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person, and would be deemed to have ended on the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of Proposed Rule G-42 or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

advisor also would be required to conduct a review of its supervisory and compliance policies and procedures to ensure that they are reasonably designed to prevent inadvertently providing advice to municipal entities and obligated persons. The final sentence of paragraph .06 of the Supplementary Material would also clarify that the satisfaction of the requirements of paragraph .06 would have no effect on the applicability of any provisions of Proposed Rule G-42 other than sections (b) and (c), or any other legal requirements applicable to municipal advisory activities.

Documentation of the Municipal Advisory Relationship

Section (c) of Proposed Rule G-42 would require each municipal advisor to evidence each of its municipal advisory relationships by a writing, or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The documentation would be required to be dated and include, at a minimum:[9]

- the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed, as provided in proposed subsection (c)(i);
- the information required to be disclosed in proposed section (b), including the disclosures of conflicts of interest, as provided in proposed subsection (c)(ii);
- a description of the specific type of information regarding legal and disciplinary events requested by the Commission on SEC Form MA and SEC Form MA-I, as provided in proposed subsection (c)(iii), and detailed information specifying

[9] While no acknowledgement from the client of its receipt of the documentation would be required, the MSRB notes that a municipal advisor must, as part of the duty of care it owes its client, reasonably believe that the documentation was received by its client.

where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;[10]

- the date of the last material change to the legal or disciplinary event disclosures on any SEC Forms MA or MA-I filed with the Commission by the municipal advisor, as provided in proposed subsection (c)(iv);
- the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement, as provided in proposed subsection (c)(v);
- the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none, as provided in proposed subsection (c)(vi); and
- any terms relating to withdrawal from the municipal advisory relationship, as provided in proposed subsection (c)(vii).

Proposed Rule G-42(c) also would require municipal advisors to promptly amend or supplement the writing(s) during the term of the municipal advisory relationship as necessary to reflect any material changes or additions in the required information.

Recommendations and Review of Recommendations of Other Parties

Section (d) of Proposed Rule G-42 would provide that a municipal advisor must not recommend that its client enter into any municipal securities transaction or municipal financial product unless the municipal advisor has determined, based on the information obtained through the reasonable diligence of the municipal advisor, whether the transaction or product is suitable for the client. Proposed section (d) also contemplates that a municipal advisor may be requested

[10] The MSRB notes that compliance with this requirement could be achieved in the same manner, and (so long as done upon or prior to engaging in municipal advisory activities for the client) concurrently with providing to the client the information required under proposed subsection (b)(ii).

by the client to review and determine the suitability of a recommendation made by a third party to the client. If a client were to request this type of review, and such review were within the scope of the engagement, the municipal advisor's determination regarding the suitability of the third-party's recommendation regarding a municipal securities transaction or municipal financial product would be subject to the same reasonable diligence standard -- requiring the municipal advisor to obtain relevant information through the exercise of reasonable diligence.

As to both types of review, the municipal advisor would be required under proposed section (d) to inform its municipal entity or obligated person client of its evaluation of the material risks, potential benefits, structure and other characteristics of the recommended municipal securities transaction or municipal financial product; the basis upon which the advisor reasonably believes the recommended transaction or product is, or is not, suitable for the client; and whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

Paragraph .04 of the Supplementary Material would provide that a municipal advisor and its client could limit the scope of the municipal advisory relationship to certain specified activities or services. The MSRB notes that a municipal advisor would not be permitted to alter the standards of conduct or duties imposed by the proposed rule with respect to that limited scope.

Paragraph .08 of the Supplementary Material would provide guidance related to a municipal advisor's suitability obligations. Under this provision, a municipal advisor's determination of whether a municipal securities transaction or municipal financial product is suitable for its client must be based on numerous factors, as applicable to the particular type of

client, including, but not limited to: the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued are reasonably expected to be outstanding, and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after the municipal advisor has conducted a reasonable inquiry.

