

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72705; File No. SR-MSRB-2014-05)

July 29, 2014

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-3, on Professional Qualification Requirements, Regarding Continuing Education Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 22, 2014, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of proposed amendments to Rule G-3, on professional qualification requirements (the “proposed rule change”).³ The effective date of the proposed rule change will be January 1, 2015.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Certain portions of Rule G-3, including the title, are the subject of proposed amendments that are currently pending SEC approval and will not be effective until 60 days following the date of such approval. See SEC Release No. 34-72425 (Jun. 18, 2014); 79 FR 35829 (Jun. 24, 2014); File No. SR-MSRB-2014-04.

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

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to improve the Firm Element continuing education requirement of MSRB Rule G-3(h)(ii) by requiring brokers, dealers and municipal securities dealers (collectively, "dealers") to conduct annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities. While the MSRB has intended, from the inception of the rule, that dealers consider the scope of their municipal securities activities and regulatory developments in preparing their annual training plan, the rule does not specifically require dealers to train registered persons on municipal securities issues. The proposed rule change would require such training for a select group of registered persons who are regularly engaged in or supervise municipal securities activities.

Background

In 1993, a self-regulatory organization (“SRO”) task force⁴ was created to study and develop recommendations regarding continuing education in the securities industry. The task force issued a report calling for a formal, two-part continuing education program consisting of: (i) a Regulatory Element requiring securities industry professionals to obtain periodic and uniform training in regulatory matters, and (ii) a Firm Element requiring firms to provide ongoing training to employees to ensure they have up to date knowledge of job and securities product-related subjects.

On February 8, 1995 the SEC approved SRO rule changes based on the task force’s recommendations.⁵ In approving the SRO rule changes, the SEC stated that these SROs “may require their members, either individually or as part of a group, to provide specific training in any areas the SROs deem necessary.”⁶ The SEC added that “[a]s the program evolves, it is expected that educational standards will be defined by the SROs for products and services where heightened regulatory concerns exist.”⁷ Since approval of the continuing education rules, SROs have amended their continuing education rules as industry and market practices evolved.

Current Firm Element Continuing Education Requirement

Currently, MSRB Rule G-3(h)(ii)(B)(1) requires dealers to maintain a continuing and current education program for their covered registered persons to enhance their securities knowledge, skill and professionalism. Under Rule G-3(h)(ii)(A), covered registered persons are

⁴ The task force included representatives from six SROs, including the MSRB, and industry representatives.

⁵ See SEC Release No. 34-35341 (Feb. 8, 1995), 60 FR 8426 (Feb. 14, 1995), File No. SR-MSRB-94-17 (approving MSRB Rule G-3(h), on continuing education requirements).

⁶ Id.

⁷ Id.

limited to those registered representatives who have direct contact with customers in the conduct of a dealer's securities sales, trading and investment banking activities, and to their immediate supervisors.

At least annually, dealers are required to evaluate and prioritize their training needs (commonly known and referred to herein as a "needs analysis") and develop written training plans for their covered registered persons. The needs analysis should take into consideration the firm's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.

However, while the current rule requires dealers to evaluate their training needs annually, it does not require dealers to conduct municipal securities training for their covered registered persons, regardless of the extent to which they engage in municipal securities activities. The proposed rule change addresses concerns that municipal securities professionals may not be receiving adequate training because dealers may not be placing a sufficiently high priority on municipal securities in their needs analysis.

The MSRB understands that this deficiency may be the result of municipal securities topics competing with training on other products, and the perception that municipal securities are a relatively safe investment option in comparison to other investment products. However, despite competition for dealer training resources and the possible perception that municipal securities are low risk products, the MSRB believes that the municipal securities market possesses unique attributes that require particularized education and training. In addition, dealers engaging in municipal securities activities are subject to, and as a result, must be familiar with MSRB rules that are distinct from the rules of other SROs and that are tailored to address the particularities of the municipal securities market.

Since Rule G-3(h) does not require any training on municipal securities, registered persons regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities may receive insufficient, or no, training on municipal securities, particularly if such persons are employed by firms that offer a broad range of financial products. The MSRB believes that requiring dealers to conduct annual municipal securities training for registered persons who are regularly engaged in or who regularly supervise municipal securities activities would ensure the delivery of municipal securities content to those individuals who are active in the municipal securities market, while allowing dealers sufficient flexibility in delivering such content. Under the proposed rule change, dealers would continue to determine the nature of the training and would have the discretion as to content based on the specific type of municipal securities activities conducted by the firm and the individual registered person.

