

MSRB Notice

2021-08

Publication Date

May 14, 2021

Stakeholders

Brokers, Dealers,
Municipal Securities
Dealers, Investors
General Public

Notice Type

Request for Comment

Comment

Deadline

June 28, 2021

Category

Fair Practice

Affected Rules

[Rule G-10](#)

[Rule G-48](#)

[Rule D-9](#)

[Rule D-15](#)

Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers

Overview

The Municipal Securities Rulemaking Board (“MSRB” or “Board”) seeks comment on a draft amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify and better align the requirements for brokers, dealers, and municipal securities dealers (collectively, “dealers”) to provide the annual notifications to those customers who would be best served by receipt of the annual notifications. The MSRB also seeks comments on an associated draft amendment to MSRB Rule G-48, on transactions with sophisticated municipal market professionals (SMMPs), to exclude transactions with SMMPs from the application of draft Rule G-10.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information they believe would be useful to the MSRB. Comments should be submitted no later than June 28, 2021 and may be submitted by [clicking here](#) or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB’s website.¹

Questions about this notice should be directed to Bri Joiner, Director, Regulatory Compliance, or Lisa Wilhelmy, Assistant Director, Market Regulation, at 202-838-1500.

¹ Comments generally are posted on the MSRB’s website without change. Personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.



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Background

In 2017, the MSRB amended Rule G-10 with the goal to, among other things, modernize the rule and extend the rule's application to municipal advisors.² Prior to that time, the rule only applied to dealers and required dealers to provide a customer with a paper copy of the MSRB's investor brochure after a customer had made a complaint to the dealer.³ Recognizing this requirement did not afford customers the best use of the information in a timely manner, the 2017 amendments modified Rule G-10 and replaced the post-complaint delivery requirement.

Rule G-10 currently requires dealers and municipal advisors to provide certain notifications to customers and municipal advisory clients, respectively, at least annually by December 31st each year.⁴ More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information ("annual notifications"):

- (i) A statement that the regulated entity is registered with the SEC and the MSRB;
- (ii) The website address for the MSRB; and
- (iii) A statement as to the availability to the MSRB's customer or municipal advisory client of a brochure that is available on the MSRB's

² See Exchange Act Release No. 79801 (January 13, 2017), 82 FR 7898 (January 23, 2017), (File No. SR-MSRB-2016-15). The 2017 amendments created similar obligations for municipal advisors to provide their municipal advisory clients with certain notifications. The text of the amendments addressed the scope of Rule G-10 notification obligations for municipal advisors by specifically defining "municipal advisory client" to include "either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom to municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act."

³ See [Exchange Act Release No. 24764](#) (July 31, 1987), 52 FR 29459 (August 7, 1987), (File No. SR-MSRB-87-6).

⁴ Municipal advisors provide the requisite notifications promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement.

website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.⁵

The draft amendment being proposed is specific to dealer obligations' under Rule G-10 and the MSRB is not proposing to modify municipal advisors' obligations under the rule. Unlike municipal advisors who provide the annual notifications to clients that have engaged the municipal advisor to conduct municipal advisory services, dealers are currently obligated to provide the annual notifications to all customers, including customers who have not effected, and may never effect, a municipal securities transaction.⁶ In addition, during the rulemaking process to adopt the 2017 amendments, the MSRB made clear that the term "customers," consistent with MSRB Rule D-9, includes institutional customers as well as customers who invest in municipal fund securities.⁷

Since 2017, feedback from market participants has indicated that this rule would benefit from more clarity as to which customers should receive the annual notifications.⁸ Additionally, market participants are still raising the question of the utility of such annual notifications to institutional investors, contending that such notifications are unwarranted.⁹ Given there has been a reasonable implementation period to allow the MSRB time to gain experience with the rule and to obtain meaningful insight, the MSRB believes that this retrospective review presents an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule.

⁵ See MSRB's [Information for Municipal Securities Investors](#) and [Information for Municipal Advisory Clients](#).

⁶ Under MSRB Rule D-9, a "customer" means "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

⁷ See *supra* note 2. See also MSRB "[FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection](#)" (FAQs) (September 2017) at FAQs 6 and 7.