In connection with a municipal advisor's obligation to determine the suitability of a municipal securities transaction or a municipal financial product for a client, which should take into account its knowledge of the client, paragraph .09 of the Supplementary Material would require a municipal advisor to know its client. The obligation to know the client would require a municipal advisor to use reasonable diligence to know and retain essential facts concerning the client and the authority of each person acting on behalf of the client, and is similar to requirements in other regulatory regimes.[11] The facts "essential" to knowing one's client would include those required to effectively service the municipal advisory relationship with the client;

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[11] The MSRB notes that similar requirements apply to brokers and dealers under FINRA Rule 2090 (Know Your Customer) and swap dealers under Commodity Futures Trading Commission ("CFTC") Rule 402(b) (General Provisions: Know Your Counterparty), 17 CFR 23.402(b), found in CFTC Rules, Ch. I, Pt. 23, Subpt. H (Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, including Special Entities) (17 CFR 23.400 et. seq.). Notably, the CFTC's rule applies to dealings with special entity clients, defined to include states, state agencies, cities, counties, municipalities, other political subdivisions of a State, or any instrumentality, department, or a corporation of or established by a State or political subdivision of a State. See CFTC Rule 401(c) (defining "special entity") (17 CFR 23.401(c)).

act in accordance with any special directions from the client; understand the authority of each person acting on behalf of the client; and comply with applicable laws, rules and regulations.

The MSRB notes that a client could at times elect a course of action either independent of or contrary to the advice of its municipal advisor. Paragraph .03 of the Supplementary Material would provide that the municipal advisor would not be required to disengage from the municipal advisory relationship on that basis.

Specified Prohibitions

Subsection (e)(i)(A) would prohibit a municipal advisor from receiving compensation from its client that is excessive in relation to the municipal advisory activities actually performed for the client. Paragraph .10 of the Supplementary Material would provide additional guidance on how compensation would be determined to be excessive. Included in paragraph .10 are several factors that would be considered when evaluating the reasonableness of a municipal advisor's compensation relative to the nature of the municipal advisory activities performed, including, but not limited to: the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

Subsection (e)(i)(B) would prohibit municipal advisors from delivering an invoice for fees or expenses for municipal advisory activities that does not accurately reflect the activities actually performed or the personnel that actually performed those activities.

Subsection (e)(i)(C) would prohibit a municipal advisor from making any representation or submitting any information that the municipal advisor knows or should know is either

materially false or materially misleading due to the omission of a material fact, about its capacity, resources or knowledge in response to requests for proposals or in oral presentations to a client or prospective client for the purpose of obtaining or retaining an engagement to perform municipal advisory activities.

Subsection (e)(i)(D) would prohibit municipal advisors from making or participating in two types of fee-splitting arrangements: (1) any fee-splitting arrangement with an underwriter on any municipal securities transaction as to which the municipal advisor has provided or is providing advice; and (2) any undisclosed fee-splitting arrangement with providers of investments or services to a municipal entity or obligated person client of the municipal advisor.

Subsection (e)(i)(E) would, generally, prohibit a municipal advisor from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities. However, the provision contains three exceptions. The prohibition would not apply to: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and MSRB for making such a communication as described in subsection (e)(i)(E)(1); and (3) payments that are permissible "normal business dealings" as described in MSRB Rule G-20.

Principal Transactions

Subsection (e)(ii) of Proposed Rule G-42 would prohibit a municipal advisor to a municipal entity, and any affiliate of such municipal advisor, from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial

product as to which the municipal advisor is providing or has provided advice. The ban on principal transactions would apply only with respect to clients that are municipal entities. The ban would not apply to principal transactions between a municipal advisor (or an affiliate of the municipal advisor) and the municipal advisor's obligated person clients. Although such transactions would not be prohibited, the MSRB notes that all municipal advisors, including those engaging in municipal advisory activities for obligated person clients, are currently subject to the MSRB's fundamental fair-practice rule, Rule G-17.

Paragraph .07 of the Supplementary Material would provide an exception to the ban on principal transactions in subsection (e)(ii) in order to avoid a possible conflict with existing MSRB Rule G-23, on activities of financial advisors. Specifically, the ban in subsection (e)(ii) would not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance, because such a transaction is the type of transaction that is addressed, and, in certain circumstances, prohibited by Rule G-23.

