SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75932; File No. SR-MSRB-2015-09)

September 16, 2015

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, and Rule G-8, on Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors, and the Deletion of Prior Interpretive Guidance

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 September 2, 2015, 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 filed with the Commission a proposed rule change consisting of proposed amendments to Rule G-20 (with amendments, "proposed amended Rule G-20"), on gifts, gratuities and non-cash compensation, proposed amendments to Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance that would be codified by proposed amended Rule G-20 (the "proposed rule change"). The MSRB requested that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes.

The text of the proposed rule change is available on the MSRB's website at

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

2 17 CFR 240.19b-4.

www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

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

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[3] The Dodd-Frank Act amended Section 15B of the Exchange Act to establish a new federal regulatory regime requiring municipal advisors to register with the Commission, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that rulemaking authority, has been developing a comprehensive regulatory framework for municipal advisors and their associated persons.[4] Important elements of that regulatory framework are the proposed amendments to Rules G-20[5]and G-8.

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[3] Pub. Law No. 111-203, 124 Stat. 1376 (2010).

[4] MSRB Rule D-11 defines "associated persons" as follows:

> Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and

The proposed rule change would further the purposes of the Exchange Act, as amended by the Dodd-Frank Act, by addressing improprieties and conflicts that may arise when municipal advisors and/or their associated persons give gifts or gratuities to employees who may influence the award of municipal advisory business. Extending the policies embodied in existing Rule G-20 to municipal advisors through proposed amended Rule G-20 would ensure common standards for brokers, dealers, and municipal securities dealers ("dealers") and municipal advisors (dealers, together with municipal advisors, "regulated entities") that all operate in the municipal securities market.[6]

Proposed Amended Rule G-20

In summary, the proposed amendments to Rule G-20 would:

- Extend the relevant existing provisions of the rule to municipal advisors and their associated persons and to gifts given in relation to municipal advisory activities;

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include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

5 Existing Rule G-20 is designed, in part, to minimize the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of such organizations. Rule G-20 helps to ensure that a dealer's municipal securities activities are undertaken in arm's length, merit-based transactions in which conflicts of interest are minimized. See MSRB Notice 2004-17 (Jun. 15, 2004).

6 MSRB Rule G-17 is the MSRB's fundamental fair-dealing rule. It provides that a dealer or municipal advisor, in the conduct of its municipal securities activities or municipal advisory activities, shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. As frequently previously stated, Rule G-17 may apply regardless of whether Rule G-20 or any other MSRB rule also may be applicable to a particular set of facts and circumstances. See, e.g., Interpretative Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012) (reminding underwriters of the application of Rule G-20, in addition to their obligations under Rule G-17).

- Consolidate and codify interpretive guidance, including interpretive guidance published by the Financial Industry Regulatory Authority, Inc. ("FINRA") and adopted by the MSRB, to ease the compliance burden on regulated entities that must understand and comply with these obligations, and delete prior interpretive guidance that would be codified by proposed amended Rule G-20; and
- Add a new provision to prohibit the seeking or obtaining of reimbursement by a regulated entity of certain entertainment expenses from the proceeds of an offering of municipal securities.

Further, proposed amended Rule G-20 would include several revisions that are designed to assist regulated entities and their associated persons with their understanding of and compliance with the rule. Those revisions include the definition of additional key terms and the addition of a paragraph that sets forth the purpose of the rule. Proposed amended Rule G-20 is discussed below.

A. Extension of Rule G-20 to Municipal Advisors and Municipal Advisory Activities and Clarifying Amendments

Proposed amended Rule G-20 would extend to municipal advisors and their associated persons: (i) the general dealer prohibition of gifts or gratuities in excess of $100 per person per year in relation to the municipal securities activities of the recipient's employer (the "$100 limit"); (ii) the exclusions contained in the existing rule from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and (iii) the existing exclusion relating to contracts of employment or compensation for services. Proposed section (g), on non-cash compensation in

connection with primary offerings, would not be extended to municipal advisors or to associated persons thereof.

(i) General prohibition of gifts or gratuities in excess of $100 per year

Proposed section (c) (based on section (a) of existing Rule G-20) would extend to a municipal advisor and its associated persons the provision that currently prohibits a dealer and its associated persons, in certain circumstances, from giving directly or indirectly any thing or service of value, including gratuities ("gifts"), in excess of $100 per year to a person (other than an employee of the dealer). As proposed, the prohibited payments or services by a dealer or municipal advisor or associated persons would be those provided in relation to the municipal securities activities or municipal advisory activities of the employer of the recipient (other than an employee of the regulated entity).

(ii) Exclusions from the $100 limit

Proposed section (d) (based on section (b) of existing Rule G-20) would extend to a municipal advisor and its associated persons the provision that excludes certain gifts from the $100 limit of proposed section (c) as long as the conditions articulated by proposed section (d) and the relevant subsection, as applicable, are met. Proposed section (d) also would state that gifts, in order to be excluded from the $100 limit, must not give rise to any apparent or actual material conflict of interest.

Proposed section (d) would include proposed subsections (d)(i) through (d)(iv) and (d)(vi) that would consolidate and codify interpretive guidance that the MSRB provided in MSRB Notice 2007-06 (the "2007 MSRB Gifts Notice").[7] That notice encouraged dealers to adhere to the highest ethical standards and reminded dealers that Rule G-20 was designed to

[7] See Dealer Payments in Connection with the Municipal Issuance Process, MSRB Notice 2007-06 (Jan. 29, 2007).

"avoid conflicts of interest."[8] The 2007 MSRB Gifts Notice's interpretive guidance also included FINRA guidance that the MSRB had adopted by reference.[9] Further, proposed subsection (d)(v) would codify FINRA interpretive guidance relating to bereavement gifts that the MSRB previously had not adopted.[10] The MSRB believes that these proposed codifications will (i) enhance the understanding of the interpretive guidance applicable to the exclusions, (ii) foster compliance with the rule, and (iii) enhance efficiencies for regulated entities and regulatory enforcement agencies. A more detailed discussion of the subsections to proposed section (d) is provided below.

Proposed subsection (d)(i) would exclude, as is currently the case for dealers under existing Rule G-20, a gift of meals or tickets to theatrical, sporting, and other entertainment given by a regulated entity or its associated persons from the $100 limit if they are a "normal business dealing." The regulated entity or its associated persons would be required to host the gifted event, as is currently the case for dealers. If the regulated entity or its associated persons were to fail to host gifts of these types, then those gifts would be subject to the $100 limit. In

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8 Id.

9 See 2007 MSRB Gifts Notice (reminding dealers of the application of Rule G-20 and Rule G-17 in connection with certain payments made and expenses reimbursed during the municipal bond issuance process, and stating that the National Association of Securities Dealers, Inc.'s ("NASD") guidance provided in NASD Notice to Members 06-69 (Dec. 2006) to assist dealers in complying with NASD Rule 3060 applies as well to comparable provisions of Rule G-20).