⁸ On December 7, 2020, the MSRB issued [MSRB Request for Input on Strategic Goals and Priorities](#) with a comment period deadline of January 11, 2021. See [Letter from Mike Nicholas, Chief Executive Officer, BDA, dated January 11, 2021](#); See also [Letter from Leslie Norwood, Managing Director and Associate General Counsel and Bernard Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association \(SIFMA\), dated January 11, 2021](#) response letters.

⁹ See *supra* note 8.

Summary of Draft Amendment

The MSRB would like to hear from stakeholders about whether the MSRB should amend Rule G-10(a) to narrow the type of customers to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year period or who hold a municipal securities position. Thus, the draft amendment would no longer require a dealer to make the annual notifications to customers that have not, and may never, engage in municipal securities transactions, so long as the dealer has the notifications available to such customers on its website. Additionally, the MSRB is proposing a related draft amendment to Rule G-48 so that SMMPs that would otherwise receive the annual notification as a result of a municipal securities transaction or having a municipal securities position, would be excepted, so long as the dealer has the notifications available on its website. In order to deem a customer to be an SMMP, MSRB Rule D-15 requires dealers to determine the nature of the customer, the customer's sophistication level, and also requires a customer affirmation, as specified in the rule.

Economic Analysis

Section 15B(b)(2)(C) of the Exchange Act 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. The Board has historically carefully considered the costs and benefits of new and amended rules. Accordingly, the Board's policy states, prior to proceeding with a rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted will, in its judgement, meet that need.¹⁰ The MSRB seeks comment on the economic effects of amending MSRB Rule G-10.

The purpose of amending Rule G-10 would be to better define the requirement for dealers to provide the required annual notifications to specified customers. Rule G-10 was originally designed to protect investors by providing them with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority.

A. The Need for Amended Rule G-10

¹⁰ 15 U.S.C. 78o-4(b)(2)(C). See also an explanation of the MSRB's [Policy on the Use of Economic Analysis in MSRB Rulemaking](#)

As discussed above, prior to the rule amendments in 2017, Rule G-10 only required dealers to send a paper copy of the brochure outlining protections under MSRB rules to investors who had already complained to a dealer. The 2017 amendments replaced the post-complaint delivery requirement with an annual written notifications requirement to all customers of a dealer regardless of whether a customer ever effects a municipal bond transaction or owns municipal securities in the account. More specifically, the 2017 amendments permitted such written notifications to be made electronically in accordance with the electronic delivery and receipt guidance adopted by the SEC in 1996¹¹ and the MSRB in 1998.¹² To reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the annual notifications, the MSRB proposes to amend Rule G-10(a) to narrow the obligation of dealers to provide the required annual notifications to only customers who traded municipal securities or held a municipal securities position at the dealer during the calendar year. Thus, for all other customers, dealers would be permitted to make such notifications available on their websites in accordance with the rule.

Similarly, the MSRB is proposing a related draft amendment to Rule G-48, so that SMMPs that would otherwise receive the annual notifications, as a result of having traded municipal securities or because of having held a municipal securities position, would be excepted, as long as dealers make such notifications available on their websites.

B. Relevant Baselines Against Which the Likely Economic Impact of the Proposed Changes Can be Considered

To evaluate the potential impact of amended Rule G-10, a baseline or baselines must be established as a point of reference for comparison purposes. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.

For this Request for Comment, the current iteration of Rule G-10 is used as the baseline. Under the baseline, MSRB's dealers are sending the annual notifications to all customers regardless of whether a customer holds a

¹¹ See Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7-13-96).

¹² See Exchange Act Release No. 40848 (November 20, 1998); 64 FR 544 (January 5, 1999).

municipal securities position or has effected a municipal securities transaction.

C. Identifying and Evaluating Reasonable Alternative Regulatory Approaches

The MSRB policy on economic analysis in rulemaking addresses the need to consider alternative regulatory approaches, when applicable. Under this policy, only reasonable regulatory alternatives should be considered and evaluated.

One alternative would be to revert the rule back to the pre-2017 version that contained a post-complaint delivery requirement; however, adding the electronic delivery option. By rolling back the 2017 changes, a dealer would no longer have to provide the notifications to *all* customers, regardless of whether they transacted in municipal securities or own municipal securities. This alternative would alleviate the burden to dealers of sending out thousands of notifications to investors but would still not solve the problem of providing investors with more timely access to information about how to file a complaint and the protections provided under MSRB rules.