For purposes of the prohibition in proposed subsection (e)(ii), subsection (f)(i) would define the term "engaging in a principal transaction" to mean "when acting as a principal for one's own account, selling to or purchasing from the municipal entity client any security or entering into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client." Further, paragraph .11 of the Supplementary Material would clarify that the term "other similar financial products," as used in subsection (f)(i), would include a bank loan but only if it is in an aggregate principal amount of $1,000,000 or more and is economically equivalent to the purchase of one or more municipal securities.

Definitions

Section (f) of Proposed Rule G-42 would provide definitions of the terms "engaging in a principal transaction," "affiliate of the municipal advisor,"[12] "municipal advisory relationship,"[13] and "official statement."[14] Further, for several terms in Proposed Rule G-42 that have been previously defined by federal statute or SEC rules, proposed section (f) would, for purposes of Proposed Rule G-42, adopt the same meanings. These terms would include "advice;"[15] "municipal advisor;"[16] "municipal advisory activities;"[17] "municipal entity;"[18] and "obligated person."[19]

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12 "Affiliate of the municipal advisor" would mean "any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor." See Proposed Rule G-42(f)(iii).

13 Proposed Rule G-42(f)(vi) provides that a "municipal advisory relationship" would

> be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

14 "Official statement" would have the same meaning as in MSRB Rule G-32(d)(vii). See Proposed Rule G-42(f)(ix).

15 "Advice" would have the same meaning as in Section 15B(e)(4)(A)(i) of the Exchange Act (15 U.S.C. 78o-4(e)(4)(A)(i)); SEC Rule 15Ba1-1(d)(1)(ii) (17 CFR 240.15Ba1-1(d)(1)(ii)); and other rules and regulations thereunder. See Proposed Rule G-42(f)(ii).

16 "Municipal advisor" would

> have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section

Applicability of Proposed Rule G-42 to 529 College Savings Plans and Other Municipal Fund Securities

Paragraph .12 of the Supplementary Material emphasizes the proposed rule's application to municipal advisors whose municipal advisory clients are sponsors or trustees of municipal fund securities.[20]

Proposed Amendments to Rule G-8

The proposed amendments to Rule G-8 would require each municipal advisor to make and keep any document created by the municipal advisor that was material to its review of a recommendation by another party or that memorializes its basis for any conclusions as to suitability.

> 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

See Proposed Rule G-42(f)(iv).

17 "Municipal advisory activities" would mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) (definition of "municipal advisor") of Proposed Rule G-42. See Proposed Rule G-42(f)(v).

18 "Municipal entity" would "have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder." See Proposed Rule G-42(f)(vii).

19 "Obligated person" would "have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder." See Proposed Rule G-42(f)(viii).

20 "Municipal fund security" is defined in MSRB Rule D-12 to 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." The term refers to, among other things, interests in governmentally sponsored 529 college savings plans and local government investment pools.

III. Summary of Comments Received

As noted above, the Commission received fifteen comment letters on the proposed rule change.[21]

A. Standards of Conduct

One commenter stated that the addition of "without limitation" in Proposed Rule G-42(a)(ii) raises significant and unnecessary ambiguities, as a fiduciary duty is generally understood to encompass a duty of care and duty of loyalty.[22] The commenter also stated that the language "includes, but is not limited to" in paragraph .02 of the Supplementary Material was vague, and suggested that the MSRB specify what other duties are included.[23]

B. Disclosure of Conflicts of Interest

Three commenters expressed concerns regarding the differing timing of documentation required by sections (b) and (c) of Proposed Rule G-42.[24] Each of the commenters recommended that the timing requirement in section (b), on disclosure of conflicts of interest and other information, be changed to match that in section (c), on documentation of the municipal advisory relationship.[25] Two of the commenters believe that disclosures of conflicts of interest only matter when municipal advisors enter into municipal advisory relationships.[26] One of the

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21 See supra note 4.

