

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71326; File No. SR-MSRB-2013-07)

January 16, 2014

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals (“SMMPs”), and the Proposed Deletion of Interpretive Guidance

I. Introduction

On September 17, 2013, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change consisting of new MSRB Rule G-47 (time of trade disclosures), new MSRB Rules D-15 and G-48 (SMMPs), and amendments to MSRB Rule G-19 (suitability). The proposed rule change was published for comment in the Federal Register on October 22, 2013.<sup>3</sup> The Commission received two (2) comment letters in response to the proposed rule change.<sup>4</sup> On January 14, 2014, the MSRB responded to the comments.<sup>5</sup> The

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Act Release No. 70593 (October 1, 2013), 78 FR 62867 (October 22, 2013) (Notice of Filing of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance) (“Proposing Release”). The comment period closed on November 12, 2013.

<sup>4</sup> Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2013 (“ICI Letter”) and David L. Cohen, Managing Director/Associate General Counsel, Securities Industry

Commission is publishing this order (“Order”) to solicit comments from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup>

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 discussed below, the Commission seeks additional input from interested parties on the MSRB’s proposed change in its treatment of past interpretive guidance, as discussed in its Response, and as described below.

## II. Description of Proposal

As further described in the Proposing Release, the MSRB states that it has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and proposes to consolidate this guidance and codify it into several rules: a new time of trade disclosure rule (proposed Rule G-47), a revised suitability rule (Rule G-19), and two new SMMP rules (proposed Rules D-15 and G-48). Additionally, the proposed revisions to Rule G-19 are designed to harmonize the MSRB’s suitability rule with the Financial Industry Regulatory Authority’s (“FINRA”) suitability rule.<sup>8</sup>

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and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“SIFMA Letter”).

<sup>5</sup> See Letter from Michael L. Post, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated January 14, 2014 (“Response”).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

<sup>8</sup> See FINRA Rule 2111.

In connection with the rule changes described above, the MSRB proposed the deletion of certain interpretive guidance affected by these rule changes from the MSRB's Rule Book. Additionally, in the Proposing Release, the MSRB indicated that it did not intend to preserve the relevant guidance, because doing so "would not advance the MSRB's goal to streamline its rulebook."<sup>9</sup> In its Response, as discussed in Section III below, the MSRB articulates a different approach. Specifically, to address a commenter concern, the MSRB states that it will archive on its website the existing guidance that is to be deleted from the Rule Book in connection with the proposed rule change.<sup>10</sup> Moreover, the MSRB states that "[t]o the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case" (together with the archiving on its website of the existing guidance that is to be deleted under the proposed rule change, this approach is referred to herein as "the MSRB's proposed treatment of past interpretive guidance.") The MSRB notes, however, that preserving the guidance at issue in the Rule Book itself would undermine the MSRB's goal to provide streamlined rule language.

### III. Summary of Comments Received Regarding Proposed Deletion of Existing Interpretive Guidance and the MSRB's Response

One commenter asked that existing time of trade disclosure interpretive notices be archived and preserved, noting that "there are nuances contained in these interpretive notices spanning over 30 years of guidance that brokers, dealers, and municipal securities dealers have

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<sup>9</sup> See Proposing Release at 21 (responding to a SIFMA comment regarding proposed Rule G-47). See also Proposing Release at 4, describing the MSRB's streamlining goals ("The structure of Proposed G-47 (rule language followed by supplementary material) is the same structure used by FINRA and other self-regulatory organizations ("SROs"). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.")

<sup>10</sup> See Response at 2.

long relied upon”.<sup>11</sup> The commenter further noted that the interpretive guidance should remain accessible for examination and enforcement purposes because it governs conduct until the effective date of the proposed rule change.

As noted above, the MSRB states that it will archive on its website the existing guidance that is to be deleted from the MSRB’s Rule Book in connection with the proposed rule change. The MSRB further responds that to the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.

IV. Proceedings to Determine Whether to Approve or Disapprove SR-MSRB-2013-07 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>12</sup> Institution of such proceedings appears appropriate at this time to provide interested parties an opportunity to consider the MSRB’s proposed treatment of past interpretive guidance, as set forth in the Response. 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 MSRB’s proposed treatment of past

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<sup>11</sup> Id.

<sup>12</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

interpretive guidance as discussed in its Response, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>13</sup> the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15B(b)(2)(C) of the Act, among other things, 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.<sup>14</sup>

The Commission believes that the MSRB's Response, as well as the comment to which the MSRB was responding concerning the status of the existing MSRB guidance, raise issues about consistency with Section 15B(b)(2)(C) of the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

#### V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the MSRB's proposed treatment of past interpretive guidance as well as any other comments they may have regarding the proposal or the Response. In particular, the Commission invites the written views of interested persons concerning whether

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 15 U.S.C. 78o-4(b)(2)(C).

the proposed rule change is inconsistent with Section 15B(b)(2)(C) or any other provision of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that 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.<sup>15</sup>

Interested persons are invited to submit written data, views, and arguments by [insert date that is 21 days following publication in the Federal Register] concerning regarding the MSRB's treatment of past interpretive guidance and whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date that is 42 days following 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2013-07 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>15</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (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 Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to File Number SR-MSRB-2013-07. 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 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principle office of 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 publicly available.

All submissions should refer to File Number SR-MSRB-2013-07 and should be submitted on or before [insert date that is 21 days following publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted by [insert date that is 42 days following publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).