Another alternative would be to amend Rule G-10 to eliminate the annual notifications delivery requirement. The MSRB already requires dealers to communicate certain information to investors under Rule G-15 on customer confirmations. Under Rule G-15 (a)(i)(D)(4), the dealer is required to provide a hyperlink to the EMMA[®] for publicly available information on a specific security. By amending Rule G-10 to require dealers to also provide a hyperlink to MSRB.org and a statement that the dealer is registered with the SEC and the MSRB, dealers would be able to minimize their direct outreach to investors by utilizing an existing required form of communication (*i.e.*, customer confirmations). However, with this alternative, only customers who have recently transacted in a municipal security would be notified of the information, but not customers who hold municipal securities in their accounts.

D. Assessing the Benefits and Costs of the Proposed Changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change when the rule change proposal is fully implemented against the context of the economic baselines.¹³ The MSRB believes the proposed draft amendment would

¹³ See *supra* note 10.

benefit dealers by lessening their compliance burdens through the narrowing of the scope of the delivery obligation to those that would most directly benefit; and thereby, also reducing the volume of annual notifications sent by dealers to customers, many of those who do not own or transact in municipal securities.

As to the scale of cost reduction to dealers, as well as potential costs to some customers who may no longer receive the notifications unless they initiate a transaction in municipal securities, the MSRB is currently unable to quantify these economic effects precisely because not all the information necessary to provide a reasonable estimate is available. The MSRB has considered these costs and benefits primarily in qualitative terms.

Regardless, the MSRB is seeking, as part of this Request for Comment, additional data, or studies relevant to the costs and benefits of amending Rule G-10. For example, data such as the percentage of dealers' customers who trade or hold municipal securities for a given calendar year, would be helpful for the MSRB in assessing the impact of this rule amendment.

Benefits

The main benefit of amending Rule G-10 would be to reduce the burden and confusion that has been expressed by stakeholders about the utility of such annual notifications to all customers. By amending the rule to limit the scope to customers who either held or transacted in municipal securities during the prior one-year period, burdens to dealers would be reduced. Amending the Rule to expressly clarify and narrow the scope of dealers' obligations would remove the existing ambiguity cited by dealers as to the scope of the term customer under the Rule. Also, other customers of dealers who do not transact in municipal securities would not be subjected to receipt of additional unnecessary communications. In addition, in striving to focus communications that are appropriate to the customer, the resulting effect may be that customers pay more attention to communications from dealers. Finally, dealers may incur savings from sending out less correspondence to customers due to the narrowed scope of the dealers' obligations; and due to the flexibility provided pursuant to the rule and related draft amendment to Rule G-48 that except other customers and SMMPs.

Costs

To evaluate the potential costs to customers, the MSRB divided all dealer customers into four segments to separately compare the future expected state to the current baseline state of each group.

1. Customers who currently hold municipal securities and plan to transact again in the future. These customers would not be impacted by the proposed draft amendment to Rule G-10 since they are expected to receive the annual notifications the same way as they receive the notifications now;
2. Customers who have never held municipal securities and do not plan to transact in them in the foreseeable future. These customers are currently receiving the annual notifications even though they do not hold any municipal securities nor effect any municipal securities transactions. The draft amendment to Rule G-10 would not impact these customers since the notifications are, likely, not relevant to these customers.
3. New customers to a dealer. These customers are currently receiving the annual notifications by the end of the calendar year irrespective of their holding of municipal securities or effecting a transaction in municipal securities. The draft amendment to Rule G-10 would not impact these customers, with respect to the timing in which such annual notifications are received, based upon the customer subsequently holding municipal securities or effecting a transaction in municipal securities; and lastly,
4. Customers who have never transacted in municipal securities before but may do so in the future. These customers currently receive annual notifications even though they have not transacted or held a position in municipal securities. Under the draft amendment to Rule G-10, these customers would not receive the annual notifications, required to be delivered by calendar year end, until such time as they transact in or hold a position in municipal securities. The MSRB has been careful to balance the stated objective of utility of information to customers against the slight risk that could be born out of not providing such annual notifications to all customers. The MSRB notes that notwithstanding, such customers would be able to avail themselves of the information provided in the notifications by reviewing a dealer's website. The MSRB notes that it does not have any data on the percentage of customers who belong this category.