In addition to mandating annual training, the proposed rule change would also expand the definition of covered registered persons who are required to participate in such training to include registered persons who engage in a variety of municipal securities activities, regardless of whether such activities are customer-facing. Currently, only registered representatives who have direct contact with customers in securities sales, trading and investment banking activities and their immediate supervisors are required to participate in Firm Element continuing education.

Request for Comment on Proposed Changes to the Firm Element Requirement

On December 13, 2013, the MSRB published a request for public comment on a draft of the proposed rule change.⁸ In response, the MSRB received eleven comment letters.⁹ In

⁸ See MSRB Notice 2013-22 (Dec. 13, 2013) (“December Notice”).

formulating the proposed rule change, the Board reviewed all comments submitted in connection with the proposal and considered the suggestions and issues they raised. The MSRB also considered the alternatives suggested by commenters and amended the proposed rule change in response to the comments.

For example, a number of commenters objected to the initial proposal to extend the Firm Element training to all persons associated with dealers who primarily engage in municipal securities activities. In response to the comments, as more fully discussed below, the MSRB modified the proposal to require only registered persons who are regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities to participate in the training.

Training of Registered Persons Who are Not Customer-Facing

Several commenters expressed concerns about requiring registered persons who are not customer-facing but perform middle or back-office functions to participate in continuing education. In this regard, the proposed rule change sets no new precedent. Both the Financial Industry Regulatory Authority (“FINRA”) and the Chicago Board Options Exchange (“CBOE”) require certain registered personnel who are not customer-facing to fulfill continuing education

⁹ Letters were received from Bond Dealers of America (“BDA”), Diamant Investment Corporation (“Diamant”), Financial Services Institute (“FSI”), Investment Company Institute (“ICI”), MetLife Securities, Inc. (“MetLife”), National Society of Compliance Professionals (“NSCP”), Romano Wealth Management (“Romano”), RW Smith & Associates, Inc. (“RW Smith”), Securities Industry and Financial Markets Association (“SIFMA”), Securities Industry Council on Continuing Education (“SICCE”), and Wulff, Hansen & Co (“Wulff”). The comment letters are discussed in more detail below.

requirements.¹⁰ In approving FINRA’s operations professional classification, the SEC stated, “[g]iven the growing complexity of the industry, and the importance of the services provided by the back-office personnel, the Commission believes that FINRA’s proposal to . . . require members to provide Operations Professionals with continuing education . . . will help to address regulatory gaps in this area.”¹¹

Requiring training for registered representatives and principals who regularly engage in or supervise municipal securities activities will provide reasonable assurance that individuals performing important functions in a dealer’s middle and back-office understand their professional responsibilities and applicable regulations, as well as the importance of identifying and escalating indications of possible wrongdoing. As a baseline, dealers that are FINRA members must deliver Firm Element training to certain customer-facing and back-office registered persons. The MSRB believes that the proposed rule change would result in training that would be appropriately targeted to registered representatives who regularly engage in municipal securities activities, such as sales, trading, investment banking, and processing and clearance of municipal securities transactions, as well as those principals who regularly supervise such activity. Furthermore, the MSRB believes that the proposed rule change would not pose an

¹⁰ FINRA Rule 1250(a)(5) requires operation professionals (Series 99) to complete continuing education, and CBOE Rule 9.3A(c) requires proprietary traders (Series 56) to complete continuing education requirements.

¹¹ SEC Release No. 34-64687 (Jun. 16, 2011), 76 FR 36586 (Jun. 22, 2011), File No. SR-FINRA-2011-013. Similarly, regarding CBOE’s Proprietary Trader exam (Series 56), the Commission stated, “Though proprietary traders with a Series 56 registration do not interact with the public, the Exchange believes this requirement is appropriate as it ensures these registered persons continue to enhance their securities knowledge, skill and professionalism. . . . Thus, the Exchange believes it is appropriate that these individuals also complete the Firm Element.” SEC Release No. 34-70027 (Jul. 23, 2013), 78 FR 45584 (Jul. 29, 2013), File No. SR-CBOE-2013-076.

undue burden on dealers because most registered persons already participate in some form of Firm Element training.

