

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72743; File No. SR-MSRB-2014-04)

August 1, 2014

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

I. Introduction

On June 6, 2014, 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 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change consisting of proposed amendments to Rule G-3, on classification of principals and representatives, numerical requirements, testing, continuing education requirements; Rule G-7, on information concerning associated persons; and Rule G-27, on supervision. The proposed rule change was published for comment in the Federal Register on June 24, 2014.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB states that the proposed rule change would: (1) amend MSRB Rule G-3(a)

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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> Securities Exchange Act Release No. 34-72425 (June 18, 2014), 79 FR 35829 (June 24, 2014) (the “Notice”).

<sup>4</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated July 15, 2014 (“SIFMA Letter”).

to limit the scope of permitted activities of a limited representative - investment company and variable contracts products (“Limited Representative”) to sales to and purchases from customers of municipal fund securities; (2) eliminate the Financial and Operations Principal (“FINOP”) classification, qualification and numerical requirements in MSRB Rule G-3(d); (3) clarify in Supplementary Material .01 to Rule G-3 that references to sales include the solicitation of sales of municipal securities; and (4) make certain technical amendments to (i) re-title Rule G-3 and its subparagraph (a) and define the Limited Representative classification, (ii) reorganize Rules G-3 and G-7(a), and (iii) remove references to the FINOP in Rules G-7 and G-27.<sup>5</sup>

1. Proposed Changes to Rule G-3(a) – Limited Representative

According to the MSRB, the proposed rule change will better align the activities permitted of Limited Representatives with the competencies tested in the Limited Representative - Investment Company and Variable Contracts Products Examination (“Series 6 examination”) administered by the Financial Industry Regulatory Authority (“FINRA”).<sup>6</sup> Currently, Limited Representatives are individuals whose activities, with respect to municipal fund securities,<sup>7</sup> may include (1) underwriting or sales; (2) research or investment advice with regard to underwriting or sales; or (3) any other activities that involve communication, directly or indirectly, with public investors with regard to underwriting or sales. According to the MSRB, Limited Representatives qualify as such by, among other requirements, passing the Series 6 examination.<sup>8</sup>

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<sup>5</sup> See supra note 3.

<sup>6</sup> Id.

<sup>7</sup> Under MSRB Rule D-12, “municipal fund security shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.”

<sup>8</sup> See supra note 3.

The MSRB has represented that the proposed rule change would narrow the activities permitted of Limited Representatives exclusively to sales to and purchases from customers of municipal fund securities.<sup>9</sup> The MSRB stated that the proposed rule change is appropriate because the Series 6 examination focuses on purchases and sales activities, commensurate with the scope of permissible activities under NASD Rule 1032(b).<sup>10</sup> The MSRB believes that individuals engaging in activities other than sales of municipal fund securities should be required to take and pass the Municipal Securities Representative Qualification Examination (“Series 52 exam”), which tests the basic competency to perform the activities described in MSRB Rule G-3(a)(i)(A).<sup>11</sup> According to the MSRB, the proposed rule change would harmonize MSRB and FINRA rules by limiting the activities of individuals solely qualified by having passed the Series 6 examination to sales-related activities and, under MSRB rules, exclusively to municipal fund securities sales-related activities.<sup>12</sup>

## 2. Elimination of MSRB’s FINOP Requirement

According to the MSRB, the proposed rule change also would eliminate the MSRB FINOP classification and the requirement that certain dealers designate at least one such principal (collectively referred to herein as the “FINOP requirement”).<sup>13</sup> The MSRB conducted

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<sup>9</sup> Id.

<sup>10</sup> NASD Rule 1032(b) has been incorporated in the FINRA Manual and continues to be referred to as an NASD rule.

<sup>11</sup> See supra note 3.

<sup>12</sup> Under NASD Rule 1032(b), individuals who have taken and passed the Series 6 examination may only engage in sales activity related to investment company and variable contracts products.

<sup>13</sup> See supra note 3.

a review of the professional qualification requirements in Rule G-3 and determined that the FINOP requirement in Rule G-3(d) is unnecessary and duplicative of other regulations, such as NASD Rule 1022(b).<sup>14</sup> According to the MSRB, the responsibilities and duties of FINOPs pertaining to municipal securities are not unique, and FINRA rules establish general responsibilities and duties for such individuals.<sup>15</sup> The MSRB believes that FINRA’s regulation of FINOPs is more appropriate in that the core responsibilities of a FINOP pertain to the dealer’s financial reports and supervision of the dealer’s activities under the financial responsibility rules.<sup>16</sup>

Currently, MSRB Rule G-3(d) requires that every dealer, excluding bank dealers or certain other dealers identified by reference to the SEC net capital rule, designate at least one FINOP, including its chief financial officer.<sup>17</sup> According to the MSRB, given the exclusions in the rule, only a limited number of dealers are required to designate an individual as a FINOP, and under Rule G-3(d)(ii) these individuals must be qualified in accordance with FINRA rules.<sup>18</sup> As such, individuals seeking qualification as a FINOP must pass the Financial and Operations Principal Qualification Examination (“Series 27 examination”) administered by FINRA.<sup>19</sup>

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> MSRB Rule G-3(d)(i) excludes from the financial and operations principal requirement, any “bank dealer or a broker, dealer or municipal securities dealer meeting the requirements of subparagraph (a)(2)(iv), (v) or (vi) of rule 15c3-1 under the Act or exempted from the requirements of Rule 15c3-1 in accordance with paragraph (b)(3) thereof.”