In addition to costs to customers, dealers would likely incur some minor costs, relative to the baseline state, to meet the standards of conduct and duties contained in amended Rule G-10. These changes may include a one-time upfront cost related to revising policies and procedures, as well as ongoing costs such as compliance costs associated with identifying only relevant municipal securities investors for targeted outreach. Dealers may incur compliance costs as related to maintaining an active list of municipal securities investors, including costs pertaining to creating and maintaining books and records. However, the MSRB believes these costs would be minimal, as firms would be able to leverage their existing customer database to swiftly identify the relevant pool of customers eligible for the annual notifications under the proposed draft amendment to Rule G-10.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the draft amendment to Rule G-10 would neither impose a burden on competition nor hinder capital formation, as the proposed rule changes would reduce burden to dealers by narrowing the scope of the application of the rule. The MSRB believes that the amended rule would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses but believes the overall benefits would outweigh the costs to market participants.

The MSRB does not expect that amended Rule G-10 would change the competitive landscape of the municipal securities dealer community, as the draft amendment to Rule G-10 would be applicable to all dealers; therefore, the expected benefits and minor costs would be proportionate to the size and business activities of each dealer.

Request for Comments:

The MSRB seeks public comment on the following questions, as well as on any other topic relevant to this request for comment. The MSRB encourages statistical, empirical, and other data from commenters that may support their views and/or may otherwise support or refute the views, assumptions, or issues raised in this request for comment.

1. Is it appropriate to tailor a dealer's obligations to provide the annual notifications only to those customers for which a purchase or sale of a

municipal security was affected that calendar year and to those customers for which a municipal securities position is held during that calendar year? What are the potential benefits balanced against any foreseeable operational challenges?

2. Is it appropriate to provide an exception to the annual notifications requirement to exclude SMMPs, as defined in Rule D-15, from receipt of such notifications?
3. Should the MSRB provide an exception to the annual notifications requirement to exclude investors in 529 savings plans from receipt of such ongoing annual notifications after their initial purchase of units in a 529 savings plan?
4. Are there any other types of activities undertaken by dealers that warrant consideration as a carve-out from the annual notifications requirement (*e.g.* “check and app” business; settlement on a DVP/RVP basis)?
5. Does permitting dealers to place the notifications on their websites, in lieu of providing such notifications to customers that have not engaged in a municipal securities transaction that calendar year or that maintain a municipal securities position, reduce the burden on dealers while still providing adequate notice to such customers? Similarly, does placement of the notifications on dealers’ websites provide adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position?
6. Rule D-9 excludes an issuer in transactions involving the sale by the issuer of a new issue of its securities from the definition of customer. Should Rule G-10 require dealers to provide notifications to clients at the earliest stage of the underwriter’s relationship with such issuer client when an issuer client has not otherwise engaged a municipal advisor?
7. On an annual basis, what is the estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities?
8. Each year, what percentage of complaints are made by a customer who did not own municipal securities or did not affect a trade in the prior year at the time of a complaint inquiry?
9. On an annual basis, what would be the estimated cost savings from amending Rule G-10 to no longer send communications to customers

who have not effected a municipal securities transaction in that calendar year or that do not hold a municipal securities position?

May 14, 2021

* * * * *

Text of the Proposed Draft Amendments*

Rule G-10: Investor and Municipal Advisory Client Education and Protection

- (a) Each broker, dealer and municipal securities dealer (collectively, a “dealer”) shall, once every calendar year, provide in writing (which may be electronic) to each customer for which a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position during that calendar year, the following items of information:
- (i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board; and
 - ~~(ii) the website address for the Municipal Securities Rulemaking Board; and~~
 - ~~(iii)~~ (ii) a statement as to the availability to the customer of an investor brochure that is posted on the website of the Municipal Securities Rulemaking Board at www.msrb.org that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.
- (b) Notwithstanding the requirement in paragraph (a) of this Rule, any dealer that does not have customers or is a party to a carrying agreement where the carrying firm member complies with paragraph (a) of this Rule is exempt from the requirements of this Rule.
- (c) With respect to all other customers, each dealer shall make available on its website the information described in paragraph (a)(i) and (ii).
- ~~(d)~~ No change.

* Underlining indicates new language; strikethrough denotes deletions.

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

(a) – (e) No change.

(f) *Required Annual Notifications.* The broker, dealer, or municipal securities dealer shall not have an obligation under Rule G-10(a) to provide the annual written (which includes electronic) items of information, so long as such information required under paragraph (a)(i) and (ii) of Rule G-10 is made available on the broker's, dealer's, or municipal securities dealer's website.

