

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92677; File No. SR-MSRB-2021-04)

August 16, 2021

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to Rule G-10, on Investor and Municipal Advisory Client Education and Protection, and Rule G-48, on Transactions with Sophisticated Municipal Market Professionals, to Amend Certain Dealer Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 2021 the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“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 amendments to MSRB Rule G-10, on investor and municipal advisory client education and protection, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals (“SMMPs”) (collectively, the “proposed rule change”). The proposed rule change would clarify the scope of the requirements for brokers, dealers and municipal securities dealers (collectively, “dealers”) to provide the required notifications under Rule G-10 to those customers who would

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

best be served by the receipt of the information and make accompanying amendments to Rule G-48 to exclude SMMPs from certain requirements under Rule G-10.³

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change no later than 10 days following Commission approval. The effective date will be no later than 30 days following Commission approval.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-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.

³ 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."

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In 2017, the MSRB amended Rule G-10 with the goal of, among other things, modernizing the rule and extend the rule’s application to municipal advisors.⁴ 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.⁵ Recognizing this requirement did not afford customers the best use of the information in a timely manner, the 2017 amendments replaced the post-complaint delivery requirement with more timely delivery requirements.

Rule G-10, as designed, serves to educate and protect investors and municipal advisory clients by providing them with information about the MSRB rules designed to protect them and the process for filing a complaint with the appropriate regulatory authority. The rule currently requires dealers and municipal advisors (collectively, “regulated entities”) to provide certain

⁴ 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 obligations for municipal advisors by specifically defining “municipal advisory client” for purposes of Rule G-10 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 the 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.”

⁵ See Exchange Act Release No. 24764 (July 31, 1987), 52 FR 29459 (August 7, 1987) (File No. SR-MSRB-87-6).

notifications to customers and municipal advisory clients, respectively, once every calendar year. More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information (“required 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 customer or municipal advisory client of a brochure that is available on the MSRB’s website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.⁶

Given there has been a reasonable implementation period to allow the MSRB time to obtain meaningful insight on the operation of the rule, the MSRB conducted a retrospective review of the obligations under Rule G-10. The MSRB identified an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule to better align the scope of the rule’s application. The proposed rule change is specific to the dealer obligations under Rule G-10 and the MSRB is not proposing to modify municipal advisors’ obligations under the rule because the obligation municipal advisors have under Rule G-10 is already limited in scope in that a municipal advisor must provide the required 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

⁶ See MSRB’s “Information for Municipal Securities Investors,” [available at](https://www.msrb.org/~media/Files/Resources/MSRB-Investor-Brochure.ashx?la=en) <https://www.msrb.org/~media/Files/Resources/MSRB-Investor-Brochure.ashx?la=en> and “Information for Municipal Advisory Clients,” [available at](https://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=en) <https://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=en>.

240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement. The obligation dealers currently have under Rule G-10 is broader in that each dealer must provide the required notifications to all customers, including SMMPs, even if those customers have not effected any transaction in municipal securities and may never effect a transaction in municipal securities.⁷ Recognizing that MSRB Rule G-48 underscores the differences between dealer obligations to non-SMMP customers and SMMP customers, the MSRB also assessed whether a modification to Rule G-48 was warranted.

Proposed Amendments to Rules G-10 and G-48: Dealer Obligation to Make Required Notifications

I. Customer Receipt of Required Notifications

The proposed amendment to Rule G-10(a), would require dealers to provide the notifications to those customers for whom a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position. Narrowing the scope to those customers that engage in municipal securities transactions would reduce the burden of remitting the notifications unnecessarily to all customers, while ensuring that dealers remit the notifications to customers who would most benefit from receiving them. Customers who do not receive the notifications directly pursuant to Rule G-10(a) will still have access to them as

⁷ On December 7, 2020, the MSRB issued MSRB Request for Input on Strategic Goals and Priorities, available at <https://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2020-19.ashx??n=1>, with a comment period deadline of January 11, 2021. Two commenters recommended changes to certain dealer obligations under Rule G-10. See Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (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.

section (b) of Rule G-10 would require each dealer to have the required notifications available on its website for the benefit of such customers. As a result, the MSRB does not believe there is a detrimental impact to such customers and believes that not receiving the notifications may avoid confusion for customers who currently receive such notifications even though they have not effected a municipal securities transaction or hold municipal securities.