Flexibility to Determine Who is Regularly Engaged in Municipal Securities Activities

Under the proposed rule change, not all registered persons would be required to participate in a dealer's Firm Element training. Rather, dealers would be required to train only those registered persons engaged in or supervising municipal securities activities on a regular basis. Dealers would determine which of their registered persons regularly engage in or supervise municipal securities activities, and they would not be required to provide Firm Element continuing education for those individuals who engage in municipal securities activities on an infrequent or de minimis basis.

Dealers would be required, under Rule G-3(h)(ii)(B)(1), to document, in writing, their method for determining whether an individual, or class of individuals, regularly engages in or regularly supervises municipal securities activities as part of their needs analysis. Dealers would have the flexibility to determine who participates in such training, so long as they have a reasonable basis for determining which registered persons regularly engage in or supervise municipal securities activities.

A dealer could, for example, determine that registered representatives are "regularly engaged in municipal securities activities" if such individuals are engaged in sales of municipal securities to customers and derived more than a certain percent of their gross sales in the preceding year from municipal securities transactions. Or, dealers might determine that registered representatives who participate in a threshold level of municipal securities trades, or are part of a particular group within the firm (e.g., a dealer's public finance group) are regularly engaged in municipal securities activities.

Flexibility Regarding Training Content

As is currently the case, dealers also would have the flexibility to determine the content of the training. While some dealers may elect to develop original content, others may utilize existing content available in the marketplace. Dealers would be able to access and include MSRB webinars as part of the training. Conferences and other municipal securities training offered by trade associations and other market participants could also be utilized. Given the variety of sources for municipal securities training content, the MSRB believes the proposed rule change would impose little additional burden on dealers.

Technical Amendments

Finally, the proposed rule change includes certain technical amendments to conform other portions of Rule G-3 to the proposed rule change. First, the proposed rule change would amend Rule G-3(h)(ii)(C) to clarify that covered registered persons must participate in the Firm Element training as required by the dealer.¹² Second, Rule G-3(h)(ii)(B)(1) would be amended to clarify that, under the proposed rule change, supervisory training would be required for any registered principal who regularly supervises municipal securities activities.¹³ Third, Rule G-

¹² Rule G-3(h)(ii)(C) currently states: “Participation in the Firm Element – Covered registered persons included in a broker, dealer or municipal securities dealer’s plan must [take all appropriate and reasonable steps to] participate in continuing education.” (emphasis added) Proposed revised Rule G-3(h)(ii)(C) would remove the text in brackets to ensure all covered registered persons participate in Firm Element continuing education annually.

¹³ Rule G-3(h)(ii)(B)(1) currently states “If a broker, dealer or municipal securities dealer’s analysis determines a need for supervisory training for persons with supervisory responsibility, such training must be included in the broker, dealer or municipal securities dealer’s training plan.” The MSRB proposes to eliminate this provision because, under the proposed rule change, registered principals who regularly supervise municipal securities activity would be required to participate in Firm Element training annually.

3(h)(ii)(B)(2) would be amended to explicitly require that a firm's training program include training on the municipal securities products, services and strategies offered by the dealer.

Effective Date

The MSRB is proposing January 1, 2015 as the effective date for the proposed rule change to provide dealers with adequate time to include the training requirements of the proposed rule change into their annual needs analysis and written training plan developed after such date.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,¹⁴ which provides that the MSRB's rules shall:

provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless ... such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.

Additionally, the MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹⁵ which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating

¹⁴ 15 U.S.C. 78o-4(b)(2)(A).

¹⁵ 15 U.S.C. 78o-4(b)(2)(C).

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.

Requiring Firm Element continuing education for registered persons who regularly engage in municipal securities activities and supervisors who regularly supervise municipal securities activities is essential for the protection of investors, municipal entities and the public interest because such education will help ensure that individuals regularly participating in the municipal securities market will stay abreast of new municipal securities features, products and risks; changes to applicable regulatory regimes; and innovations in market practices. As SIFMA noted in a recent comment letter to the MSRB regarding a rule proposal on professional qualifications for municipal advisors, “[c]ontinuing education and day to day training are critical parts of the core training of a firm’s employees. Regulations change frequently, and firms need to ensure their associated persons are appropriately informed about such changes.”¹⁶ The MSRB agrees with SIFMA’s assertion that continuing education is necessary to remain current on regulatory developments and believes the proposed rule change will accomplish that objective.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers who engage in municipal securities activities. The proposed rule change does nothing more than specify that, in developing an annual training plan based on the firm’s needs analysis, the dealer must include municipal securities training for those registered individuals who are regularly engaged in municipal securities activities and supervisors who