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2021-08 (JUNE 28, 2021)

1. American Securities Association: Letter from Christopher A. Iacovella, Chief Executive Officer, dated June 28, 2021
2. Bond Dealers of America: Letter from Michael Decker, Senior Vice President, dated June 28, 2021
3. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 28, 2021
4. Szaro, Jennifer: Email dated May 17, 2021



american securities association

America's Voice for Main Street's Investors

June 28, 2021

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW Suite 1000
Washington, DC 20005

Re: Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers

Dear Mr. Smith:

The American Securities Association (ASA)¹ appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposed amendment to MSRB Rule G-10 and associated draft amendment to Rule G-48 that deal with notifications dealers are required to provide customers regarding the application of MSRB and Securities and Exchange Commission (SEC) rules to municipal security transactions. (Proposal)

The ASA largely supports the Proposal and is pleased the MSRB has conducted a review of the 2017 amendments to Rule G-10. Rule G-10 currently requires dealers to provide customers in writing: (1) A statement that the dealer is registered with the SEC and MSRB; (2) the website address for the MSRB; and (3) notifying the customer of the availability of an MSRB brochure that outlines the protections provided by MSRB rules and how a customer can file a complaint with a regulatory authority.

The 2017 amendments mandated dealers provide these annual notifications to *all* customers, regardless of whether a customer transacted in municipal securities or had any intention at all to transact in municipal securities. This effectively required dealers to provide disclosures to many customers that were irrelevant given their trading history.

The ASA believes a much more thoughtful and targeted approach is appropriate, and we are pleased the Proposal properly balances the need to provide certain customers with municipal-related disclosures with the costs that are imposed on dealers for complying with these requirements. The Proposal would require dealers to provide disclosures only to customers that have transacted in municipal securities within the last year or who currently hold a municipal securities position. This will ensure that actual municipal customers receive the necessary

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.



American Securities Association
1455 Pennsylvania Ave. NW, Suite 400
Washington, D.C. 20004



AmericanSecurities.org
@amersecurities



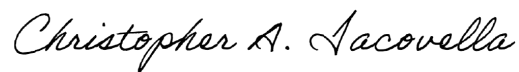
202.621.1784

disclosure, save other customers from receiving irrelevant information, and mitigate the compliance burdens upon dealers.

ASA also supports the proposed changes to Rule G-48 that would provide an exception to Rule G-10 for disclosures provided to sophisticated municipal market professionals (SMMPs), so long as a dealer maintains these notifications on its website. However, we believe the MSRB should eventually adopt this approach for all municipal customers under Rule G-10 given the way that investors today seek out and process information and disclosures related to their financial professional. While many investors will seek out such information from a dealer's website, this could be implemented with an "opt-out" provision for those customers that wish to receive paper or electronic copies of disclosures.

The ASA commends this effort by the MSRB to modernize its rules in order to keep up with technology and reduce compliance burdens for dealers while maintaining sufficient disclosures for investors. We look forward to working with the MSRB on this initiative as it moves forward.

Sincerely,



Christopher A. Iacovella
Chief Executive Officer
American Securities Association





1909 K Street NW, Ste 510
Washington, DC 20006
202.204.7900
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June 28, 2021

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I St NW Ste 1000
Washington DC 20005

Transmitted electronically

In regard to MSRB Notice 2021-08

Dear Mr. Smith,

The Bond Dealers of America (BDA) is pleased provide comments on MSRB Notice 2021-08, "Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers" (The "Notice"). BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks active in the US fixed income markets. Our members serve as both underwriters and Municipal Advisers ("MAs") on municipal securities transactions.

BDA generally welcomes and supports the changes proposed in the Notice. We raised issues about the application of MSRB Rule G-10 (the "Rule") in our January letter to the Board on MSRB Notice 2020-19, "MSRB Requests Input on Strategic Goals and Priorities." In our letter we stated that the Rule "results in superfluous disclosures to customers who do not own or trade municipal securities." We also asked the Board to amend the Rule to "specify that it applies to customers who own municipal securities or who have traded municipal securities since the dealer's last annual disclosure." In the Notice the MSRB proposes to eliminate the G-10 disclosure requirement for retail customers who have not owned or traded municipal securities within the most recent 12-month period and would exempt Sophisticated Municipal Market Professionals ("SMMPs") from the Rule altogether if the dealer makes the relevant information available on its Web site.