10 See FINRA Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts), dated December 17, 2007 (stating that FINRA staff agrees that reasonable and customary bereavement gifts (e.g., appropriate flowers, food platter for the mourners, perishable items intended to comfort the recipient or recipient's family) are not "in relation to the business of the employer of the recipient" under FINRA Rule 3060, but that bereavement gifts beyond what is reasonable and customary would be deemed to be gifts in relation to the business of the employer of the recipient and subject to the $100 limit of Rule 3060) ("FINRA bereavement gift guidance").

addition, the regulated entity would be excluded from the $100 limit if it were to sponsor legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses. Finally, municipal advisors and their associated persons would be held to the same standard as dealers, in that gifts would not qualify as "normal business dealings" if they were "so frequent or so extensive as to raise any question of propriety."

Proposed subsections (d)(ii) through (iv) would establish three categories of gifts that previously were excluded from the $100 limit under the category of "reminder advertising" in the rule language regarding "normal business dealings" in existing section (b) of Rule G-20. The MSRB believes that these more specific categories in the proposed new subsections will assist regulated entities with their compliance obligations by providing additional guidance on the types of gifts that constitute reminder advertising under the existing rule. Those more specific categories are:

- gifts commemorative of a business transaction, such as a desk ornament or Lucite tombstone (proposed subsection (d)(ii));
- de minimis gifts, such as pens and notepads (proposed subsection (d)(iii)); and
- promotional gifts of nominal value that bear an entity's corporate or other business logo and that are substantially below the $100 limit (proposed subsection (d)(iv)).

Proposed subsection (d)(v) would exclude bereavement gifts from the $100 limit. That proposed subsection would consolidate and codify the FINRA bereavement gift guidance currently applicable to dealers that exempts customary and reasonable bereavement gifts from the $100 limit. Under proposed subsection (d)(v), the bereavement gift would be required to be reasonable and customary for the circumstances.

Finally, proposed subsection (d)(vi) would exclude personal gifts given upon the occurrence of infrequent life events, such as a wedding gift or a congratulatory gift for the birth of a child. Similar to proposed subsection (d)(v), proposed subsection (d)(vi) would consolidate and codify the FINRA personal gift guidance currently applicable to dealers. That guidance exempts personal gifts that are not "in relation to the business of the employer of the recipient"[11] from the $100 limit. Proposed paragraph .04 of the Supplementary Material, discussed below, would provide guidance as to types of personal gifts that generally would not be subject to the $100 limit.

With regard to proposed subsections (d)(ii) through (vi), the "frequency" and "extensiveness" limitations applicable to proposed subsection (d)(i) would not apply. The MSRB is proposing to modify those limitations to better reflect the characteristics of the gifts described in proposed subsections (d)(ii) through (vi). Gifts described in those subsections would be gifts that are not subject to the $100 limit, and, typically would not give rise to a conflict of interest that Rule G-20 was designed to address. Transaction-commemorative gifts, de minimis gifts, promotional gifts, bereavement gifts, and personal gifts, as described in the proposed rule change, by their nature, are given infrequently and/or are of such nominal value that retaining the requirement that such gifts be "not so frequent or extensive" would be unnecessarily duplicative of the description of these gifts and could result in confusion.

To assist regulated entities with their understanding of the rule's exclusions and with their compliance with the rule, the proposed rule change would provide guidance regarding promotional gifts and "other business logos" (proposed paragraph .03 of the Supplementary Material) and personal gifts (proposed paragraph .04 of the Supplementary Material).

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[11] NASD Notice to Members 06-69 (Dec. 2006).

Specifically, proposed paragraph .03 would clarify that the logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of the regulated entity, would constitute an "other business logo" under proposed subsection (d)(iv). The promotional items bearing such logos, therefore, would be excluded from the $100 limit so long as they meet all of the other terms of proposed section (d) and proposed subsection (d)(iv), including the requirement that the promotional items not give rise to any apparent or actual material conflict of interest.[12] These items would qualify as excluded promotional gifts because they are as unlikely to result in improper influence as items that previously have been excluded (i.e., those items bearing the corporate or other business logo of the regulated entity itself).

Proposed paragraph .04 of the Supplementary Material regarding personal gifts would state that a number of factors should be considered when determining whether a gift is in relation to the municipal securities or municipal advisory activities of the employer of the recipient. Those factors would include, but would not be limited to, the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift.[13] Proposed paragraph .04 would also state that a gift would be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the

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[12] The logo of a 529 college savings plan ("529 plan") for which a dealer is acting as a distributor would likely constitute an "other business logo" under proposed paragraph .03 of the Supplementary Material. For purposes of determining the applicability of proposed amended Rule G-20 and the exclusion from the $100 limit under proposed subsection (d)(iv), the analysis would "look through" to the ultimate recipient of the gift. For example, a state issuer arranges to have a box of 200 tee shirts containing the logo of its 529 advisor-sold plan delivered to the 529 plan's primary distributor. That distributor, in turn, provides the box of tee shirts to a selling firm. Registered representatives of that selling firm then distribute one tee shirt to each of 200 school children. Each gift of a tee shirt would constitute one gift to each school child.

[13] See supra n.11.

recipient when a regulated entity bears the cost of a gift, either directly or indirectly by reimbursing an associated person.

(iii) Exclusion for Compensation Paid as a Result of Contracts of Employment or Compensation for Services

Proposed section (f) would extend to municipal advisors the exclusion from the $100 limit in existing Rule G-20(c) for contracts of employment with or compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. However, proposed section (f) would clarify that the type of payment that would be excluded from the general limitation of proposed section (c) is "compensation paid as a result of contracts of employment," and not, simply, "contracts of employment" (emphasis added). The MSRB is proposing this amendment to clarify that the exclusion in proposed section (f) from the limitation of proposed section (c) does not apply to the existence or creation of employment contracts. Rather, that exclusion would apply to the compensation paid as a result of certain employment contracts. This amendment is only a clarification and would not alter the requirements currently applicable to dealers.

B. Consolidation and Codification of MSRB and FINRA Interpretive Guidance

As discussed above under "Extension of Rule G-20 to Municipal Advisors and Municipal Advisory Activities and Clarifying Amendments," the proposed amendments would consolidate and codify existing FINRA interpretive guidance previously adopted by the MSRB and incorporate additional relevant FINRA interpretive guidance that has not previously been adopted by the MSRB. The interpretive guidance codified by the proposed amendments would provide that gifts and gratuities that generally would not be subject to the $100 limit would

include: transaction-commemorating,[14] de minimis,[15] promotional,[16] bereavement[17] and personal gifts[18] discussed above.

The substance of the statement in the 2007 MSRB Gifts Notice, which provides that certain portions of the NASD Notice to Members 06-69 apply as well to comparable provisions of MSRB Rule G-20, would be codified in the proposed rule change, That portion of the interpretative guidance, accordingly, would be deleted. While FINRA's interpretive guidance regarding bereavement gifts was not formerly adopted by the MSRB, the MSRB believes that this guidance will be appropriate for regulated entities as it would be consistent with the purpose and scope of proposed amended Rule G-20. Further, the MSRB believes that the consolidation and codification of applicable interpretive guidance will foster compliance with the rule as well as create efficiencies for regulated entities and regulatory enforcement agencies.