The proposed rule change would also amend Rule G-48 to modify a dealer's obligation under Rule G-10. Specifically, the proposed amendment to add section (f) to Rule G-48 would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to Rule G-10(a).⁸ The MSRB believes that customers who meet the definition of SMMPs under Rule D-15 are sophisticated in their understanding of the municipal market. In the event that an SMMP is seeking the information found in the required notifications, including the MSRB's website address, dealer registration status and how to file a complaint with the appropriate regulatory agency, a sophisticated customer is likely to know the information, or seek access to it from the dealer's or MSRB's website. The proposed amendment to Rule G-48 balances the burden on dealers to remit the required notifications to SMMPs against the usefulness of SMMPs receiving such notifications when the information is otherwise readily available. This modified obligation dealers have with respect to SMMPs is proposed section (f) of Rule G-48, in keeping with the placement of other modified obligations for transactions with SMMPs under Rule G-48.

⁸ In order for a customer to be deemed 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.

II. Exception for Dealers Subject to Carrying Agreements

The proposed amendments to Rule G-10 would apply to all dealers, with two general exceptions: (i) a dealer that does not have customers, or (ii) a dealer that is a party to a carrying agreement in which the carrying dealer has agreed to comply with the requirement to provide notifications under the rule. The proposed amendment to section (c) of Rule G-10 would provide that any dealer that does not have customers, or who is a party to a carrying agreement in which the carrying dealer has agreed to comply with the required notification requirements, would be exempt from the Rule G-10(a) requirements. The MSRB recognizes that customer accounts may be held at other dealers, subject to a carrying agreement, and that the carrying dealers are responsible for providing account statements and trade confirmations. Therefore, the proposed amendment to Rule G-10(c) is meant to acknowledge common business practices and facilitate carrying dealers' compliance with the requirement to provide notifications under the rule, on behalf of other dealers.⁹ Additionally, the proposed amendments would expressly clarify that the dealer would not be subject to the notifications requirement, under Rule G-10(a), in cases where dealers conduct a limited business and are not considered to have customers.

III. Supplementary Material to Rule G-10

The proposed rule change would include supplementary material under Rule G-10 that would provide clarity on the timeframe for delivery of the required notifications. Supplementary Material .01 of Rule G-10 would make clear that the obligation to provide the required notifications once each calendar year to applicable customers would be deemed satisfied if

⁹ The proposed rule change promotes regulatory consistency with section (b)(2) of FINRA Rule 2267, on Investor Education and Protection, which provides that any member that does not have customers or is a party to a carrying agreement where the carrying firm member complies with the rule is exempt from the requirements of the rule.

dealers deliver the required notifications at a given point in each calendar year so long as any customers that effected a transaction in municipal securities or held municipal securities after that given date in each calendar year receive the notifications within the following rolling 12-month period. More explicitly, after a dealer provides the required notifications to the applicable customers, the ensuing notifications must be provided within 12 months from the date of the preceding notifications, but may be provided within a shorter time period.¹⁰ The MSRB believes that the proposed amendments would foster greater flexibility with respect to the timing of the required notifications, and would also ensure that each applicable customer receives the required notification within a rolling 12-month period; and thereby, ease operational concerns.

For example, assume a dealer opts to remit the required notifications on June 30, 2022, and in September 2022 a non-SMMP customer who has never held municipal securities effects a transaction in municipal securities for the first time. The dealer would not be required to remit the notifications to that customer in calendar year 2022, but the dealer would be obligated to remit the notification to that customer, and all other applicable customers, on or before June 30, 2023. In no event may a dealer exceed 12 months without remitting the notifications to a non-SMMP customer who has effected a transaction in municipal securities or who holds municipal securities.

The proposed rule change makes technical amendments to streamline the required notifications by deleting the current provision (a)(ii) of Rule G-10 and placing the reference to the website address for the Municipal Securities Rulemaking Board within the proposed

¹⁰ A dealer may, of course, elect to provide the required notification more frequently than a rolling 12-month basis.

amended provision that re-numbers provision (a)(iii) of Rule G-10 to provision (a)(ii). The proposed amendments also re-numbers the remainder of Rule G-10, accordingly.