22 See SIFMA Letter.

23 Id.

24 See BDA Letter, GKB Letter and NAMA Letter.

25 Id.

26 See BDA Letter and GKB Letter.

commenters stated that the differing timing requirements would lead to "confusing guidance and duplicative disclosures" to clients.[27]

One commenter suggested merging the two "catch-all provisions" in subsections (b)(i)(A) and (b)(i)(G) because it is not clear what the difference is between the two paragraphs.[28]

One commenter stated that contingent fees that are based on the completion of a transaction, but not on the size of a transaction, are not a conflict of interest.[29] That commenter argued that contingent fee arrangements benefit municipal entities by insuring their government funds will not be drawn upon for payment of fees if the transaction is not completed.[30] Accordingly, the commenter requested that the proposed rule change not require a "conflict of interest" disclosure for contingent fees that do not inherently create conflicts of interest.[31]

C. Documentation of Municipal Advisory Relationship – Section (c)

Two commenters expressed concerns with disclosing information regarding legal or disciplinary events through reference to the municipal advisor's most recent Form MA and Form MA-I.[32] Both commenters stated it was difficult or burdensome for clients to find the relevant Form MA and Form MA-I documents in the SEC's EDGAR system.[33] One of the commenters

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27 See NAMA Letter.

28 Id.

29 See WM Financial Letter.

30 Id.

31 Id.

32 See GFOA II Letter and NAMA Letter.

33 Id.

requested the proposed rule be amended to require municipal advisors to provide copies of Form MA-Is directly to their clients as part of the documentation of the relationship, rather than providing the location of the forms.[34] This commenter also suggested that municipal advisors be required to notify clients of changes to Form MA that are material and to provide clients with the updated Form MA with an explanation of how any changes made to the form materially pertain to the nature of the relationship between the municipal advisor and the client.[35]

One commenter requested the MSRB provide more clarity about the term "detailed information" in the requirement in subsection (c)(iii) that the municipal advisor provide "detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission."[36] The commenter suggested the MSRB provide non-exclusive examples; for example, allowing municipal advisors to provide clients with a link to the municipal advisor's EDGAR page.[37]

D. Recommendations and Review of Recommendations of Other Parties

One commenter supported section (d)'s requirements to inform clients about reasons for a recommendation, however, it stated that greater clarity through a non-exclusive list of examples of how regulated entities could comply with the regulation was needed.[38] Specifically, the commenter suggested the MSRB provide examples of how a municipal advisor should perform

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34 See GFOA II Letter.

35 Id.

36 See NAMA Letter.

37 Id.

38 Id.

its reasonable diligence to satisfy the criteria listed in section (d).[39] This commenter also requested guidance on section (d)(iii), regarding informing a client whether the municipal advisor investigated or considered reasonably feasible alternatives because the commenter was concerned that a municipal advisor would be required to provide a list that was exhaustive and non-germane to the client.[40]

Another commenter requested the MSRB provide a more concise definition of the term "suitable" to enable municipal advisors to comply with the requirements and stated that the "perfunctory list of generic factors" for consideration in paragraph .08 of the Supplementary Material failed to provide municipal advisors with a clear definition of such an important term.[41]

One commenter expressed concern that the language in subsection (d)(ii) implies that municipal advisors would be permitted to make a recommendation to a client that is unsuitable, which seemed contrary to the proposed rule's duty of care and loyalty requirements.[42]

Two commenters expressed concern that documentation requirements for recommendations are too burdensome.[43] One of the commenters estimated that municipal advisors may spend between 20% and 30% of their time writing letters to document compliance, providing a laundry list of consequences that would dilute the advice given, "similar to the way G-17 letters from underwriters have become boiler plate disclosures and have lost

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39 Id.

40 Id.

41 See PFM Letter.

42 See GFOA Letter.

43 See BDA Letter and First Southwest Letter.

significance."[44] The other commenter suggested that the proposed rule should specifically state that such communication to clients under section (d) may be oral and is not required to be in writing.[45] The commenter was concerned that informing a client of risks, benefits or other aspects of a transaction in writing may not be in the client's best interest because that writing could be obtainable through Freedom of Information Act requests and other means.[46]

Four commenters expressed concern regarding the duty of care standard, as expressed in paragraph .01 of the Supplementary Material, which requires municipal advisors to undertake "a reasonable investigation" to avoid basing recommendations on "materially inaccurate or incomplete information."[47] All four commenters argued that a municipal advisor should be permitted to assume that information beyond what is publicly available and is provided by the client is complete and accurate.[48] Two commenters argued that this requirement was inconsistent with current regulatory regimes as other financial professionals are not required to investigate information provided by clients.[49] One of the commenters expressed concern that this requirement would make a municipal advisor potentially liable to its client for that client's own misrepresentations.[50] One of the commenters argued that in the context of 529 college savings plans, it is not uncommon for the municipal advisor that is acting as a plan sponsor to

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44 See First Southwest Letter.