In addition to the interpretive guidance discussed above, proposed paragraphs .01, .02, and .05 of the Supplementary Material would provide guidance relating to the valuation and the aggregation of gifts and to the applicability of state laws. Proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined generally according to the higher of its cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the $100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient

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14 Proposed subsection (d)(ii), on transaction-commemorative gifts.

15 Proposed subsection (d)(iii), on de minimis gifts.

16 Proposed subsection (d)(iv), on promotional gifts.

17 Proposed subsection (d)(v), on bereavement gifts.

18 Proposed subsection (d)(vi), on personal gifts.

over the course of a year however "year" is selected to be defined by the regulated entity (i.e., calendar year or fiscal year, or rolling basis). Proposed paragraphs .01 and .02 reflect existing FINRA interpretive guidance regarding the aggregation of gifts for purposes of its gift rules, which the MSRB has previously adopted.[19]

Proposed paragraph .05 of the Supplementary Material would remind regulated entities that, in addition to all the requirements of proposed amended Rule G-20, regulated entities may also be subject to other duties, restrictions, or obligations under state or other laws. In addition, proposed paragraph .05 would provide that proposed amended Rule G-20 would not supersede any more restrictive provisions of state or other laws applicable to regulated entities or their associated persons. As applied to many municipal advisors previously unregistered with, and unregulated by, the MSRB and their associated persons, the provision would serve to directly alert or remind municipal advisors that additional laws and regulations may apply in this area.[20]

C. Prohibition of Reimbursement for Entertainment Expenses

Proposed section (e) of Rule G-20 would provide that a regulated entity is prohibited from requesting or obtaining reimbursement for certain entertainment expenses from the proceeds of an offering of municipal securities. This provision would address a matter highlighted by a recent FINRA enforcement action.[21] Specifically, proposed section (e) would

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19 NASD Notice to Members 06-69 (Dec. 2006); 2007 MSRB Gifts Notice.

20 The MSRB previously had provided this alert or reminder through interpretative guidance. See 2007 MSRB Gifts Notice (noting that state and local laws also may limit or proscribe activities of the type addressed in this notice).

21 Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014) (concluding that, while the hearing panel did not "endorse the practice of municipal securities firms seeking and obtaining reimbursement for entertainment expenses incurred in bond rating trips," neither the MSRB's rules nor interpretive

provide that a regulated entity that engages in municipal securities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of such offering of municipal securities.

Proposed section (e), however, limits what would constitute an entertainment expense. Specifically, the term "entertainment expenses" would exclude "ordinary and reasonable expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained." Proposed subsection (e) also would be intended to allow the continuation of the generally accepted market practice of a regulated entity advancing normal travel costs (e.g., reasonable airfare and hotel accommodations) to personnel of a municipal entity or obligated person for business travel related to a municipal securities issuance, such as bond rating trips and obtaining reimbursement for such costs. Some examples of prohibited entertainment expenses that would, for purposes of proposed section (e), be included are tickets to theater, sporting or other recreational spectator events, sightseeing tours, and transportation related to attending such entertainment events.

D. Additional Proposed Amendments to Rule G-20

In addition to the previously discussed proposed amendments to Rule G-20, the MSRB also is proposing several amendments to assist readers with their understanding of and

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guidance put the dealer on fair notice that such conduct would be unlawful); see 2007 MSRB Gifts Notice (stating that "dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which dealers seek reimbursement from bond proceeds, comport with the requirements of" Rules G-20 and G-17).

compliance with Rule G-20. These proposed amendments include (i) a revised rule title, (ii) a new provision stating the rule's purpose, and (iii) a re-ordering of existing provisions and additional defined terms.

(i) Amendment to Title

To better reflect the content of proposed amended Rule G-20, the title of the rule would be amended to include the phrase "Expenses of Issuance." This amendment would alert readers that the rule addresses expenses that are related to the issuance of municipal securities and that the reader should consult the rule if a question arises regarding such a matter.

(ii) Addition of Purpose Section

Proposed section (a) would set forth the purpose of Rule G-20. It would include a brief synopsis of the rule's scope and function.

(iii) Re-ordering and Definitions of Terms

To assist readers with their understanding of the rule, proposed section (b), at the beginning of the proposed amended rule, would define terms that currently are included in the last section of existing Rule G-20, section (e).

The MSRB is also proposing to include three additional defined terms solely for the purposes of proposed amended Rule G-20: "person," "municipal advisor" and "regulated entity." "Regulated entity" would mean a broker, dealer, municipal securities dealer or municipal advisor, but would exclude the associated persons of such entities. Incorporation of this term into the rule would simplify and shorten the text of proposed amended Rule G-20 as it would replace applicable references within proposed amended Rule G-20 to dealers while also including municipal advisors. The term "municipal advisor" would have the same meaning as in Section

15B(e)(4) of the Exchange Act.[22] The MSRB included that term to clarify that proposed amended Rule G-20 would apply to municipal advisors that are such on the basis of providing advice and also that are such on the basis of undertaking a solicitation.[23] "Person" would mean a natural person, codifying the MSRB's existing interpretive guidance stating the same.[24]

Proposed Amendments to Rule G-8

Proposed amendments to Rule G-8 would extend to municipal advisors the recordkeeping requirements related to Rule G-20 that currently apply to dealers.[25] Those recordkeeping requirements would be set forth under proposed paragraphs (h)(ii)(A) and (B) of Rule G-8. Municipal advisors would be required to make and retain records of (i) all gifts and gratuities that are subject to the $100 limit and (ii) all agreements of employment or for compensation for services rendered and records of all compensation paid as a result of those agreements. Municipal advisor recordkeeping requirements would be identical to the recordkeeping requirements to which dealers would be subject in proposed amended Rule G-8(a)(xvii)(A) and (B) (discussed below). The MSRB believes that the proposed amendments to Rule G-8 will

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22 15 U.S.C. 78o-4(e)(4).

23 Id.

24 See MSRB Interpretive Letter "Person" (Mar. 19, 1980).

25 The MSRB solicited comments regarding possible amendments to Rule G-9 in its Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors, MSRB Notice 2014-18 (Oct. 23, 2014). However, the MSRB omitted those amendments from this proposed rule change because their substance subsequently was addressed by a separate rulemaking initiative. See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed New Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G-9, on Preservation of Records, Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (File No. SR-MSRB-2014-06).

ensure common standards for municipal advisors and dealers, and will assist in the enforcement of proposed amended Rule G-20 by requiring that regulated entities, including municipal advisors, create and maintain records to document their compliance with proposed amended Rule G-20.

Further, the Board is proposing to amend the rule language contained in Rule G-8(a)(xvii)(A), (B), and (C) applicable to dealers, to reflect the revisions to proposed amended Rule G-20. Specifically, proposed amended paragraph (a)(xvii)(A) would provide that a separate record of any gift or gratuity subject to the general limitation of proposed amended Rule G-20(c) must be made and kept by dealers (emphasis added to amended rule text). The proposed amendments to paragraph (a)(xvii)(A) would track the reordering of sections in proposed amended Rule G-20 (replacing the reference to Rule G-20(a) with a reference to Rule G-20(c)) and would provide greater specificity as to the records that a dealer must maintain by referencing the terms used in proposed amended Rule G-20(c). Paragraph (a)(xvii)(B) would be amended to clarify that dealers must make and keep records of all agreements referred to in proposed amended Rule G-20(f) and records of all compensation paid as a result of those agreements (emphasis added to proposed amended rule text). Similar to paragraph (a)(xvii)(A), the proposed amendments to paragraph (a)(xvii)(B) would track the reordering of sections in proposed amended Rule G-20 (replacing the reference to Rule G-20(c) with a reference to proposed amended Rule G-20(f)) and would provide greater specificity as to the types of records that a dealer must maintain by referencing the terms used in proposed amended Rule G-20(f). Paragraph (a)(xvii)(C) also would be amended to track the reordering of sections in proposed amended Rule G-20 (replacing the references to Rule G-20(d) with references to proposed amended Rule G-20(g)).

