

SECURITIES AND EXCHANGE COMMISSION
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November 14, 2016

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Extend the MSRB's Customer Complaint and Related Recordkeeping Rules to Municipal Advisors and to Modernize Those Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2016, 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 filed with the Commission a proposed rule change consisting of (i) proposed amendments to Rule G-10, on delivery of investor brochure, Rule G-8, on books and records to be made by brokers, dealers, and municipal securities dealers and municipal advisors, and Rule G-9, on preservation of records, and (ii) a proposed Board notice regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings (collectively, the "proposed rule change"). The MSRB requests that the proposed rule change be approved with an implementation date of six months after the Commission approval date for all changes.

¹ 15 U.S.C. 78s(b)(i).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-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.

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

1. Purpose

Background

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").³ The Dodd-Frank Act amended Section 15B of the Exchange Act to establish a new federal regulatory regime requiring municipal advisors to register with the Commission, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that rulemaking authority, has been developing a comprehensive regulatory framework for municipal advisors and their associated persons.⁴

³ Pub. Law No. 111-203, 124 Stat. 1376 (2010).

⁴ MSRB Rule D-11 defines "associated persons" as follows:

Further, and concurrent with its efforts to develop a comprehensive regulatory framework for municipal advisors and their associated persons, the MSRB initiated a review of its rules and related interpretive guidance for brokers, dealers and municipal securities dealers (collectively, “dealers”) and municipal advisors (municipal advisors, together with dealers, “regulated entities”). The MSRB initiated that review in the context of the Board’s obligation to protect investors, municipal entities, obligated persons, and the public interest. As part of that review, the MSRB solicited comments from market participants.⁵ In response, market participants recommended that the Board update Rule G-10.⁶ The proposed rule change, consisting of amendments to Rule G-10 and its related recordkeeping rules, Rules G-8 and G-9, and guidance under Rule G-32, is an important element of both MSRB regulatory initiatives.

Proposed Rule Change

Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms “broker,” “dealer,” “municipal securities broker,” “municipal securities dealer,” “bank dealer,” and “municipal advisor” shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board’s rules.

⁵ MSRB Notice 2012-63, Request for Comment on MSRB Rules and Interpretive Guidance (Dec. 18, 2012).

⁶ See, e.g., Letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (commenting that (i) the requirement to deliver an investor brochure under Rule G-10 should be eliminated, (ii) the investor brochure is of limited value, if any, to institutional investors as well as investors in municipal fund securities, and (iii) alternatively, the MSRB could accomplish the objective of Rule G-10 by posting the investor brochure on its website); Letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (commenting that (i) the requirement to deliver an investor brochure under Rule G-10 should be eliminated, (ii) the investor brochure is of limited value, if any, to institutional investors as well as investors in municipal fund securities, and (iii) alternatively, the MSRB could accomplish the objective of Rule G-10 by posting the investor brochure on its website).

To extend its customer complaint and recordkeeping rules to municipal advisors and to modernize those rules, the Board is filing this proposed rule change with the Commission. Specifically, the proposed rule change would (i) extend the Board’s customer complaint recordkeeping requirements to all municipal advisors (i.e., non-solicitor and solicitor municipal advisors) as well as align those recordkeeping requirements more closely with the customer complaint recordkeeping requirements of other financial regulators, (ii) require that all regulated entities retain their customer or municipal advisory client⁷ complaint records for six years, (iii) overhaul Rule G-10 so that the rule would more closely focus on customer and municipal advisory client education and protection as well as align that rule with customer education and protection rules of other financial regulators, and (iv) extend the Board’s guidance under Rule G-32, Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (Nov. 20, 1998) (the “1998 Notice”), to municipal advisors.