¹⁶ See SIFMA Letter dated May 16, 2014 in response to MSRB Notice 2014-08 (Mar. 17, 2014).

regularly supervise municipal securities activities. The proposed rule change does not set forth any quantitative or qualitative requirements regarding the training that must be provided. Rather, it continues to grant dealers flexibility to develop Firm Element training based on the nature of their business activities. Several commenters indicated that the proposed rule change would likely improve the municipal securities market and its efficient operation, and that potential burdens created by the proposed rule change are to be likely outweighed by the benefits.

The Board has historically given careful consideration to the costs and benefits of its new and amended rules. The Board recently adopted a policy to more formally integrate economic analysis into its rulemaking process. According to the policy, the Board should, prior to proceeding with a rulemaking, evaluate the need for the rule and determine whether the rule as drafted will, in its judgment, meet that need. The Board also should identify, prior to proceeding with a rulemaking, data and other information it would need in order to make an informed judgment about the potential economic consequences of the rule. In addition, the Board should make a preliminary identification of both relevant baselines and reasonable alternatives to the proposed rule. Finally, the Board should consider the potential benefits and costs of the proposed rule and the reasonable alternative regulatory approaches.

The Need for the Proposed Rule Change

The need for the proposed rule change arises from concerns that municipal securities professionals may not be receiving adequate training on municipal securities. The structure of the current rule allows for dealers to evaluate and prioritize their firm-level training needs, at least annually, through a needs analysis. The current rule does not require dealers to conduct municipal securities training for their covered registered persons, regardless of the extent to which they engage in municipal securities activities. Absent a requirement, some dealers may not

be placing a sufficiently high priority on municipal securities in their needs analysis, particularly when municipal securities topics are competing with training on other topics. This situation may arise, for example, in firms with a broad scope of business activities with only a small subset of employees engaged on a regular basis with municipal securities activities. In evaluating training needs at these firms, municipal securities training can become a low priority at the firm level even though such training is important to the subset of employees who are registered individuals regularly engaged in municipal securities activities. The proposed rule change addresses the need to ensure adequate training for municipal securities professionals by requiring focused training for registered representatives who engage regularly in municipal securities activities.

Relevant Baselines

To evaluate the potential impact of the proposed rule change, a baseline, or baselines, must be established as a point of reference. The analysis proceeds by comparing the expected state after the proposed rule change is approved to the baseline state prior to the rule taking effect. The economic impact of the proposed rule change is measured as the difference between these two states.

One baseline that can be used to evaluate the impact of the proposed rule change is the current structure of Rule G-3 which requires Firm Element education programs for a firm's covered registered persons, i.e., those who are registered representatives who have direct contact with customers in the conduct of a dealer's securities sales, trading and investment banking activity, and their immediate supervisors.

For the subset of municipal securities professionals who are associated persons of FINRA members, a baseline to evaluate the impact of the proposed rule change is the current FINRA

requirements for Firm Element training applied to certain customer-facing and back-office registered persons.

Identifying and Evaluating Reasonable Alternative Regulatory Approaches

One alternative to adopting the proposed rule change would be for the MSRB not to engage in additional rulemaking, and thus, not require dealers to conduct municipal securities training for their covered registered persons, regardless of the extent to which they are engaged in municipal securities activities. In the absence of such a requirement, dealers would evaluate and prioritize their training needs which may not include training regarding municipal securities even if registered representatives and principals are regularly engaged in or supervise such activities.

Various alternatives were suggested by commenters and have been addressed herein. Some of the suggested alternative regulatory approaches have been incorporated into the proposed rule change. For example, a number of commenters raised concerns with the initial proposal to extend the Firm Element training to all persons associated with dealers who primarily engage in municipal securities activities. In response to the comments, the MSRB modified the proposal to require only registered persons regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities to participate in the training.

Another alternative suggested by commenters was to eliminate a proposed one-hour continuing education requirement. After carefully considering the views of the commenters, the MSRB has eliminated the one-hour requirement in the proposed rule change.