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act[26] provides that

> [t]he Board shall propose and adopt rules to effect the purposes of this title 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 products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[27] 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, 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 the proposed rule change is consistent with Section 15B(b)(2) and Section 15B(b)(2)(C) of the Exchange Act. The proposed rule change would help prevent fraudulent and manipulative practices, promote just and equitable principles of trade and protect investors, municipal entities, obligated persons and the public interest by reducing, or at least exposing, the potential for conflicts of interest in municipal advisory activities by extending the relevant provisions of existing Rule G-20 to municipal advisors and their associated persons. Proposed amended Rule G-20 would help ensure that engagements of municipal advisors, as well as engagements of dealers, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. By expressly prohibiting the seeking

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[26] 15 U.S.C. 78o-4(b)(2).

[27] 15 U.S.C. 78o-4(b)(2)(C).

of reimbursement from the proceeds of issuance expenses for the entertainment of any person, including any official or other municipal entity personnel or obligated person personnel, proposed amended Rule G-20 would serve as an effective means of curtailing such practices by providing regulated entities with clear notice and guidance regarding the existing MSRB regulations of such matters. Further, proposed amended Rule G-20 would enhance compliance with Rule G-20 by codifying certain MSRB interpretive guidance and by adopting and codifying certain FINRA interpretive guidance. This codification not only will heighten regulated entity compliance and efficiency (and heighten regulatory enforcement efficiency), but will help prevent inadvertent violations of Rule G-20.

In addition, the proposed amendments to Rule G-8 would assist in the enforcement of Rule G-20 by extending the relevant existing recordkeeping requirements of Rule G-8 that currently are applicable to dealers to municipal advisors. Regulated entities, in a consistent and congruent manner, would be required to create and maintain records of (i) any gifts subject to the $100 limit in proposed amended Rule G-20(c) and (ii) all agreements for services referred to in proposed amended Rule G-20(f), along with the compensation paid as a result of such agreements. The MSRB believes that the requirement that all regulated entities create and retain the documents required by proposed amended Rule G-8 will allow organizations that examine regulated entities to more precisely monitor and promote compliance with the proposed rule change. Increased compliance with the proposed rule change would likely reduce the frequency and magnitude of conflicts of interests that could potentially result in harm to investors, municipal entities, or obligated persons, or undermine the public's confidence in the municipal securities market.

Section 15B(b)(2)(L)(iv) of the Exchange Act[28] requires that rules adopted by the Board:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that while the proposed rule change will affect all municipal advisors, it is a necessary regulatory burden because it will curb practices that could harm municipal entities and obligated persons. Specifically, the MSRB believes the proposed rule change will lessen the frequency and severity of violations of the public trust by elected officials and others involved in the issuance of municipal securities that might otherwise have their decisions regarding the awarding of municipal advisory business influenced by the gifts given by regulated entities and their associated persons. While the proposed rule change would burden some small municipal advisors, the MSRB believes that any such burden is outweighed by the need to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,[29] which provides that the MSRB's rules shall

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would extend the provisions of existing Rule G-8 to require that municipal advisors as well as dealers make and keep records of: gifts given that are subject to the $100 limit; and all agreements referred to in proposed section (f) (on compensation for

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[28] 15 U.S.C. 78o-4(b)(2)(L)(iv).

[29] 15 U.S.C. 78o-4(b)(2)(G).

services) and records of compensation paid as a result of those agreements. The MSRB believes that the proposed amendments to Rule G-8 related to books and records will promote compliance with and facilitate enforcement of proposed amended Rule G-20, other MSRB rules such as Rule G-17, and other applicable securities laws and regulations.

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

Section 15B(b)(2)(C) of the Exchange Act[30] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons provided that there is robust protection of investors against fraud.[31]

In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.[32] In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this document.

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30 15 U.S.C. 78o-4(b)(2)(C).

31 15 U.S.C. 78o-4(b)(2)(L)(iv).

32 Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, http://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx

The MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Exchange Act. To the contrary, the MSRB believes that the proposed rule change is likely to increase competition.

Extending the relevant current restrictions to municipal advisors and their municipal advisory activities will, the MSRB believes, promote merit-based (e.g., the quality of advice, level of expertise and services offered by the municipal advisor) and price-based competition for municipal advisory services and curb or limit the selection or retention of a municipal advisor based on the receipt of gifts. A market in which the participants compete on the basis of price and quality is more likely to represent a "level playing field" for existing providers and encourage the entry of well-qualified new providers. Of particular note is the positive impact the proposed changes are likely to have on dealers that are also municipal advisors that may currently be at a competitive disadvantage vis-à-vis municipal advisors that are not subject to any of the current restrictions of Rule G-20 or the associated requirements of Rule G-8.

The proposed prohibition against the use of offering proceeds to pay certain entertainment expenses, which would apply to all regulated entities, is also, for the reasons stated above, likely to have no negative impact on competition and, to the contrary, may foster greater competition among all regulated entities.

The MSRB considered whether costs associated with the proposed rule change, relative to the baseline, could affect the competitive landscape. The MSRB recognizes that the compliance, supervisory and recordkeeping requirements associated with the proposed rule change may impose costs and that those costs may disproportionately affect municipal advisors that are not also broker-dealers or that have not otherwise previously been regulated in this area

and have not already established compliance programs to comply with the current requirements of Rule G-20 or the associated requirements of Rule G-8 and MSRB Rule G-27. During the comment period, the MSRB sought information that would support quantitative estimates of these costs, but did not receive any relevant data.

For those municipal advisors with no Rule G-20 compliance program or relevant experience, however, the MSRB believes the existing requirements of MSRB Rule G-44 provide a foundation upon which Rule G-20 specific compliance activities can be built and likely significantly reduces the marginal cost of complying with the proposed changes to Rule G-20. To further reduce compliance costs and reduce inadvertent violations of Rule G-20, the MSRB has distilled and incorporated additional interpretive guidance that was not previously included in the draft amendments and clarified specific points. The MSRB believes these refinements will help minimize costs that could affect the competitive landscape and will particularly benefit smaller firms.

Nonetheless, the MSRB recognizes that small municipal advisors and sole proprietors may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule change may be proportionally higher for these smaller firms, potentially leading to exit from the industry or consolidation. However, as the SEC recognized in its Order Adopting the SEC Final Rule, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors) or the consolidation of municipal advisors.[33]

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

[33] Exchange Act Release No. 70462 (Sept. 20, 2013) 78 FR 67468, 67608 (Nov. 12, 2013).