<sup>18</sup> See supra note 3.

<sup>19</sup> Id.

According to the MSRB, the Series 27 examination focuses primarily on financial reporting requirements, net capital requirements, customer protection rules, and other regulations relevant to the role of a chief financial officer or similar financial officer at an investment firm.<sup>20</sup> The MSRB stated that the examination tests few concepts specifically related to MSRB rules or municipal securities, and the MSRB believes that adding additional municipal securities content to the examination would likely be at odds with regulatory priorities.<sup>21</sup>

The MSRB further stated that a dealer's municipal securities principal would remain responsible for supervising its municipal securities activities, including its operations (such as processing, clearance and safekeeping of municipal securities), pursuant to Rule G-3(b)(i) and G-27(b)(ii)(C).<sup>22</sup> The MSRB believes that the municipal securities principal requirement ensures sufficient oversight of the operations activities of dealers pertaining to municipal securities transactions.<sup>23</sup>

### 3. Rule G-3 Supplementary Material .01

Supplementary Material .01 makes clear that the term "sales" in Rule G-3 also includes the solicitation of sales.<sup>24</sup> According to the MSRB, including the solicitation of sales would apply to all references to sales in the rule and would serve to clarify the permissible activities of municipal securities professionals that are appropriately registered to engage in, or to supervise, sales to and purchases from customers of municipal securities.<sup>25</sup>

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<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

#### 4. Technical and Conforming Amendments

To clarify certain MSRB rules and to conform other rules to the rules amended by the proposed rule change, the MSRB proposed several technical amendments.<sup>26</sup> The MSRB believes that these non-substantive changes will provide clarity and promote a better understanding of MSRB rules.<sup>27</sup> First, the MSRB proposed to simplify the title of Rule G-3 by changing it to the more self-explanatory: “Professional Qualification Requirements.”<sup>28</sup> Second, (i) the heading of Rule G-3(a) would be changed to incorporate the Limited Representative classification, (ii) paragraph (a)(i)(C) of Rule G-3 would be added to define the Limited Representative classification, (iii) paragraph (a)(ii)(C) would be renumbered as new paragraph (a)(ii)(B)(3), with slight modification to make it consistent with paragraph (a)(i)(C), and (iv) the introductory paragraph preceding Rule G-3(a) would be amended to eliminate the reference to the FINOP while also adding references to municipal securities sales limited representatives, limited representative - investment company and variable contracts products, and municipal fund securities limited principals.<sup>29</sup> Third, Rule G-7(a) would be amended to add Limited Representatives and general securities principals to the list of associated persons.<sup>30</sup> Fourth, the MSRB proposed to delete Rule G-3(g)(ii), waiver of qualification requirements with respect to the FINOP, as such an exemption would be rendered moot by the elimination of the FINOP

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<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id.

classification.<sup>31</sup> Lastly, the proposed rule change would make conforming changes by eliminating references in Rule G-7 and G-27 to the FINOP.<sup>32</sup>

### III. Summary of Comment Received

The Commission notes that it received only one comment letter.<sup>33</sup> The comment letter expressed general support and agreement with the proposed rule change.<sup>34</sup>

### IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the SIFMA Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, 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>35</sup> The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because the proposed rule change would better align the

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<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> SIFMA Letter.

<sup>34</sup> Id.

<sup>35</sup> 15 U.S.C. 78o-4(b)(2)(C).

responsibilities of the Limited Representative with the competencies a Limited Representative is tested for. The Commission also believes the proposed rule change would result in consistent regulatory treatment of Limited Representatives by the MSRB and FINRA, thereby reducing potential dealer confusion. In addition, the Commission believes the proposed rule change will ease burdens on dealers by eliminating the FINOP requirement. The Commission notes that the MSRB has represented the FINOP requirement is unnecessary and duplicative of other regulations and that municipal securities principals will continue to be responsible for overall supervision of the municipal securities activities of dealers.

In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.<sup>36</sup> The Commission believes that the proposed rule change includes accommodations that help promote efficiency and legal certainty. Specifically, the Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, the Commission believes, as discussed above, that the proposed rule change will ease burdens on dealers and reduce compliance costs by clarifying dealer obligations and eliminating regulatory redundancy.

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<sup>36</sup> 15 U.S.C. 78c(f).



For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-MSRB-2014-04) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.<sup>38</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> 17 CFR 200.30-3(a)(12).