45 See BDA Letter.

46 Id.

47 See ICI Letter, GFOA Letter, SIFMA Letter and WM Financial Letter.

48 Id.

49 See ICI Letter and SIFMA Letter.

50 See SIFMA Letter.

rely on its state partner to provide the advisor with the information necessary for the advisor to fulfill its obligations and duties to the plan.[51] In such circumstances, the commenter argued, municipal advisors should be able to presume the states' representatives are providing materially accurate and complete information.[52] One commenter supported the duty of care provisions generally but expressed concern that requiring a municipal advisor to investigate this information "may be excessive" and could lead to cost increases that could be passed on to the client.[53] Finally, one commenter requested the MSRB provide clarity by providing "non-exclusive explanatory examples of what constitutes a 'reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action.'"[54]

E. Prohibition on Delivering Inaccurate Invoices

One commenter expressed support for the prohibition on delivering inaccurate invoices, but requested the addition of materiality and knowledge qualifiers (i.e., a municipal advisor may not intentionally deliver a materially inaccurate invoice), so that immaterial or unintentional errors would not be prohibited.[55]

F. Prohibited Principal Transactions

Ten commenters expressed a variety of concerns (as summarized below) with the prohibition of certain principal transactions in Proposed Rule G-42(e)(ii).[56]

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51 See ICI Letter.

52 Id.

53 See GFOA Letter.

54 See NAMA Letter.

55 See SIFMA Letter.

56 See SIFMA Letter, Zions Letter, ABA Letter, BDA Letter, GKB Letter, Millar Letter,

1. Comparison with Similar Regulatory Regimes

Two commenters expressed concerns that the prohibition on principal transactions is overbroad and inconsistent with existing regulatory regimes regarding financial professionals.[57] One commenter argued that investment advisers owe a fiduciary duty but are not subject to a complete prohibition on principal transactions.[58] Instead, the commenter noted that investment advisers and their affiliates are permitted to engage in such transactions provided they make relevant disclosures and obtain client consent.[59] Another commenter similarly argued that restrictions on principal transactions for municipal advisors and their affiliates should be consistent with those on investment advisers, and that clients should be permitted to waive related conflicts of interest.[60] The commenter also argued that principal transactions can lead to more favorable financing terms for clients and cited Commission guidance.[61]

2. Advice Incidental to Securities Execution Services

Three commenters argued for an exemption to the principal transaction prohibition when advice is provided to a municipal entity client that is incidental to or ancillary to a broker-dealer's execution of securities transactions, including transactions involving municipal bond proceeds or municipal escrow funds.[62] One of the commenters proposed excluding from the

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FSI Letter, GFOA II Letter, Wells Fargo Letter and NAMA Letter.

57 See SIFMA Letter and Zions Letter.

58 See SIFMA Letter.

59 Id.

60 See Zions Letter.

61 See id. (citing Interpretation of Section 206(3) of the Investment Advisers Act of 1940, SEC Release No. IA-1732 (July 20, 1998)).

62 See FSI Letter, GFOA II Letter and SIFMA Letter.

proposed prohibition sales of fixed income securities by a broker-dealer providing incidental advice, including on bond proceeds, to the transaction, until the Commission and the Department of Labor conclude their consideration of a uniform fiduciary standard for broker-dealers and investment advisors and then harmonize the MSRB's regulatory approach to the execution of fixed income transactions when a fiduciary duty is owed to the client.[63]

Another commenter suggested the MSRB modify the ban on principal transactions in the case of brokerage of bond proceed investments.[64] The commenter expressed concern that the proposed prohibition could force small governments to establish "a more expensive fee-based arrangement with an investment adviser in order to receive this very limited type of advice on investments that are not risky."[65]

One of the commenters suggested the exception could include certain disclosure and client consent provisions similar to Investment Advisers Act Temporary Rule 206(3)-3T that permits investment advisers that are also broker-dealers to act in a principal capacity in transactions with certain advisory clients.[66] The commenter also suggested the proposed exception be limited to certain fixed-income securities as defined by Rule 10b-10(d)(4).[67]

3. Scope: "Directly Related To"

Three commenters expressed concern that the language in section (e)(ii) limiting the principal transaction prohibition to transactions "directly related to the same municipal securities

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63 See SIFMA Letter.