The MSRB received eight comment letters[34] in response to the Request for Comment on the draft amendments to Rules G-20 and G-8. Many commenters expressed support for the draft amendments. NAMA welcomed the amendments and their attempt to limit the gaining of influence through the giving of gifts and gratuities. BDA and SIFMA expressed their general support of extending Rule G-20's requirements to municipal advisors as each believed the amendments would promote a level-playing field for the regulation of municipal advisors and dealers acting in the municipal securities and municipal advisory marketplace. Several commenters, however, expressed concerns or suggested changes to the draft amendments. The comment letters are summarized and addressed below by topic.

A. $100 limit

NAMA and PFM expressed concerns that the $100 limit would not adequately apply to gifts given to certain recipients that, in their opinion, should be subject to the $100 limit of proposed amended Rule G-20. Further, NAMA and Anonymous suggested revisions to the amount of the $100 limit.

(i) Application of Proposed Amended Rule G-20(c) to certain recipients

[34] Comments were received in response to the Request for Comment from: An anonymous attorney ("Anonymous"), Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated December 8, 2014 ("BDA"); Chris Taylor, dated October 23, 2014 ("Taylor"); FCS Group: Letter from Taree Bollinger, dated October 24, 2014 ("FCS"); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated December 5, 2014 ("ICI"); National Association of Municipal Advisors: Letter from Terri Heaton, President, dated December 8, 2014 ("NAMA") (formerly, National Association of Independent Public Finance Advisors); The PFM Group: Letter from Joseph J. Connolly, Counsel, dated November 7, 2014 ("PFM"); and Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated December 8, 2014 ("SIFMA").

NAMA believed the $100 limit would not apply to gifts given to employees or officials of municipal entities or obligated persons.[35] In NAMA's view, such persons, for the most part, do not engage in "municipal advisory activities" or "municipal securities business" as such business is proposed to be defined in amended MSRB Rule G-37, on political contributions and prohibitions on municipal securities business.

The MSRB has determined not to revise proposed amended Rule G-20(c) in response to NAMA's concerns. Even if employees or officials of municipal entities or obligated persons generally do not engage in "municipal advisory activities," the MSRB has made clear in existing interpretive guidance regarding Rule G-20 that issuer personnel are considered to engage in "municipal securities activities."[36] The language of both existing Rule G-20 and proposed amended Rule G-20 applies to gifts given in relation to this broad term, "municipal securities activities," and not the narrower term, "municipal securities business," which was developed for the particular purposes of MSRB Rule G-37.

PFM believed that section (c) of proposed amended Rule G-20 would not apply to gifts given to elected or appointed issuer officials, because the government, in its view, is not their "employer." Existing Rule G-20(a), however, which would be retained as proposed amended Rule G-20(c), broadly defines "employer" to include "a principal for whom the recipient of a

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35 NAMA stated that the term "municipal securities activities" is not defined by the proposed rule change, but did not provide any explanation of its statement or reason for its statement. The term "municipal securities activities" is a term that is used in existing Rule G-20 and frequently throughout the MSRB Rule Book.

36 See, e.g., 2007 MSRB Gifts Notice (stating that dealers should consider carefully whether payments of expenses they make in regard to expenses of issuer personnel, in the course of the bond issuance process, comport with Rules G-20 and G-17). The MSRB does not suggest that it has relevant regulatory authority over municipal entities or obligated persons; rather, the MSRB can appropriately regulate the conduct of dealers and municipal advisors in the giving of gifts to personnel of municipal entities and obligated persons.

payment or service is acting as agent or representative."[37] Thus, for purposes of existing and proposed amended Rule G-20, elected and appointed officials are considered employees of the governmental entity on behalf of which they act as agent or representative.

(ii) Changing the amount of the $100 limit

NAMA and Anonymous submitted comments regarding changing the amount of the $100 limit. NAMA proposed that the $100 limit be raised to $250 per person per year, believing this would strike the appropriate balance of allowing reasonable and customary gift giving while also limiting conflicts of interest, and would align Rule G-20 with MSRB Rule G-37. NAMA stated that, in Rule G-37, the MSRB determined that the contribution level of $250 (without the exceptions in Rule G-20) was sufficient to address the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence. NAMA proposed that supplementary material be added to state, in effect, that occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity would be presumed to be so extensive as to raise a question of propriety if they exceed $250 in any year in conjunction with any gifts provided under Rule G-20(c). NAMA asserted that because the purposes of Rule G-20 and Rule

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37 See, e.g., First Fidelity Securities Group, Exchange Act Release No. 36694, Administrative Proceeding File No. 3-8917 (Jan. 9, 1996) (finding violations of Rule G-20 based on payments to financial consultants of issuer, concluding they were "agent[s] or representative[s]" of issuer within the meaning of the rule). See Self-Regulatory Organizations; Order Approving A Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Recordkeeping & Record Retention Requirements Concerning Gifts & Gratuities, Exchange Act Release No. 34372 (July 13, 1994) (File No. SR-MSRB-94-7) ("Rule G–20 is intended to prevent fraud and inappropriate influence in the municipal securities market by limiting the amount of gifts or gratuities from municipal securities dealers to persons not employed by the dealers, including issuer officials and employees of other dealers, in relation to municipal securities activities." (citation omitted)).

G-37 are united in their attempt to limit a dealer's or a municipal advisor's ability to gain undue influence through the giving of gifts or contributions, that the rules should be written similarly.

Anonymous suggested that the MSRB set a $20 or less per gift limit and lower the $100 limit to $50 per year to level the playing field among all types of municipal advisors and to attain broader compatibility with various federal, state and local regulations regarding gifts. Anonymous further stated that the effective limit to a municipal advisor who also is registered as an investment adviser and subject to the requirements of the Investment Advisers Act of 1940 (the "Advisers Act") (a "municipal advisor/investment adviser"), even in the absence of proposed amended G-20 generally would be zero because, in its view, a municipal advisor/investment adviser is subject to Advisers Act Rule 206(4)-5 (the Advisers Act "pay to play" rule) in its municipal advisory activities.[38] Anonymous stated that Rule 206(4)-5 defines payments as "any gift, subscription, loan, advance, or deposit of money or anything of value," and contains no de minimis exception.

Rule G-37 is designed to address potential political corruption that may result from pay-to-play practices, [39] and as such, is tailored in light constitutional First Amendment concerns. Existing Rule G-20, on the other hand, is designed to address commercial bribery by minimizing the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of gifts or

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38 17 CFR 275.206(4)-5.

39 Exchange Act Release No. 33868, 59 FR 17621, 17624 (Apr. 13, 1994) (File No. SR-MSRB-1994-02).

Pay-to-play practices typically involve a person making a cash or in-kind political contribution (or soliciting or coordinating with others to make such contributions) in an attempt to influence the selection of the contributor to engage in municipal securities activities or municipal advisory activities.

gratuities given to employees of such organizations.[40] Rules G-37 and G-20 thus address substantially different regulatory needs in different legal contexts, and the dollar thresholds used in those rules currently differ on that basis. The MSRB believes that the mere purported alignment with Rule G-37 is an insufficient justification for raising the $100 limit.