Assessing the Benefits and Costs

The purpose of the proposed rule change is to enhance the municipal securities knowledge of those registered individuals who regularly engage in or regularly supervise municipal securities activities. Relative to the baseline of existing Rule G-3, the proposed rule change would require dealers to conduct municipal securities training annually for their registered representatives and principals who are regularly engaged in, or supervise, such activities.

At the outset, the MSRB notes it is currently unable to quantify the economic effects of the proposed rule change because the information necessary to provide reasonable estimates is not available.

The likely benefit of the proposed rule change is that it will ensure that registered individuals who are regularly engaged in or regularly supervise municipal securities activities will receive training on municipal securities topics for the purpose of keeping them up to date, and to enhance their knowledge, skill and professionalism. Because the municipal securities market is complex and has unique institutional features, it is important for these individuals that some portion of their required annual training include topics specific to municipal securities.

The proposed rule change includes training for individuals performing important functions pertaining to municipal securities transactions in a dealer's middle or back-office. The benefit of requiring training for these individuals is that the training will provide reasonable assurance that these individuals will understand their professional responsibilities and applicable regulations, as well as the importance of identifying and escalating matters that may indicate possible violations of MSRB rules or the federal securities laws.

Relative to the baseline of existing Rule G-3, the likely benefit of the proposed rule change will accrue primarily to municipal securities professionals employed by firms engaged in many activities, where municipal securities activities are only a portion of the business. Individuals in such firms may not be receiving training on municipal securities because the Firm Element needs analysis, when evaluated across a broad scope of a firm's activities, may result in training for other areas that are deemed a higher priority. For firms specializing in municipal securities activities, the proposed rule change will likely produce no additional benefit, except for training of registered back-office personnel, since the Firm Element needs analysis performed by these firms under existing Rule G-3 will likely result in specialized training on municipal securities topics.

Relative to the baseline of existing Rule G-3, the proposed rule change would likely produce additional compliance costs for certain firms, primarily for firms engaged in many activities where municipal securities activities are only a portion of the business. These firms would incur costs associated with determining and documenting which of their covered employees are regularly engaged in, or regularly supervise municipal securities activities. To address this cost, the proposed rule change allows dealers flexibility in determining which individual employees meet the criteria of regularly engaging in or supervising these activities.

It also would be expected that firms will incur costs in developing instructional materials specifically addressing topics related to municipal securities. Many of the comment letters addressed concerns about the cost of producing these instructional materials. However, there are less costly alternatives to developing original instructional materials. The training requirement can be satisfied by attending professional conferences or webinars addressing topics related to

municipal securities. Some of these webinars are available without charge and may be able to satisfy all or a portion of a dealer's training needs.

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

In response to the December Notice, the MSRB received eleven comment letters. BDA and FSI expressed support for requiring municipal securities training as part of the Firm Element training. BDA commented that requiring training of registered representatives regularly engaged in municipal securities activities "would also help keep these professionals abreast of emerging regulatory developments and industry trends, without having to include additional municipal securities content on such general securities qualification examinations or impose a specific examination requirements [sic] for registered representatives engaged in municipal securities activities." FSI stated that it believed the proposed rule change would effectively target registered representatives regularly engaged in municipal securities activities without "imposing additional continuing education requirements on associated persons of a broker-dealer firms [sic] for whom this additional training would be unnecessary." FSI further commented that the proposal "provides a measured and balanced approach to achieving MSRB's goals to increase municipal securities training while ensuring that unnecessary additional regulatory requirements are avoided."

One-Hour Training Requirement

Some commenters objected to the proposed one-hour continuing education requirement included in the draft rule language proposed in the December Notice, arguing that it improperly focused on the quantitative aspect of training instead of the qualitative nature of the training. Several commenters believed that the one-hour requirement was too subjective and did not adequately consider the quality of the training being delivered. According to SIFMA, "[f]ocusing

on the quantity (i.e., time element) versus the quality of the training provided is misguided.” Wulff expressed a similar sentiment, stating “[t]he specified one-hour minimum will also complicate the process of identifying and proving a violation of the rule by firms whose programs are deemed inadequate by their examiners but meet the quantitative minimum set forth in the rule.” NSCP noted that “[c]urrently, there are no prescriptive rules that we are aware of that mandate specific time on any aspect of securities industry CE training.” NSCP added that “mandating prescriptive minimum hourly training requirements is inconsistent with the industry-wide goal of designing CE training appropriately addressing each firm’s needs, based upon a self-managed analysis.”