2. Statutory Basis

Section 15B(b)(2)(C) of the Exchange Act³⁰ 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 Sections 15B(b)(2)¹¹ and 15B(b)(2)(C)¹² of the Exchange Act. Rule G-10 would continue to be designed to prevent fraudulent and manipulative acts and the proposed rule change does not diminish such protections. The proposed rule change would help promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest by ensuring that customers who have effected a transaction in municipal securities or hold a municipal securities position, during the requisite period, receive information that would be useful to them in understanding the regulatory framework. The proposed rule change may also avoid confusion because dealers would not have to provide notifications to customers who have not effected any municipal securities transactions. More specifically, the proposed rule change is designed to ensure that applicable customers receive beneficial information, through the MSRB's investor brochure, on how to file a complaint about dealers with the appropriate regulatory authority and

¹¹ 15 U.S.C. 78o-4(b)(2).

¹² 15 U.S.C. 78o-4(b)(2)(C).

an overview of the investor protections provided by MSRB rules. The required notifications, which would be provided once each calendar year, are in support of curbing potential fraudulent and manipulative practices, by creating an awareness amongst customers of the SEC and MSRB.

Additionally, for all other customers, including SMMPs, while dealers will not have to provide the required notifications pursuant to Rule G-10(a), such dealers would have to make the required notifications available on their websites in accordance with the rule, and other applicable MSRB rules and federal securities laws, which is in furtherance of the public interest. The MSRB believes that the proposed amendments to Rule G-48 to effectuate the exemption for remitting notifications to SMMPs, so long as the SMMPs have access to such notifications on a dealer's website, will facilitate transactions in municipal securities and help perfect the mechanism of a free and open market in municipal securities by avoiding the imposition of regulatory burdens upon dealers where they appear to be unnecessary. The MSRB currently understands that SMMPs are generally knowledgeable about the registration status of a dealer and how to file a complaint if warranted and can access the information on a dealer's website as needed.

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

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.¹³ The MSRB has considered the economic impact associated with the proposed rule change, including a comparison to reasonable alternative regulatory approaches,

¹³ 15 U.S.C. 78o-4(b)(2)(C).

relative to the baseline.¹⁴ The MSRB does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of amending Rule G-10 is to better refine the requirement for dealers to provide the required 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. As discussed above, prior to the 2017 rule amendments, 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 notification requirement to all customers of a dealer regardless of whether a customer ever effects a municipal securities transaction or owns municipal securities in the account.¹⁵ To reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the notifications, the MSRB proposes to amend Rule G-10(a) to narrow the obligation of dealers to provide the required notifications to only customers who traded municipal securities or held a municipal securities position at the dealer during each calendar year. 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

¹⁴ See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

¹⁵ See supra note 4.

proposing related amendments to Rule G-48, so that all SMMPs would be exempt as long as dealers make such notifications available on their websites.

The MSRB assessed other regulatory alternatives and determined that the proposed amendments to Rule G-10 and Rule G-48 are superior to these alternatives. One alternative would be to revert the rule back to the pre-2017 version that contained a post-complaint delivery requirement and 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.¹⁶ 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.

¹⁶ Under Rule G-15(a)(i)(D)(4), the dealer is required to provide a hyperlink to EMMA[®] for publicly available information on a specific security.

Benefits and Costs

The MSRB believes by amending the rule to limit the scope of the delivery obligation to customers who either held or transacted in municipal securities during a 12-month period, compliance burdens to dealers would be lessened. The volume of notifications sent by dealers to customers, many of those who do not own or transact in municipal securities, and therefore receive no utility from such notifications, would be reduced. Additionally, other customers of dealers who do not own or transact in municipal securities would not be subjected to receipt of additional unnecessary communications, which could create noise and confusion for these customers. Furthermore, 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 proposed amendments to Rule G-48 that exempt other customers and SMMPs.

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.