Further, the parallel that Anonymous draws between proposed amended Rule G-20 and the SEC's regulation of political contributions by certain investment advisors under Advisers Act Rule 206(4)-5 fails to account for the difference in the scope of each regulation. Specifically, Anonymous' interpretation of the regulations fails to recognize the much broader application of proposed amended Rule G-20. Proposed amended Rule G-20 would apply to any gifts given in relation to any of the municipal securities or municipal advisory activities of the recipient's employer. Advisers Act Rule 206(4)-5, on the other hand, is much narrower in application – it restricts only payments for a solicitation of a government entity for investment advisory services.[41] Also, proposed amended Rule G-20 would explicitly apply to gifts given to many regulated persons (e.g., associated persons of dealers and municipal advisors). By contrast, the complete prohibition Anonymous cites from Advisers Act Rule 206(4)-5 does not apply to payments to defined regulated persons. While it may be appropriate to limit payment for a solicitation to zero unless certain conditions are met, this is not a sufficient rationale to reduce the $100 limit for gifts in proposed amended Rule G-20(c). Adopting Anonymous' recommendation would likely result in an overly and unnecessarily restrictive prohibition that would not allow for appropriate social interactions between regulated entities and their

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40 See supra n.5.

41 17 CFR 275.206(4)-5.

prospective and/or actual business associates. The MSRB, at this time, has determined not to decrease the $100 limit for gifts set forth in proposed amended Rule G-20(c).

B. Gifts Not Subject to the $100 limit

(i) "Normal Business Dealings"

NAMA expressed concern that proposed amended Rule G-20(d), which sets forth the exclusions from the $100 limit, leaves open opportunities for abuse particularly because the associated books and records requirement does not require the maintenance of records of excluded gifts. NAMA expressed concern in particular regarding proposed subsection (d)(i), which would, under certain circumstances, exclude from the $100 limit the giving of occasional meals or tickets to theatrical, sporting or entertainment events. In NAMA's view, regulated entities would be able to engage in otherwise impermissible gift giving under the guise of "normal business dealings," and such gift giving likely would result in the improper influence that Rule G-20 was designed to curtail. NAMA suggested modifying the amended rule to impose an aggregate limit of $250 on all gifts given as part of "normal business dealings," believing the aggregate limit would be consistent with the dollar threshold used in MSRB Rule G-37.

The MSRB, like NAMA, is concerned that the exclusions from the $100 limit not be abused. For this reason, proposed amended Rule G-20 would place important conditions on the several types of excluded gifts, including those in the category of "normal business dealings." All of the gifts described in proposed section (d) would be excluded only if they do not "give rise to any apparent or actual material conflict of interest," and, under proposed section (d)(i), "normal business dealing" gifts would be excluded only if they are not "so frequent or so extensive as to raise any question of propriety." Moreover, dealers and municipal advisors are subject to the fundamental fair-dealing obligations of MSRB Rule G-17. Rule G-17 likely

addresses at least some of the concerns raised by NAMA by prohibiting regulated entities from characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue, as such behavior could possibly constitute a deceptive, dishonest or unfair practice.[42] The MSRB has determined at this juncture not to further revise proposed amended Rule G-20 because the MSRB believes the proposed rule change adequately addresses the concerns raised by NAMA relating to excluded gifts generally and "normal business dealings" in particular.

(ii) Nominal Value Standard for Promotional Gifts

ICI expressed concern regarding proposed amended Rule G-20(d)(iv), which provides that promotional gifts generally would not be subject to the $100 limit if such gifts are of nominal value, i.e., "substantially below the general $100 limit." ICI stated that this standard is too vague, would be difficult to comply with, and that the resulting ambiguity would permit the MSRB to second guess a regulated entity's good faith effort to comply with the rule. ICI stated that deleting the phrase would better align Rule G-20 with FINRA's comparable non-cash compensation rule for investment company securities, and would facilitate registrants' compliance with such rules.

Since 2007, the MSRB has used the "substantially below the general $100 limit" standard by way of its interpretive guidance, which incorporates FINRA guidance to the same effect under the FINRA gift and non-cash compensation rules.[43] The MSRB believes that it is appropriate at this time to retain this standard for determining whether a promotional gift is of

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42 See 2007 MSRB Gifts Notice (stating that a dealer should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue, may, depending on all the facts and circumstances, constitute a deceptive, dishonest, or unfair practice in violation of Rule G-17).

43 FINRA Rules 3220 and 2320; NASD Rule 2820.

nominal value because, among other reasons, the current standard is harmonized with more analogous FINRA regulation, ICI's concern about consequences from perceived vagueness is speculative, and a bright-line limit could distort behavior resulting in increased gift giving at or near any bright-line limit.

(iii) Gifts of Promotional Items and "Other Business Logos"

ICI requested clarification regarding the application of proposed amended Rule G-20 to promotional gifts that display the brand or logo of the product for which the regulated entity is acting as a distributor, such as a 529 college savings plan, and not the brand or logo of the regulated entity itself. ICI stated its belief that Rule G-20 would not appear to be triggered when a regulated entity utilizes promotional gifts that display the logo of a client or product of a regulated entity, such as a logo for a 529 college savings plan, because such gifts do not promote that regulated entity's brand or logo. ICI recommended that the MSRB clarify that proposed amended Rule G-20(c) does not apply at all in such instances, and that the regulated entity therefore need not rely on an exclusion for the giving of such promotional gifts.

The restrictions of proposed Rule G-20 are not, as suggested by ICI, triggered because a gift given by a regulated entity or its associated person promotes that regulated entity's brand or logo. Rather, proposed amended Rule G-20 has potential application to the giving of "any thing or service of value" in relation to the recipient's employer's municipal securities or municipal advisory activities (emphasis added). The proposed amended rule provides for exclusions of certain gifts, including the exclusion for promotional gifts "displaying the regulated entity's corporate or other business logo." As such, if the gift items described by ICI meet all of the requirements to qualify for an exclusion as described in proposed section (d) and proposed subsection (d)(iv), then the restrictions of proposed amended Rule G-20(c) would not apply.

Proposed paragraph .03 to the Supplementary Material would provide this guidance regarding promotional gifts, and due to the apparent misapprehension of the scope of the rule in the commentary, would clarify that such gifts are potentially subject to the $100 limit of proposed amended section (c).

C. Incorporation of Applicable FINRA Interpretive Guidance

NAMA commented that the MSRB should codify all applicable FINRA guidance on gifts and gratuities into the rule language of Rule G-20. NAMA noted that many municipal advisors are not FINRA members and stated that regulated entities (particularly non-FINRA members) should not be expected to review FINRA interpretive guidance to fully understand their obligations under Rule G-20.

The MSRB generally agrees with NAMA. In addition, the MSRB recognizes that some municipal advisors may be establishing compliance programs to comply with MSRB rules for the first time. The MSRB further believes that it will be more efficient for all regulated entities and regulatory enforcement agencies if additional applicable FINRA interpretive guidance is codified in proposed amended Rule G-20. As such, the MSRB has distilled and included in proposed amended Rule G-20 the substance of additional portions of the interpretive guidance contained in NASD Notice to Members 06-69 addressing the valuation and aggregation of gifts. As previously noted, proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined by regulated entities generally according to the higher of cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the $100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient over the course of a year.