64 See GFOA II Letter; see also SIFMA Letter.

65 See GFOA II Letter.

66 See FSI Letter.

67 Id.

transaction or municipal financial product" is vague or overly broad.[68] One of the commenters proposed alternative language prohibiting a principal transaction "if the structure, timing or terms of such principal transaction was established on the advice of the municipal advisor…."[69] The commenter also requested clarification regarding the application of the principal transaction ban to several specific scenarios.[70]

One commenter argued that any prohibition should be more narrowly tailored to prevent principal transactions directly related to the advice provided by the municipal advisor.[71] The commenter believed that, as written, the prohibition would prevent a firm from acting as counterparty on a swap after having advised a municipal entity client on investing proceeds from a connected issuance of municipal securities.[72] The commenter proposed alternative language prohibiting principal transactions "directly related to the advice rendered by such municipal advisor."[73] This commenter also requested clarification regarding when a ban would end because as written, the prohibition would require firms to check for advisory relationships that may have ended long before the proposed principal transaction takes place.[74]

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68 See BDA Letter, GKB Letter and SIFMA Letter.

69 See BDA Letter; see also GKB Letter.

70 See BDA Letter.

71 See SIFMA Letter.

72 Id.

73 Id.

74 Id.

4. Exception for Affiliates or "Remote Businesses"

Two commenters addressed concerns regarding the impact of the principal transaction prohibition on affiliates of municipal advisors.[75] One commenter stated that the MSRB should exempt municipal advisor affiliates operating with information barriers, and stated that if an affiliate has no actual knowledge of the municipal advisory relationship between the municipal entity client and the municipal advisor due to information barriers and governance structures, the risk of a conflict of interest is significantly diminished.[76] Another commenter proposed the addition of a knowledge standard (i.e., to prohibit a municipal advisor and any affiliate from knowingly engaging in a prohibited principal transaction), arguing that such a knowledge standard is consistent with Section 206(3) of the Investment Advisers Act.[77]

One commenter suggested that an investment vehicle such as a mutual fund that is advised by a municipal advisor or its affiliate should not itself be an "affiliate" of the municipal advisor solely on the basis of the advisory relationship.[78] Otherwise, the commenter argued the investment fund may be unable to invest in a municipal security if an affiliate of the fund's advisor acted as a municipal advisor on the transaction.[79] The commenter stated that the ban in this type of situation is unnecessary because mutual funds and similar vehicles have independent boards and their affiliates do not have significant equity stakes in the funds they advise.[80]

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75 See SIFMA Letter and Wells Fargo Letter.

76 See Wells Fargo Letter.

77 See SIFMA Letter.

78 See SIFMA Letter.

79 Id.

80 Id.

5. Bank Loans

Several commenters expressed concerns with proposed paragraph .11 of the Supplementary Material under which a bank loan would be subject to the prohibition on principal transactions if the loan was "in an aggregate principal amount of $1,000,000 or more and economically equivalent to the purchase of one or more municipal securities."[81]

One of the commenters expressed general concern that banking organizations that are required to operate through a variety of affiliates and subsidiaries would fall within the scope of the "common control" definition in the statute and the prohibition would prevent a banking organization from providing ordinary bank services to a municipal entity.[82] The commenter also requested the prohibition be amended to exclude bank loans made by an affiliate from the definition of "other similar financial products" if the bank enters into the loan after the municipal entity solicits bidders for such loan using a request for proposal and the bank intends to hold the loan on its books until maturity.[83] The commenter believed that there should be few concerns regarding conflicts if a loan is entered into by an affiliate of a municipal advisor and a municipal entity would be free to choose its lender based on factors most appropriate for the municipality and its taxpayers.[84] In addition, the commenter stated that the potential conflicts of interest should be substantially mitigated if a bank holds a loan on its books to maturity because in such cases, the commenter believes the interest of the municipal entity and the bank are aligned in that

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81 See ABA Letter, Millar Jiles Letter, BDA Letter, Zions Letter.