BDA fully supports the Board's proposal. The Rule as currently written requires disclosures specific to the MSRB and the municipal market to customers who have never and may never own or trade a municipal security. It has resulted in unnecessary and costly disclosures to customers who do not need the information. The Board's proposed changes would make the dealer disclosure process more efficient without threatening any investor protections. We urge the Board to move forward.

As the MSRB continues its review of Rule G-10, we recommend additional amendments to the Rule which would also lower the cost of transmitting disclosures for broker-dealers while ensuring that retail customers have the information they need. We urge consideration of the following three specific changes:

Exempt issuers from annual customer disclosures. The Rule specifies that dealers must provide the relevant disclosures "to each customer." MSRB Rule D-9 defines customer as "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions

involving the sale by the issuer of a new issue of its securities.” We do not believe the broad definition of customer, which includes issuers, makes sense in the context of G-10. The types of disclosures that must be made under the Rule—information about the firm’s registration status and a reference to a MSRB investor protection brochure—generally do not apply to issuers. Like SMMPs, issuers are financial professionals who understand the municipal market well enough to know about the MSRB as a resource and do not require additional annual reminders. Eliminating the requirement for dealers to make G-10 disclosures to issuers would further enhance the efficiency of the Rule without threatening any regulatory protections.

The same reasoning applies to issuers that are MA clients. The Rule specifies that MAs must make G-10 disclosures to clients with whom they have a MA relationship “no less than once each calendar year...during the course of that municipal advisory relationship.” For many dealer MAs, making these disclosures is a cumbersome, manual process, and MAs already provide information required to be disclosed under Rule G-10 in MA engagement letters directed at issuer clients. Issuers, as municipal financial professionals, do not need annual reminders of the role of the MSRB. We ask that the Board eliminate the requirement for MAs to make annual disclosures to their advisory clients.

Permit clearing firms to make G-10 customer disclosures on behalf of the dealer with the customer relationship. Many broker-dealers employ the services of clearing firms as opposed to clearing all trades themselves. Clearing firms are broker-dealers with a specialty business of serving as other dealers’ “back office” by clearing and settling trades for other dealers, serving as custodian for customer securities and cash, and providing other services such as generating and transmitting customer account statements. In some cases it may be more efficient for the clearing firm to transmit the appropriate G-10 disclosures to customers rather than the firm with the customer relationship, or the “introducing dealer.” Rule G-10 should explicitly permit this.

FINRA Rule 2666, “Investor Education and Protection,” is a customer disclosure rule analogous in some ways to Rule G-10, although it focuses on disclosures related to the Securities Investors Protection Corporation, not the MSRB. Rule 2666 states explicitly “In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.” We ask that the MSRB provide similar flexibility under Rule G-10.

Eliminate the disclosure requirement for customers who do not own municipal securities. The proposal in the Notice would require dealers to send G-10 disclosures once every calendar year to each customer (a) for which a purchase or sale of a municipal security was effected during that calendar year, or (b) who holds a municipal securities position during that calendar year. The second requirement mandates sending G-10 disclosures to any customer that held a municipal securities position at any time during the calendar year, even if such customer does not hold a municipal securities position at the time that the annual mailing list is generated or the disclosure is sent. There is no justification for sending municipal-specific disclosures to customers who do not own and have not traded municipal securities. We urge the MSRB to revise the Rule so that G-10 disclosures would be made to customers who have traded municipal securities in the last year or who own municipal securities at the time the disclosure transmission is prepared.

We applaud the MSRB for the changes proposed in the Notice. The proposed amendments to Rule G-10 would lower costs for dealers without sacrificing investor protection or transparency. In keeping with the same theme, we urge the Board to consider additional changes to the Rule to exempt issuers from these disclosures, permit clearing firms to transmit the relevant disclosures on behalf of their introducing firms' customers, and require disclosures for customers who own municipal securities or have traded them since the last annual disclosure. Please call or write if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Decker". The signature is fluid and cursive, with the first name "Michael" and last name "Decker" clearly distinguishable.