D. Alignment with FINRA Rules

ICI commented that it is supportive of the MSRB's rulemaking effort to align, when appropriate, MSRB rules with congruent FINRA rules, and that the comments ICI submitted were intended to foster additional alignment with FINRA rules. In particular, ICI stated that the MSRB should consider how it might better align Rule G-20 with FINRA's comparable rules, including NASD Rule 2830(l)(5) since that rule was not addressed in the MSRB's Request for Comment. In addition, ICI suggested that the MSRB should monitor FINRA's retrospective review relating to gifts, gratuities and non-cash compensation and consider making conforming amendments to its rules to keep in line with any amendments that FINRA might adopt.

As part of the MSRB's rulemaking process, the MSRB considers the appropriateness and implications of harmonization between MSRB and FINRA rules that address similar subject matters. The MSRB believes that such harmonization, when practicable, can facilitate compliance and reduce the cost of compliance for regulated entities.

As discussed above, the MSRB has consolidated and proposed to codify a significant portion of FINRA's interpretive guidance set forth in NASD Notice to Members 06-69 on gifts and gratuities in proposed amended Rule G-20. In addition, portions of proposed amended Rule G-20 and existing Rule G-20 are substantially similar to other applicable NASD and FINRA rules, including NASD Rule 2830(l)(5), Investment Company Securities, and FINRA Rule 2320(g)(4), Variable Contracts of an Insurance Company. With regard to FINRA's retrospective review of its gifts, gratuities and non-cash compensation rules, the MSRB has monitored from the beginning of this rulemaking initiative, and continues to monitor, FINRA's activities in this area, and may consider further potential harmonization if FINRA proposes or adopts any amendments to its relevant rules.

E. Entertainment Expenses and Bond Proceeds

(i) Definition of Entertainment Expenses

BDA, NAMA, SIFMA, and Anonymous requested clarification regarding the expenses that would be subject to the prohibition in proposed amended Rule G-20(e). BDA requested that the MSRB clarify "entertainment expenses" versus expenses for "normal and necessary meals" and "normal travel costs." BDA also suggested that the MSRB treat a regulated entity's meals with clients that are generally part of travel separately from items like tickets to sporting or theatrical events, which BDA believed was clearly entertainment. BDA requested that, if the MSRB were to not amend proposed amended Rule G-20(e) itself, that the MSRB should provide interpretive guidance to clarify the issue.

NAMA commented that the entertainment expense reimbursement prohibition was appropriate and suitably tailored. Nevertheless, NAMA believed that it would be clearer if entertainment expenses were defined as "necessary expenses for meals that comply with the expense guidelines of the municipal entity for their personnel (any amounts in excess would not be reimbursable and subject to limitation)."

SIFMA commented that "entertainment expenses" should not include expenses "reasonably related to a legitimate business purpose." SIFMA stated that such a revision to the draft rule language would improve the clarity of the rule and would aid in compliance with the rule. Further, SIFMA suggested that the entertainment expense provision might be clearer if the provision stated that meals that are "a fair and reasonable amount, indexed to inflation, such as not to exceed $100 per person" are not, for purposes of the provision, entertainment expenses and therefore not subject to the prohibition.

Anonymous suggested that the MSRB modify proposed section (e) to clarify that the prohibition is not intended to unnecessarily restrict how a regulated entity may appropriately use the fees it earns from its clients when the fees are paid from the proceeds of an offering of municipal securities.

After careful consideration of these comments, the MSRB has included a clarification in the proposed entertainment expense provision to conform proposed amended Rule G-20(e) to a standard used in tax law for analogous purposes. That tax law standard is used to identify a legitimate connection to business activity and avoid excess expenses in relation to that activity. The modification replaces the phrase "reasonable and necessary expenses for meals" with "ordinary and reasonable expenses for meals" (emphasis added) hosted by the regulated entity and directly related to the offering for which the regulated entity was retained. Beyond this modification, the MSRB believes that the proposed entertainment expense provision, including with respect to its scope, is sufficiently clear. The MSRB believes that the inclusion of a discrete dollar limit or other more prescriptive language as suggested by some commenters would result in an overly inflexible rule. Further, the MSRB believes that making the scope of the prohibition turn on the existence and parameters of client entertainment and gift policies, as suggested by NAMA, would result in a lack of uniformity and potential confusion among market participants.

(ii) Other Comments Regarding Entertainment Expenses and Bond Proceeds

SIFMA stated that it agreed with the intent of the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities. Nonetheless, SIFMA commented that it was concerned: (i) about the "function and interpretation of the prohibition;" (ii) that the entertainment expense provision would prohibit a

practice which is currently not prohibited by MSRB rules;[44] (iii) that regulated entities should be able to accommodate clients that would like entertainment expenses to be paid for and reimbursed to the dealer out of the proceeds of the offering;[45] and (iv) that the provision augurs "federal regulatory creep" over state and local issuers, which would "become another area where regulators will hold dealers responsible indirectly for state and local issuer behavior that they cannot regulate directly." Anonymous stated that it believed the entertainment prohibition provision would prohibit an investment adviser registered under the Advisers Act ("RIA") employed by firms that also employ municipal advisors from obtaining reimbursement for appropriate business expenses (such as an RIA taking a commercial client of their investment advisory business out to lunch to discuss business) because it construed the firm's funds (which were earned municipal advisory fees paid to the firm from bond proceeds) as retaining their character as "bond proceeds."

Proposed amended Rule G-20(e) would address a concern of the MSRB that reimbursement of certain expenses from bond proceeds may violate MSRB rules, including Rules G-20 and G-17.[46] The MSRB has provided guidance that obtaining reimbursement for expenses from bond proceeds, even "if thought to be a common industry practice" may raise a question under applicable MSRB rules depending on "the character, nature and extent of

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44 SIFMA stated that it understood that such practices may be permitted or prohibited depending on state or local laws.

45 The MSRB believes that SIFMA's recommendation would circumvent the purpose of the proposed entertainment expense provision because it would allow dealers to seek or obtain reimbursement for entertainment expenses from an issuer by including such expenses in the underwriter's discount. The MSRB believes that SIFMA's suggested change would be contrary to the intent of the proposed entertainment expense provision.

46 See supra n. 21.

expenses paid by dealers or reimbursed as an expense of the issue."[47] The MSRB believes that proposed amended Rule G-20(e) will promote just and equitable principles of trade.

Further, the proposed reimbursement prohibition is explicitly limited in its application to the conduct of dealers and municipal advisors. It would not prohibit a municipal entity from using bond proceeds to pay for entertainment costs, though other laws or regulations outside of MSRB rules may apply. The proposed prohibition also would not preclude dealers and municipal advisors from providing business entertainment – i.e., items or services of value – that is within the scope of "normal business dealing," which would include, for example, meals or tickets to theatrical, sporting or other entertainments, subject to the conditions of proposed amended Rule G-20(d)(i) (the provision on normal business dealings).

Accordingly, the MSRB has determined not to revise proposed amended Rule G-20, at this time, in response to the comments from SIFMA or Anonymous relating to the entertainment expense reimbursement prohibition.