82 See ABA Letter.

83 Id.

84 Id.

each party wants funding that serves the particular needs of the municipal entity and both parties must be satisfied that the loan can be repaid and desire that it be repaid.[85]

Similarly, another commenter suggested that a municipal advisor should be able to satisfy its fiduciary obligation to a municipal entity by procuring bids for the proposed financing (and thus make a principal bank loan through an affiliated entity permissible), stating that if the affiliate of the municipal advisor were the lowest bidder, the municipality would be penalized by being forced to borrow at a higher rate under the proposed rule change.[86]

One commenter argued that bank loans "should be excluded in their entirety from Proposed Rule G-42."[87] The commenter believed that it would be paradoxical to allow individuals and private businesses to borrow money from banks that are fiduciaries, but to prevent municipal entities from doing the same.[88] Alternatively, the commenter requested that MSRB increase the threshold loan amount in paragraph .11 of the Supplementary Material to align with the bank qualified exemption amount in the Internal Revenue Code, which it states is currently $10,000,000.[89]

One commenter commented on the language of paragraph .11 of the Supplementary Material, arguing that the phrase "economically equivalent" is "too ambiguous and does not provide clarity."[90] The commenter acknowledged this phrase appeared intended to develop a

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85 Id.; see also Zions Letter.

86 See Millar Jiles Letter.

87 See Zions Letter.

88 Id.

89 Id.

90 See BDA Letter.

standard that does not require the determination of when a bank loan constitutes a security, and acknowledged difficulties applying the Reves[91] test to make such a determination.[92] However, the commenter argued that this language will "compound the confusion" and requested that the MSRB be clear about which structural components of a direct purchase structure would cause it to fall within the scope of the transaction ban.[93]

Another commenter expressed confusion regarding the "economically equivalent" language.[94] The commenter requested clarity regarding the time period over which bank loans should be aggregated in order to determine whether a series of loans meets the "aggregate principal amount" threshold specified in paragraph .11 of the Supplementary Material.[95] The commenter also noted that the typical bank loan to a municipal entity is for the purchase of equipment and is payable over a term of less than five years, while the typical municipal security is secured by a pledge of revenues and is payable over a much longer term.[96] The commenter asked whether a bank loan of $1,500,000 which is secured by real or personal property and which is payable over a term of five years or less would be "economically equivalent to the purchase of one or more municipal securities."[97]

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91 Reves v. Ernst & Young, 494 U.S. 56 (1990).

92 See BDA Letter.

93 Id.

94 See Millar Jiles Letter.

95 Id.

96 Id.

97 Id.

6. Exception if Represented by Separate Registered Municipal Advisor

One commenter suggested the proposed subsection (e)(ii) be revised to permit an otherwise prohibited principal transaction where the municipal entity is represented by more than one municipal advisor, including a separate registered municipal advisor with respect to the principal transaction.[98] The commenter argued this exemption would be comparable to the independent registered municipal advisor exemption, and would permit municipal entities to contract with a counterparty of their choice.[99] The commenter also noted this would be especially beneficial to municipal entities who may hire several municipal advisors for different elements of the same transaction.[100]

7. Relationship between MSRB Rule G-23 and the Prohibition on Principal Transactions

Two commenters stated that the reference to MSRB Rule G-23 in paragraph .07 of the Supplementary Material was unnecessary or enhances the possible conflict between Proposed Rule G-42 and Rule G-23.[101] One of the commenters interpreted the prohibition in Rule G-23 as subsumed by the more stringent provisions of Proposed Rule G-42.[102] The other commenter believed the additional activities or principal transactions that should be prohibited under Proposed Rule G-42 (namely advice with respect to municipal derivatives or the investment of

98 See SIFMA Letter.

99 Id.

100 Id.

101 See BDA Letter and NAMA Letter.

102 See BDA Letter.

proceeds) don't conflict with Rule G-23, but merely supplement the prohibitions in Rule G-23 by extending the list of prohibitions found in Rule G-23.[103]