After carefully considering the views of the commenters and the objectives of the proposed rule change, the MSRB eliminated the one-hour requirement in the proposed rule change. One of the core objectives of the proposed rule change is to ensure that registered individuals regularly engaged in municipal securities activities take part in municipal securities continuing education. The MSRB believes that the proposed rule change can achieve the objective of enhancing an individual’s municipal securities knowledge without setting time parameters for the training.

Persons Covered by the Training Requirement

Some commenters expressed concern over the MSRB’s inclusion of the phrase “primarily engaged in municipal securities activities” and the use of the term “associated person” in the December Notice. These commenters believed that the phrase “primarily engaged” did not provide dealers with enough guidance to determine who at their firm would meet such a standard. Furthermore, these commenters stated that they would have difficulty determining which persons at their firm would now be considered an “associated person.” ICI commented

that “[i]dentifying which of its associated persons are ‘primarily engaged in municipal securities activities’ may be a relatively easy exercise for municipal securities dealers whose primary business consists of the offer and sale of municipal securities other than municipal fund securities. In the case of our members and other dealers whose municipal securities activities are limited to the offer and sale of municipal fund securities, such as 529 plan securities, this will be an incredibly difficult exercise.” Additionally, commenters raised concerns over expanding the continuing education requirement to unregistered associated persons, suggesting it was a departure from the current regulatory standards set by other regulators. NSCP noted that, “this new requirement [requiring non-registered personnel to complete continuing education training] represents a departure from current industry-wide requirements, e.g., FINRA Rule 1250 prescribes requirements for registered persons only.”

While the December Notice proposed a training requirement beyond registered representatives, it simultaneously narrowed the category of covered persons to those primarily engaged in municipal securities activities. The Board’s rationale for initially proposing to expand the training requirement to unregistered persons who engage in municipal securities activities in a dealer’s middle or back-office was to address cases where such individuals may not have been receiving continuing education, and yet were charged with adhering to requirements prescribed by the MSRB’s uniform practice rules. Nevertheless, after considering the concerns of commenters and the potential impact of expanding the coverage of the training requirement, the Board decided that its objective of ensuring proper levels of continuing education for those individuals regularly participating in the municipal securities market could be accomplished by requiring training for registered representatives and principals who regularly engage in or supervise municipal securities activities. The MSRB believes that training registered persons

who regularly supervise municipal securities activities will improve their ability to supervise registered and non-registered persons who engage in activities covered by MSRB rules.

Additional Compliance Burden and Duplicative Requirements

Several commenters stated that the proposed rule change would be duplicative and impose additional and unjustified compliance burdens. BDA commented that “with any new or enhanced regulatory requirement, there are associated compliance costs borne by the staff at our member firms.” NSCP raised concerns about compliance professionals becoming “bogged down by administrative functions associated with such a prescriptive rule.” Similarly, Diamant commented that “...forcing additional education requirements simply places another layer of regulatory burden on top of the existing education requirement.” The MSRB maintains that the Firm Element requirement is not a new requirement as described by commenters. Dealers have been delivering continuing education that may have included municipal securities content since the continuing education rules were first established in 1995. The proposed rule change would simply add the requirement that some training on municipal securities be provided to select registered persons. The MSRB concedes that this change may require some dealers to devote resources to evaluating their training programs and including content on municipal securities activities for registered representatives and principals that regularly engage in or supervise municipal securities activities.

Dealers, however, will have the ability to create and deliver content in the most convenient and effective manner based on their own business model. To the extent technology is available and affordable it may be used to assist dealers in delivering content to their employees, thereby mitigating the impact of the proposed rule change. The MSRB understands that many dealers already provide substantial training for their employees, and that many firms do not limit

the training to their customer-facing registered representatives. The goal of the proposed rule change is to ensure that all dealers provide at least some municipal securities training for those registered persons who regularly engage in municipal securities activities and to those registered persons who regularly supervise such activity. The Board believes this approach is consistent with the investors' expectation of financial professionals and the firms with which they do business.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2014-05 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-2014-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you

wish to make available publicly. All submissions should refer to File Number SR-MSRB-2014-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).