Michael Decker
Senior Vice President



June 28, 2021

VIA ELECTRONIC SUBMISSION

Ronald W. Smith
 Corporate Secretary
 Municipal Securities Rulemaking Board
 1300 I Street NW, Suite 1000
 Washington, DC 20005

Re: MSRB Notice 2021-08 – Amendments to Rule G-10 Notification Requirement for Dealers

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Notice 2021-08 (the “Notice”),² which proposes an amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify the requirements for brokers, dealers, and municipal securities dealers (“dealers”) to provide the annual notifications to those customers who would be best served by receipt of the annual notifications. SIFMA appreciates the MSRB reviewing Rule G-10 and proposing these amendments which SIFMA generally supports as a way to reduce the compliance burden on the dealer community without reducing investor protections. SIFMA members do have some suggested clarifications and further changes, as set forth below.

I. Scope of Customers To Be Notified

SIFMA members feel the most critical issue is to modify the scope of customers that are required to receive the annual notifications pursuant to Rule G-10. SIFMA proposes that the added language “to each customer for which a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position during that calendar

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² MSRB Notice 2021-08 (May 14, 2021).

year” be narrowed to “to each customer that held municipal securities in an account with the broker as of a date within a reasonable period of time prior to the date the notices are made.” Dealers can readily reference their stock records at any point in time to identify those customers for whom municipal securities are being held, but it is much more burdensome to “look back” at the prior 12 months—or, as currently required, current calendar year—of transactional records and daily stock record positions, to identify customers who either transacted through, or otherwise held with, a dealer municipal security positions during that time period but for whom their positions are no longer held with that same dealer. To the extent such positions were transferred to another dealer in that same calendar year, the application of the rule would require the dealer currently holding the position to provide the notice. Admittedly, by reducing the scope of the required notifications to being based on positions held at the time of the notification, the mailing would not include any customers whose entire holdings were called or matured prior to the stock record review date. These conditions, however, would seem to impact only a small number of customers and, as discussed below, many of those customers may still be able to locate the notifications on the websites of those prior custodial or executing dealers that choose to provide the notifications on the internet, further reducing the total number of customers potentially impacted.

II. Relevant Time Period

SIFMA members suggest that the language “once every calendar year” be restated as “at least annually” or alternatively “at least once each year.” The current language leads some firms to believe the customer notification needs to occur at the end of the calendar year in December. These firms have stated that since the G-10 disclosure is required to be sent to any customer for whom a municipal security was held by the dealer during the calendar year, if the “annual disclosure” is sent out in September but certain customers did not have positions carried by the dealer until November, the rule could be interpreted to read that those customers would not have received the annual disclosure in that calendar year.³ Therefore, SIFMA members would appreciate clarification that they may send the customer notices at any time during the year. Some SIFMA members send other annual notices to customers at different times during the calendar year due to other regulatory requirements, including those set by FINRA and the SEC. Sending all possible notices to customers at once reduces the burdens on the dealer and the environmental impact of printing and mailing such customer notifications. In addition, the requested clarification, coupled with the change we propose above with respect to the scope of customers to be notified, would allow dealers to more readily identify the customers to whom the annual notice would need to be sent.

³ See MSRB Notice 2020-17 (Nov. 20, 2020) fn 6: “In instances where a dealer provides notice to customers at a point in time earlier than the end of the calendar year, e.g., during March, the dealer needs to ensure that any new customers receive the required notifications by the end of the calendar year. See “FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection,” (“FAQs”) Question #3 (September 2017).”

III. Issuer Notifications

SIFMA members feel strongly that Rule G-10 should not require dealers to provide notification to clients at the earliest stage of the underwriter's relationship with the issuer client when an issuer client has not otherwise engaged a municipal advisor. Any such disclosures due by the dealers to the issuer client are detailed in the bond purchase agreement or in Rule G-17. Adding additional disclosures in Rule G-10 will add to the complexity of dealer compliance without added benefit. If the MSRB feels that additional disclosures should be made to municipal securities issuers, those regulatory requirements should be added to the disclosures due to issuers under Rule G-17.

IV. Notification by Municipal Advisors

SIFMA members believe that current Rule G-10(b), amended Rule G-10(d), should not require annual disclosure by municipal advisors to their municipal advisory clients. Such disclosure is already required to be made promptly after the establishment of a municipal advisory relationship and is included in municipal advisor agreements. This is both a manual and unnecessary process to determine which relationships are subject to the annual disclosure whereas website disclosure of the related information should be sufficient. There is no other municipal advisor disclosure that is required to be made on an annual basis and if any changes in disclosure by municipal advisors are thought necessary, then those changes should be made in Rule G-42. Rule G-42 details the disclosures required by non-solicitor advisors. Again, in this instance SIFMA members feel the information required to be disclosed by Rule G-10 can adequately be communicated by municipal advisors to their municipal advisory clients through website disclosure.