G. Inadvertent Advice – Supplementary Material .06

One commenter suggested that the safe harbor in paragraph .06 of the Supplementary Material for inadvertent advice be expanded to include the prohibition on principal transactions.[104] That commenter argued that firms would be unlikely to rely on the safe harbor unless it also provided an exemption for inadvertent advice triggering the prohibition on principal transactions.[105]

One commenter argued that the inadvertent advice provision in paragraph .06 of the Supplementary Material creates a loophole that would allow broker dealers to serve as financial advisors (without a fiduciary duty) and then switch to serving as an underwriter by claiming that such advice was inadvertent.[106]

H. Sophisticated Municipal Issuers

One commenter requested an exemption to the suitability standard in proposed section (d) and paragraph .08 of the Supplementary Material for "sophisticated municipal issuers."[107] This commenter stated that certain issuers are capable of independently evaluating risks in issuing

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103 See NAMA Letter.

104 See SIFMA Letter.

105 Id.

106 See WM Financial Letter.

107 See First Southwest Letter.

municipal securities, and exercising independent judgment in evaluating recommendations of a municipal advisor.[108]

I. Request for Prospective Application of Proposed Rule G-42 Requirements

Two commenters requested the proposed rule change only apply prospectively to municipal advisory relationships entered into, or recommendations of municipal securities transactions or municipal financial products to an existing municipal entity or obligated person client made, after the effective date of the proposed rule change.[109] One of the commenters noted this was relevant with respect to 529 plans "due to the nature of the advisor's relationship with the plan and duration of existing 529 plan contracts."[110] The other commenter argued that reviewing and likely supplementing the documentation for all existing municipal advisory relationships will be overly burdensome for both municipal advisors and their clients.[111]

J. Use of Supplementary Material in Proposed Rule G-42

One commenter suggested that all supplementary material be removed and moved to separate written interpretative guidance to afford the subjects more "fittingly robust regulatory guidance."[112] The commenter was concerned that the supplementary material which does not allow for "more succinct definitional direction" would lead to inconsistent application by registrants and "the potential for unintended consequences as a matter of the statute itself."[113]

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108 Id.

109 See ICI Letter and SIFMA Letter.

110 See ICI Letter.

111 See SIFMA Letter.

112 See PFM Letter.

113 Id.

K. Other Comments

One commenter expressed concerns with the lack of a pay-to-play rule for non-dealer municipal advisors, arguing that non-dealer municipal advisors should be subject to a rule based on the framework of MSRB Rule G-37 limiting municipal advisors to a limit of $250 per election to a candidate for whom the contributor is eligible to vote.[114]

IV. Proceedings to Determine Whether to Approve or Disapprove SR-MSRB-2015-03 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[115] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[116] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15B(b)(2) of the Act[117] requires that the MSRB propose and adopt rules to effect the purposes of the Act with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial

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114 See First Southwest Letter.

115 15 U.S.C. 78s(b)(2)(B).

116 Id.

117 15 U.S.C. 78o-4(b)(2).

products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors. In addition, Section 15B(b)(2)(C) of the Act[118] requires, among other things, that the MSRB's rules 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 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. In addition, Section 15B(b)(2)(L)(i) of the Act[119] requires, with respect to municipal advisors, the MSRB to adopt rules to prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients.

The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Sections 15B(b)(2),[120] 15B(b)(2)(C),[121] and 15B(b)(2)(L)(i)[122] of the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any

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118 15 U.S.C. 78o-4(b)(2)(C).

119 15 U.S.C. 78o-4(b)(2)(L)(i).

120 15 U.S.C. 78o-4(b)(2).

121 15 U.S.C. 78o-4(b)(2)(C).

122 15 U.S.C. 78o-4(b)(2)(L)(i).

others they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 15B(b)(2)(C) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[123]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 30 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 45 days from publication in the Federal Register].

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-2015-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

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123 Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2015-03. 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-2015-03 and should be submitted on or before [insert date 30 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 45 days from date of publication in the Federal Register].

For the Commission, pursuant to delegated authority.[124]

Robert W. Errett
Deputy Secretary

[124] 17 CFR 200.30-3(a)(12).