In summary, by regulated entity, the proposed rule change would:

Municipal Advisors

- amend Rule G-8 to exclude municipal advisors from the definition of “customers;”
- amend Rule G-8 to include the definition of “municipal advisory client;”
- amend Rule G-8 to extend the requirements that are similar to the rule’s customer complaint recordkeeping requirements to municipal advisory client complaint recordkeeping;
- amend Rule G-8 to provide guidance in supplementary material that would define electronic recordkeeping;

⁷ The proposed rule change, in Rule G-8(e)(ii), would define a municipal advisory client as a municipal entity or an obligated person for whom the municipal advisor engages in activities that would cause the municipal advisor to be a municipal advisor, as defined in Section 15B(e)(4) of the Exchange Act, 15 U.S.C. 78q-4(e)(4).

- amend Rule G-8 to provide guidance in supplementary material that would remind a municipal advisor that it may be required to promptly report certain municipal advisory client complaints to other regulatory authorities;
- amend Rule G-9 to require that the records of municipal advisory client complaints be kept for at least six years;
- amend Rule G-10 to extend requirements that are similar to the rule's dealer customer protection and education requirements to municipal advisory client protection and education; and
- extend to municipal advisors, under Rule G-32, the guidance provided by the 1998 Notice, as relevant.

Dealers

- amend Rule G-8 to require that dealers keep a standardized complaint log electronically, using product and problem codes tailored for municipal securities, to document the written complaints of customers;
- amend Rule G-8 to define written customer complaints to include complaints received electronically by the dealer;
- amend Rule G-8 to provide guidance in supplementary material that would define electronic recordkeeping;
- amend Rule G-8 to provide guidance in supplementary material that would remind a dealer that it may be required to promptly report certain written customer complaints to other regulatory authorities; and
- amend Rule G-10 in its entirety so that the rule would more clearly focus on customer protection and education.

A detailed rule discussion of the proposed rule change’s recordkeeping requirements, customer and municipal advisory client education and protection requirements, and electronic delivery guidance to municipal advisors follows.

A. Recordkeeping Requirements

Rule G-8 currently requires that a dealer keep a record of all written complaints from customers and what action, if any, has been taken by the dealer in connection with those complaints. Under the proposed rule change, the Board would amend Rule G-8 to enhance its current recordkeeping requirements and then would extend those enhanced recordkeeping requirements to municipal advisors. More specifically, the proposed rule change would require regulated entities to retain additional detailed information about complaints electronically using a standard set of complaint product and problem codes. Supplementary Material would define electronic recordkeeping, and would remind regulated entities of their complaint reporting obligations to other regulatory authorities.

The three major components of the proposed rule change relating to complaint recordkeeping enhancements—namely, the application of those requirements to municipal advisors, the electronic complaint log, and supplementary material—are discussed below.

(i) Application of Customer Complaint Recordkeeping Requirements to Municipal Advisors

Under the proposed rule change, the Board would amend Rule G-8 to extend its complaint recordkeeping requirements to all municipal advisors. To accomplish this, the Board would (i) define municipal advisory client and (ii) require that a municipal advisor keep a record of written municipal advisory client complaints similar to the record that would be required for dealers to keep of customer complaints (see discussion under “Electronic Complaint Log”

below).⁸ The Board also would extend the record retention period applicable to customer complaints under Rule G-9(a)(v) to municipal advisory client complaints under the proposed amendment to Rule G-9(h)(iii).

A municipal advisory client, as previously noted, would include a municipal entity or obligated person for whom the municipal advisor engages in activities that cause the municipal advisor to be within the definition of a municipal advisor set forth in Section 15B(e)(4) of the Exchange Act.⁹ Consistent with the Board’s mandate under the Dodd-Frank Act to protect investors, municipal entities, and obligated persons,¹⁰ the proposed rule change’s definition of municipal advisory client would include clients of non-solicitor and solicitor municipal advisors.

The definition of a municipal advisor set forth in Section 15B(e)(4)(A)¹¹ is broad and includes non-solicitor and solicitor municipal advisors. Section 15B(e)(4)(A)(ii),¹² in turn, references the definition of “solicitation of a municipal entity or obligated person” set forth in

⁸ “Written” would include electronic correspondence. “Complaint” would mean any written statement alleging a grievance involving the activities of the dealer or municipal advisor or any of their associated persons with respect to any matter involving a customer’s or the municipal entity client’s account. See the proposed amendments to Rule G-8(a)(x)(ii) and (h).