V. SMMPs

SIFMA appreciates the MSRB's amendments to proposed Rule G-48(f). Requiring dealers to send customer notifications pursuant to Rule G-10 to sophisticated municipal market participants ("SMMPs") is costly for dealers, without any related benefits. SMMPs are by definition sophisticated investors that should not require "hand-holding" in order to find the investor brochure on the dealer's website, or elsewhere, or to otherwise require guidance as to how to file a complaint with the appropriate regulatory authority. It has been the experience of dealers that SMMPs do not need or want such basic customer disclosures, and many object to the unnecessary mailings as merely a waste of resources, especially as many SMMPs deal with multiple dealers and are therefore receiving similar and duplicative notifications from each dealer with which they deal. Placement of the customer notifications on dealers' websites provides adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position.

VI. 529 Plan Investors

SIFMA also feels that the MSRB should provide an exception to the annual customer notifications requirement to exclude investors in 529 savings plans from receipt of such ongoing annual notifications after their initial purchase of units in a 529 savings plan. Such notifications are redundant and unnecessary. Website disclosure of such information should be sufficient for investor protection without imposing unnecessary burdens on the dealers.

VII. Certain Other Exclusions

SIFMA members appreciate the inclusion of new Rule G-10(b). However, we propose to clarify this exception as follows, “Notwithstanding the requirement in paragraph (a) of this Rule, any dealer that does not have customers or ~~is a party to a carrying agreement where the carrying firm member complies~~ that has agreed with a clearing firm servicing its customer accounts that the clearing firm will comply with paragraph (a) of this Rule is exempt from the requirements of this Rule.” We feel this new language clarifies that the exclusion should only apply if a clearing firm has agreed to comply with Rule G-10(a).

VIII. Cost Savings and Impact

Although the potential cost savings from the proposed amendments are difficult to quantify, it is likely dependent upon the size of the dealer. Members agree that the savings is likely more significant for larger firms, although the change would reduce the compliance costs for all dealers. Any physical notifications that can be avoided, without impacting customer protection, reduces costs as well as the environmental impact of printing and mailing each customer notification. The COVID-19 pandemic also added an additional risk for dealer staff that need to produce and mail these physical customer notifications. Likewise, the recent societal changes mean that many customers may not be receiving mail at their offices and may be less willing to touch any mail they do receive.

SIFMA members state that their estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities is anecdotally reported to be less than 1%. Similarly, each year the percentage of complaints that are made by a customer that did not own municipal securities or did not effect a trade in the prior year at the time of a complaint was anecdotally reported to be zero.

* * *

Thank you for considering SIFMA's comments. Overall, SIFMA appreciates the MSRB's proposed amendments, and the opportunity to set forth our additional suggestions and clarifications above. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, light-colored signature line.

Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***

Bri Joiner, Director, Regulatory Compliance

Lisa Wilhelmy, Assistant Director, Market Regulation

Comment on Notice 2021-08

from Jennifer Szaro,

on Monday, May 17, 2021

Comment:

I am thankful for this opportunity to comment on the proposed changes to Rule G-10. For perspective, we are a retail, small firm broker-dealer with an annual average of less than 100 municipal bond transactions and offer 529 plans. When we needed to provide this annual notification it was a significant expenditure and caused a complete change in our annual and disclosure deliveries. Annually we provide our privacy statement to all clients. However to incorporate the G-10 paragraph changed the entire mailing structure. We needed to revise our system and changed how we delivered disclosures. Our contact management system is not set up to identify muni only clients - most clients utilize multiple lines of business. For the amount of work and expense that it took to provide clients with a few sentences, there was a disproportional benefit to clients. We also post this message on our website along with other disclosures, which are all important. I wholehearted am in favor of revising this rule in particular to include "(f) Required Annual Notifications -regarding posting on the BD website. Investors are used to going to a company's website for details and accessing their materials. The greater the consistency with how we, as an industry, provide investors with reference materials and disclosures perhaps the more effective the delivery. My impression is that investors want to review materials at their pace, on their time, when it suits them. For broker-dealers who have a website, this is a very reasonable and sensible option.