F. Application of Non-Cash Compensation Provisions to Municipal Advisors

In response to the Request for Comment, NAMA commented that the provisions of draft amended section (g), which would have extended the non-cash compensation provisions in connection with primary offerings that currently apply to dealers to municipal advisors and their associated persons, appeared to be inapplicable to non-dealer municipal advisors. Anonymous supported the extension of such provisions to municipal advisors.

After carefully considering the comments, the MSRB believes, at this juncture, that extending the requirements of proposed section (g) to a municipal advisor and any associated

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47 Id.

person thereof is not necessary. However, the MSRB intends to monitor the activities of municipal advisors in relation to its rules, and may revisit this matter at a future date.

G. Potential Regulatory Alternatives

Anonymous suggested that the MSRB consider two alternatives to proposed amended Rule G-20. According to Anonymous, to ensure that municipal advisors/investment advisers are not unduly disadvantaged by the ability of non-RIAs to give gifts, the MSRB should incorporate Advisers Act Rule 206(4)-5 into Rule G-20 and clarify that Rule 206(4)-5 also applies to municipal advisory activities of any MSRB-regulated entity. Anonymous believed that because Rule 206(4)-5 already applies to municipal advisors/investment advisers, the incorporation of that rule into Rule G-20 would reduce duplicative rulemaking and would increase regulatory certainty. Alternatively, Anonymous suggested that the MSRB recommend to the SEC that it adjust Rule 206(4)-5 to be more compatible with proposed amended Rule G-20 as to the municipal advisory activities of municipal advisors/investment advisers.

The MSRB believes that Anonymous's concerns are addressed by other MSRB rules or rule provisions that the MSRB has already proposed. Advisers Act Rule 206(4)-5 prohibits an investment adviser from providing or agreeing to provide, directly or indirectly, payments to solicit a government entity for investment advisory services unless such person is a defined regulated person. MSRB Rule G-38, solicitation of municipal securities business, flatly prohibits a dealer, directly or indirectly, from paying any person who is not an affiliated person of the dealer for a solicitation of municipal securities business on behalf of such dealer. In addition, proposed MSRB Rule G-42, on duties of non-solicitor advisors, currently pending with the SEC for approval or disapproval, would generally prohibit payments for solicitations with certain limited exceptions that would include allowing payments that constitute "normal business

dealings" as defined in Rule G-20, reasonable fees paid to another registered municipal adviser, and payments to an affiliate. The MSRB therefore believes that it is unnecessary to incorporate Advisers Act Rule 206(4)-5 into Rule G-20 to address Anonymous's concerns.

H. Recordkeeping Requirements

(i) Recordkeeping for Certain Gifts not Subject to $100 limit

NAMA commented that a regulated entity should be required to maintain records for gifts that are subject to either the normal business dealing exclusion under proposed amended Rule G-20(d)(i) or the personal gift exclusion under proposed amended Rule G-20(d)(vi). NAMA noted that gifts that constitute normal business dealings within proposed amended Rule G-20(d)(i) require recordkeeping to comply with certain requirements of the Internal Revenue Service and of various municipalities, such as in California. Therefore, according to NAMA, imposing a recordkeeping requirement would not be an entirely new burden, would provide protection against pay-to-play activities and would provide a means to determine whether such gifts give rise to questions of impropriety or conflicts of interest. NAMA also commented that, to afford meaningful enforcement, the MSRB should require a regulated entity to keep records of any personal gifts given pursuant to proposed amended Rule G-20(d)(iv) that were paid for, directly or indirectly, by the regulated entity.

After carefully considering the comments, the MSRB continues to believe that the recordkeeping requirements of Rule G-8(h) that relate to Rule G-20 should be limited to items that are subject to the $100 limit. The MSRB believes this approach to recordkeeping under Rule G-20 will continue to harmonize with existing FINRA recordkeeping requirements for dealers. Moreover, significant safeguards that are provided by other MSRB rules, including Rules G-27, G-44, and G-17, weigh against imposing the additional recordkeeping burdens on regulated

entities suggested by NAMA. As the MSRB reminded dealers in its 2007 MSRB Gifts Notice on Rule G-20, dealers are required to have supervisory policies and procedures in place under Rule G-27 that are reasonably designed to prevent and detect violations of Rule G-20 (and of other applicable securities laws).[48] Recently adopted Rule G-44, on supervision and compliance obligations of municipal advisors, imposes similar supervisory requirements on municipal advisors. Further, and also as the MSRB reminded dealers in 2007 in particular contexts, the making of payments that might not otherwise be subject to Rule G-20 could constitute separate violations of Rule G-17, which currently applies to municipal advisors and dealers.[49]

(ii) Recordkeeping of Services Agreements

PFM objected to the draft amendment to Rule G-8(h)(ii)(B) that would require municipal advisors to keep all agreements referred to in draft amended G-20(f), on compensation for services. PFM stated that this requirement would be a substantial and unjustified burden on municipal advisors due to the large number of transactions for which, it believed, they would need to maintain records. Furthermore, PFM believed that the MSRB does not have statutory authority to require recordkeeping of contracts for services of a non-securities related nature and stated that it believed that Rule G-8(h)(ii)(B) would require such recordkeeping. PFM suggested that draft amended Rule G-8(h)(ii)(B) be revised to limit the required agreements to those "relied upon by the registrant pursuant to Rule G-20(c)" rather than those "referred to in Rule G-20(f)." FCS requested clarification as to whether Rule G-8(h)(ii)(B) would require a municipal advisor to keep a record of every contract the municipal advisor enters into "for municipal advisory services whether or not any gifts [were] given."

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48 2007 MSRB Gifts Notice.

49 Id.

The comments from PFM and FCS appear to be predicated on a misunderstanding of the types of agreements that are referred to in proposed section (f). The proposed section provides that the $100 limit does not apply to compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. Thus, the agreements referred to in proposed section (f) are those under which compensation would otherwise be subject to the $100 limit (i.e., compensation in relation to the municipal securities or municipal advisory activities of the employer of the recipient). As such, agreements of a non-securities related nature, about which PFM expressed concern, would not be required to be kept by proposed amended Rule G-8(h)(ii)(B).

(iii) Recordkeeping by Registered Investment Advisers

Anonymous commented that it believed that while the draft recordkeeping requirements were relevant, such requirements were unnecessary for municipal advisors/investment advisers because, according to Anonymous, RIAs are required to keep such records under the Advisers Act Rule 206(4)-3.[50] Anonymous suggested that the MSRB consider exempting municipal advisors/investment advisers from the recordkeeping requirements associated with Rule G-20.

To help ensure a level playing field as well as to enhance compliance and enforcement, the MSRB believes that all regulated entities, including municipal advisors/investment advisers, should be subject to substantially identical recordkeeping requirements associated with Rule G-20. Therefore, regardless of whether a regulated entity also may be subject to a comparable requirement under other federal securities laws, that regulated entity would be required to comply with Rule G-20's associated recordkeeping requirements.

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

[50] 17 CFR 275.206(4)-3.

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-2015-09 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-2015-09. 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-2015-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.[51]

Brent J. Fields
Secretary

[51] 17 CFR 200.30-3(a)(12).