⁹ 15 U.S.C. 78q(e)(4).

¹⁰ See supra note 3.

¹¹ Section 15B(e)(4), 15 U.S.C. 78q-4(e), provides, in part, that the term municipal advisor:

- (A) means a person (who is not a municipal entity or an employee of a municipal entity) that –
 - (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or
 - (ii) undertakes a solicitation of a municipal entity. . .

¹² 15 U.S.C. 78q(e)(4)(A)(ii).

Section 15B(e)(9) of the Exchange Act.¹³ Section 15B(e)(9),¹⁴ in part, defines a solicitation of a municipal entity or obligated person to mean “a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser . . . that does not control . . . the person undertaking such solicitation” As such, the potential pool of written complaints could, for example, include a written complaint made by a municipal advisory client relating to an advertisement of the solicitor municipal advisor. Nonetheless, to protect municipal entity clients and obligated persons, the Board believes that it is important to capture the written complaints made by the full spectrum of municipal advisory clients of a solicitor municipal advisor.

Further, under the proposed rule change, the Board would amend Rule G-9 to extend the record retention period for municipal advisory client complaints to six years. Without such an extension, records of customer complaints would be kept for six years, while records of municipal advisory client complaints would be kept for five years. Because of the potential importance of municipal advisory client complaints to informing other regulators on inspections of regulated entities and on the potential enforcement of MSRB rules (see discussion under “Electronic Complaint Log” below), the MSRB believes that the retention period for such municipal advisory client complaint records should correspond to that of customer complaint records.¹⁵

¹³ 15 U.S.C. 78q(e)(9).

¹⁴ Id.

¹⁵ The Board notes, however, that there are instances where the record retention requirements between dealers and municipal advisors differ. For example, dealers are

(ii) Electronic Complaint Log

Under the proposed rule change, the Board would amend Rule G-8 to require that all regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients and persons acting on behalf of such customers or municipal advisory clients. There would be no option to keep the complaint log in a paper format. The electronic complaint log would include identifying information about the customer or municipal advisory client (i.e., his, her or its name, address, and account number), the date the complaint was received, the date of the activity that gave rise to the complaint, and the person whom the customer or municipal advisory client names in his or her complaint. The record also would include a description of the nature of complaint, and the action, if any, the dealer or municipal advisor has taken concerning the complaint. The log would require that the regulated entity code the complaint using a standard set of product and problem codes.

By enhancing the information about customer and municipal advisory client complaints that a regulated entity would be required to keep, as well as by requiring that the regulated entity keep those records electronically using standard codes, the Board would align Rule G-8 with the recordkeeping requirements of other financial regulators. For example, Rule 17a-3(18) under the Exchange Act¹⁶ and FINRA Rule 4513¹⁷ each require information about customer complaints

required to retain records of gifts and gratuities under Rule G-20 for six years, while municipal advisors only are required to retain such records for five years.

¹⁶ Rule 17a-3(a)(18), 17 CFR 240.17a-3(a)(18), provides, in part, that every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall make and keep current the following books and records relating to its business:

similar to what would be required under the proposed rule change. Those rules require identifying information about the customer, the date the complaint was received, the name of any associated person named in the complaint, a description of the nature of the complaint and the disposition of the complaint.¹⁸ Further, FINRA Rule 4530 requires that dealers use product and problem codes to code their electronic logs of customer complaints.¹⁹

In addition, by requiring that customer and municipal advisory client complaint records be kept electronically using standard codes, the Board believes that the proposed rule change would enhance the ability of other financial regulators to conduct more cost-effective and efficient inspections and surveillance of regulated entities. The Board understands that other

A record:

- (i) As to each associated person of each written customer complaint received by the member, broker or dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. . .
- (ii) Indicating that each customer of the member, broker or dealer has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to the account may be directed.

¹⁷ FINRA Rule 4513(a) provides, in part, that:

[e]ach member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints.

¹⁸ See supra notes 16 and 17.