- Customers who currently hold municipal securities and plan to transact again in the future. These customers would not be impacted by the proposed amendments to Rule G-10 since they are expected to receive the required notifications the same way as they receive the notifications now;
- 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

notifications even though they do not hold any municipal securities nor effect any municipal securities transactions. The proposed amendments to Rule G-10 would not impact these customers since the notifications are, likely, not relevant to these customers;

- New customers of a dealer. These customers are currently receiving the notifications by the end of each calendar year irrespective of their holding of municipal securities or effecting a transaction in municipal securities. The proposed amendments to Rule G-10 would impact these customers, as they would not receive a notification unless they effected a transaction in municipal securities or held municipal securities at the time the dealer remitted the notifications that calendar year. However, these customers would receive the notification the next calendar year and in no event more than 12 months from the time such customers effected a transaction in municipal securities or held municipal securities;
- Existing customers who have never transacted in municipal securities before but may do so in the future. These customers currently receive notifications even though they have not transacted or held a position in municipal securities. Under the proposed amendments to Rule G-10, these customers would not receive the notifications, required to be delivered once every calendar year, until such time as they have a municipal securities transaction 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 required notifications to all customers, once every calendar year. The MSRB notes that such customers would be able to avail themselves of the information provided in the

notifications by reviewing a dealer’s website. The MSRB also notes that the anecdotal evidence provided by a commenter shows less than one percent of all existing customers who had previously not transacted or owned any municipal security would effect a transaction in municipal securities;¹⁷ and lastly,

- SMMPs who have traded municipal securities or hold a municipal securities position. All SMMPs currently receive annual notifications, but under the proposed amendments to Rule G-48, these customers would not receive the notifications; instead, SMMPs would still be able to avail themselves of the information provided in the notifications by reviewing a dealer’s website. Since SMMPs affirm to having a level of sophistication, knowledge and familiarity with the municipal securities market, these notifications add little benefit for SMMPs, if any. By exempting the requirement to send notifications to SMMPs, the proposed amendments would reduce the time and cost burdens for dealers with minimal reduction in benefits for SMMPs.

In addition to any 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 the proposed rule change. 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 limiting the receipt to only the relevant municipal securities customers for targeted communication outreach. However, the MSRB believes these costs would be minimal, as firms

¹⁷ Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association (“SIFMA Letter” or “SIFMA”) dated June 28, 2021: “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%.”

would be able to leverage their existing customer database to swiftly identify the relevant pool of customers eligible for the required notifications under the proposed rule change.

As to the overall 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. For example, the MSRB is interested in the percentage of dealers' customers who trade or hold municipal securities for a given calendar year, which would be helpful for the MSRB to assess the impact of the draft rule amendments. The MSRB sought the data during the Request for Comment process but was unable to obtain it. Therefore, the MSRB has considered these benefits and costs in qualitative terms.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change would reduce burdens to dealers of remitting the notifications to all customers by narrowing the scope of the application of the rule. The MSRB believes that the proposed rule change would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants.

The MSRB does not expect that the proposed rule change would change the competitive landscape of the municipal securities dealer community, as the proposed amendments to Rule G-10 and Rule G-48 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.

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

As previously noted, on May 14, 2021, the MSRB published a Request for Comment, which sought comment on the matters included in the proposed rule change for a period of 45 days. The MSRB received four comment letters.¹⁸ These comments, along with the MSRB’s responses, are discussed below.

Narrowing the Scope of Customers Receiving the Dealer Notifications

The MSRB sought comment on whether to narrow the scope of customers who receive the required notifications once every calendar year to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year or who hold a municipal securities position. All four commenters noted that the MSRB’s draft amendments would ensure that the customers who would most benefit from receiving the required information would receive the notifications. Commenters also noted that no longer requiring dealers to provide such notifications unnecessarily to other customers would mitigate the compliance burden on dealers.

One commenter, BDA, recommended that the MSRB exempt dealers from providing issuers the required notifications, stating that “issuers are financial professionals who understand the municipal market well enough to know about the MSRB and do not require additional annual reminders.” As a threshold matter, the MSRB does not agree with the premise that all issuers have the same level of market sophistication and should have a wholesale exclusion. Pursuant to

¹⁸ See Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association (“ASA Letter” or “ASA”), dated June 28, 2021; Letter from Michael Decker, Senior Vice President, Bond Dealers of America (“BDA Letter” or “BDA”), dated June 28, 2021; SIFMA Letter; and Letter from Jennifer Szaro (“Szaro Letter” or “Szaro”), dated May 17, 2021.

Rule D-9, an issuer is a “customer” except in the case of a sale by the issuer of a new issue of its securities. Therefore, in these instances, dealers would not be required to provide the required notifications to an issuer.¹⁹ If an issuer is otherwise a customer, a dealer would continue to be obligated to provide the notifications pursuant to Rule G-10(a) unless the issuer customer is an SMMP, which would be determined based on the nature of the issuer, a determination of sophistication by the dealer and an affirmation by the issuer.²⁰ As noted above, with respect to an SMMP, the proposed amendment to Rule G-48 would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to Rule G-10(a).

BDA also requested that the MSRB eliminate the annual requirement to provide notifications to customers who do not hold a municipal securities position at the dealer at calendar year-end. BDA stressed that modifying the proposed rule language in such a way would diminish the burden on dealers of looking through stock records to identify municipal securities customers for whom dealers no longer hold positions because they were either transferred, sold or matured entirely prior to the stock record review. The MSRB believes that the proposed rule change requiring the notifications to those customers who effected transactions in municipal securities or who hold a municipal securities position, coupled with the supplementary material

¹⁹ The MSRB did solicit feedback in the RFC on whether Rule G-10 should require dealers to provide notifications to issuer 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. A summary of the comments received in response to this question is discussed in Section C. below.

²⁰ See Rule D-15 on the definition of the term “Sophisticated Municipal Market Professional.” In order to deem a customer an SMMP, a dealer is required to determine the nature of the customer and the customer’s sophistication level, and also requires the customer’s affirmation, as specified in Rule D-15. In addition, this determination must be reasonable, including an analysis of the amount or type of securities owned or under management by the customer. See Rule D-15, Supplementary Material .01.

on the sequencing of such notifications, strikes the right balance in providing investor protections and reducing regulatory burdens. The MSRB does not believe the rule should be narrowed further as BDA suggests.

Additionally, BDA suggested that municipal advisors should not be obligated to provide municipal advisory clients with the required notifications promptly after the establishment of a municipal advisory relationship or entering into an agreement to undertake a solicitation and annually thereafter during the course of the agreement. BDA asserts that municipal advisors are already providing such notifications as part of the municipal advisor engagement letter. While this comment is outside the scope of the current proposal, MSRB notes the MSRB's municipal advisory client brochure summarizes key principles of the MSRB rules designed to protect municipal advisory clients as well as information on how on how to file a complaint against a municipal advisor with the appropriate federal regulatory authority – information that is not customarily provided as part of the municipal advisor engagement letter. The MSRB continues to believe that requiring municipal advisors to provide the Rule G-10 notifications to municipal advisory clients creates an awareness of the protections afforded by the regulatory framework governing municipal advisory activities.

Exclusion of SMMPs

The MSRB sought comment on whether to exclude SMMPs from receiving the required notifications, so long as dealers provide such notifications on their websites (“website-only notifications”). Both ASA and SIFMA specifically expressed support for the draft amendments, indicating that the placement of the notifications on dealers’ websites is also in keeping with the modern approach to seek and find electronic resources on dealers’ websites, and provides adequate notice to SMMPs. SIFMA remarked that SMMPs are, by definition, sophisticated

investors that should not require “hand-holding” in order to find information on 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. SIFMA also noted that 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.

The MSRB has had the opportunity to evaluate the implementation of the requirement to provide notifications once every calendar year, which was adopted in 2017,²¹ has considered these comments as well as recent stakeholder comments,²² and has determined that allowing dealers to make the required notifications available on their websites is appropriate for SMMP customers.

Dealer Notifications to Issuer Clients Who are not Represented by Municipal Advisors

The MSRB sought comment on whether an issuer in transactions involving the sale by the issuer of a new issue of its securities who are not otherwise represented by a municipal advisor should receive the required notifications from dealers. BDA and SIFMA commented, arguing strongly against providing such notifications to such issuers, noting that dealer disclosures to issuers in transactions involving the sale by the issuer of a new issue of its securities are made in the Bond Purchase Agreement and engagement letters and that requiring the annual notifications will add to the complexity of dealer compliance without greater benefit to such issuer. SIFMA further opined that any such required notifications should be made in the context of underwriter disclosures, under Rule G-17. After review of the comments, the MSRB

²¹ See supra note 4.

²² See supra note 7.

has determined not to place the additional requirement on dealers to provide the required notifications to such issuers who are not otherwise represented by municipal advisors.

529 Plan Customers

The MSRB sought comment on whether to provide an exception to the notifications requirement that excludes investors in 529 savings plans from receipt of ongoing notifications after their initial purchase of units in a 529 savings plan. SIFMA indicated support for the draft amendments to exclude ongoing notifications to investors of 529 savings plan. The Szaro letter noted that providing the required notifications to such customers entails dealer work and expenses that are not balanced proportionately to the benefit to a customer in receiving the information. SIFMA and Szaro both favored website-only notifications as a sensible and reasonable option for dealers who have websites. Given that 529 savings plans (and other municipal fund securities) are offered and serviced as a benefit to customers that typically hold other securities in their brokerage accounts, unintended operational challenges may be introduced by establishing a different requirement for the delivery of the required notifications for municipal fund securities. In reviewing the comments received, the MSRB does not believe there is compelling information to warrant a change from the current requirements under Rule G-10.

Website-Only Notifications for All Customers

The proposed amendments to Rule G-10 exclude the required 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. Szaro and ASA suggested removing the requirement for the notifications to be remitted to customers of the dealer who effected a transaction in municipal securities or who held a municipal securities position in favor

of making such notifications available to all customers by having the notifications available only on the dealer's website. Szaro and ASA stated that customers today prefer to review information about dealers from dealers' websites and that individualized annual notifications could be eliminated without threatening investor protections.

The MSRB believes that the proposed rule change strikes the correct balance by requiring the notifications only to those customers who would most benefit by their receipt (i.e., customers of the dealer who effected a transaction in municipal securities or who hold a municipal securities position) and permitting the notifications to be available to all customers on a dealer's website. Moreover, the MSRB believes that receipt of such push notifications is in furtherance of investor protection, and that such information would not be as easily ascertained by a customer having to undergo a search for the information on a dealer's website.²³

Clarify Timeframe for Delivery of Notifications

SIFMA and BDA stated that the MSRB should clarify the timeframe for delivery of the annual notifications by modifying the draft proposed rule language from "once every calendar year" to prescribe that delivery of such notifications should be made "at least annually" or "at least once a year." BDA noted that the change in the delivery timeframe would reduce dealer printing burdens as they may couple these notifications with other required disclosures.

The MSRB acknowledges that it has previously indicated in the form of FAQs²⁴ that the obligation to provide the required notifications "once every calendar year" has meant by the end

²³ SIFMA suggested extending website-only notifications delivery to municipal advisory clients. As previously mentioned, the MSRB limited the scope of the RFC to dealer obligations to their customers and is not modifying municipal advisor's obligations under the Rule G-10.

²⁴ See FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection (September 2017).

of each calendar year. The MSRB does not propose to move away from the current rule text that states the required notifications must be made “once every calendar year,” because this language is consistent with the language governing the obligations of municipal advisors to provide the same required notifications to municipal advisory clients. The MSRB believes that proposed amendments will provide clarification and flexibility on the sequencing of the required notifications. Specifically, proposed Supplementary Material .01 allows a dealer to provide the notifications to the applicable customers at any given point in each calendar year, but also recognizes that there may be additional customer(s) that effect a purchase or sale of a municipal security or hold a municipal security after the notifications have been delivered that calendar year. Accordingly, Supplementary Material .01 allows such customers to receive the notifications within the following rolling 12-month period. The MSRB would revise existing compliance resources, including the FAQs, as necessary to be aligned with the proposed rule change.

Permitting Notifications by Clearing Firms Per Agreement

The MSRB sought comment on draft amendments that proposed to exclude a dealer that is a party to a carrying agreement, where the carrying dealer provides such required notifications, from the requirements under Rule G-10. Both SIFMA and BDA generally supported this provision but suggested clarifying language to reflect the agreement to undertake the obligation to provide the required notifications. The MSRB is clarifying the proposed rule language to reflect firms’ agreement about which party will undertake the Rule G-10 notifications obligation.

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

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 email to rule-comments@sec.gov. Please include File Number SR-MSRB-2021-04 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-2021-04. This file number should be included on the subject line if email 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2021-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.²⁵

Vanessa A. Countryman
Secretary

²⁵ 17 CFR 200.30-3(a)(12).