¹⁹ See FINRA Rule 4530(d). The product and problem codes used under Rule 4530 as of August 29, 2016 are available at http://www.finra.org/sites/default/files/Web%20-%20Complaints%20%20Problem%20and%20Product%20Codes_0.pdf.

financial regulators conduct certain portions of their inspections and monitoring of dealers electronically. Under the proposed rule change, the Board would ensure that inspections of certain dealers and municipal advisors that are not members of FINRA also could be accomplished in a more cost-effective and efficient manner.

As noted above, under the proposed rule change, the Board would develop codes for the electronic complaint log that would be based on the product and problem codes required by FINRA Rule 4530, but would be tailored to address municipal securities and municipal advisory activities.²⁰ The Board would make such codes available in a manual that would be posted on its website. A regulated entity, similar to FINRA Rule 4530, would be required to select the most prominent product and the most egregious problem discussed in the complaint. In the future, however, the Board may require that all products and problems be coded in the electronic customer or municipal advisory client complaint log.

While the electronic complaint log requirement would impose a burden on dealers and municipal advisors, the Board anticipates that the electronic complaint log requirement would impose little additional burden on dealers that are FINRA members. The proposed rule change's complaint log recordkeeping requirements are similar to the requirements relating to customer complaints set forth in Rule 17a-3 under the Exchange Act.²¹ Under Rule G-8(f), dealers in compliance with Rule 17a-3 will be deemed to be in compliance with Rule G-8 as long as certain information is maintained, including information relating to customer complaints.²² In addition,

²⁰ Id.

²¹ See supra note 16.

²² Specifically, Rule G-8(f) provides that:

dealers that are FINRA members currently must comply with FINRA Rule 4530, the rule, in part, with which the Board is seeking to align the proposed rule change. Further, as discussed under “Self-Regulatory Organization’s Statement on Burden on Competition” below, the recordkeeping burden imposed on dealers and municipal advisors would be necessary to help protect customers and municipal advisory clients.

(iii) Supplementary Material

The proposed rule change would include supplementary material under Rule G-8 that would (i) provide guidance as to the term “electronic format” used in the proposed amendments to Rules G-8(a) and (h) and (ii) remind regulated entities of their reporting obligations to other regulatory authorities. The supplementary material, in .01, would make clear that a regulated entity could use any electronic format, i.e., computer software that allows for the storing, organization and manipulation of data, as long as the software would allow for the electronic complaint log to be provided promptly upon request to a financial regulatory authority. The supplementary material, in .02, also would remind a regulated entity that it may have the duty to report certain complaints, such as complaints involving theft, to other regulatory authorities, such as to FINRA or to the SEC.

B. Customer and Municipal Advisory Client Education and Protection

Under the proposed rule change, the Board would amend and overhaul Rule G-10 to replace the current Rule G-10 with a more modern customer and municipal advisory client

Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); and paragraphs (a)(xi) through (a)(xxvi) shall in any event be maintained.

education and protection rule. The proposed rule change's amendments to Rule G-10 would apply to dealers and municipal advisors.

At its core, the Board designed Rule G-10 to protect investors by providing investors with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority. That information also includes an overview of the investor protections provided by MSRB rules. However, investors currently do not receive this information until after they have made a complaint to or about the dealer; at that point, the information in the investor brochure may arrive at a point in time that would impede the investor from making the best use of the information provided in the investor brochure. The proposed rule change solves that problem through modernization of the rule.

Under the proposed rule change, Rule G-10 would remain a rule that is focused on investor education and protection. However, instead of an investor receiving the educational material and information about filing a complaint only after he or she has made a complaint, the customer or municipal advisory client would receive more regular notifications from its regulated entity about the availability of such materials. Specifically, a dealer would be required to notify a customer about its registration status and the availability of the educational material annually, and a municipal advisor would be required to notify a municipal advisory client²³ about

²³ The term "municipal advisory client" under the proposed amendments to Rule G-10 would be more narrow than how the term would be defined under the proposed amendments to Rule G-8. Under the proposed rule change, the Board would define solicitation of a municipal entity or obligated person under Rule G-10 by reference to Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Exchange Act. For purposes of that rule, solicitation does not include:

- (1) Advertising by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser; or
- (2) Solicitation of an obligated person, if such person is not acting in the capacity of an obligated person or the solicitation of the obligated person

its registration and the availability of educational material promptly but no less than once each calendar year during the course of a municipal advisory relationship. The notifications would require that the regulated entity disclose (i) that the regulated entity is registered with the MSRB and the SEC, (ii) the MSRB's website address, and (iii) that there is a brochure available on the MSRB website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

By requiring these notifications, the Board believes that a customer or municipal advisory client would be able to receive detailed and relevant information about its regulated entity, the protections provided by MSRB rules, and how to make a complaint in a more timely and consistent fashion.²⁴ Further, by reminding the customer or municipal advisory client about the regulated entity's registration with the SEC, the Board believes that a customer or municipal advisory client might be more likely to access the information and educational materials that are available from the SEC, the regulatory authority that may examine the regulated entity and/or enforce the MSRB's rules. The notifications would address concerns raised by market participants that the investor brochure may be of limited, if any, use to certain investors, such as institutional investors and investors in municipal fund securities, by directing investors to the

is not in connection with the issuance of municipal securities or with respect to municipal financial products.

By using the narrower definition of solicitation of a municipal entity or obligated person, the Board would be able to better ensure that the notifications are sent to actual solicitor municipal advisory clients and not just to an entity that reviewed an advertisement. For purposes of the proposed amendments to Rule G-10, the set of non-solicitor municipal advisory clients would remain the same as it is for the proposed amendments to Rule G-8.

²⁴ The Board would increase the visibility of the brochure, and other relevant information, on the MSRB's website.

most complete range of relevant information about the regulated entity, including the regulation of that regulated entity.²⁵

Under the proposed rule change, the Board would not specify, other than in writing, how the customer or municipal advisory client would receive the notifications. The proposed rule change assumes that the regulated entity could include the notifications with other materials. Further, as suggested by commenters to Regulatory Notice 2012-63, unlike with the current Rule G-10, a regulated entity would not be required to deliver an investor brochure to the customer. The notifications would replace that requirement.²⁶

The proposed amendments to Rule G-10 would align Rule G-10 with FINRA Rule 2267, Investor Education and Protection. That rule contains similar notification requirements, but the notifications under FINRA Rule 2267 refer the investor to the BrokerCheck Hotline Number and to FINRA's website address.²⁷ Because dealers that are FINRA members are required to provide

²⁵ See supra note 6.

²⁶ The Board believes that by no longer requiring that the investor brochure be sent after the investor has made a complaint, the investor may have an improved "complaint" experience. The Board understands that investors may have been frustrated by the timing of their receipt of the investor brochure. Some investors may have believed that the brochure was not germane and helpful to the complaint, particularly when they would have preferred information about resolving the issue and/or the actual resolution of the issue. Those investors, in turn, may have complained to their dealers about the investor brochure, and their dealers, in response, may have sent yet another investor brochure to be in compliance with Rule G-10. See id.

²⁷ FINRA Rule 2267(a) provides, in part, that:

Except as otherwise provided in this Rule, each member shall once every calendar year provide in writing (which may be electronic) to each customer the following items of information:

- (1) FINRA BrokerCheck Hotline Number;
- (2) FINRA Web site address; and

annual notifications to investors, the Board anticipates that it would not be a significant burden for most dealers to provide the annual notifications that would be required under the proposed amendments to Rule G-10. In addition, the Board believes that it would be a reasonable requirement for a municipal advisor to provide such notifications promptly but no less than once each calendar year during the course of a municipal advisory relationship.

C. Electronic Delivery Guidance for Municipal Advisors

In 1998, the Board published guidance under Rule G-32 regarding the electronic delivery and receipt of information by dealers. The Board, in part, based that guidance on guidance that the SEC had provided about electronic delivery of information. However, since that time, the Dodd-Frank Act has granted the Board with rulemaking authority over municipal advisors.²⁸ To ensure that municipal advisors could take full advantage of the Board's electronic delivery guidance, as well as to ensure that the proposed amendments to Rule G-10 would work as intended, the proposed rule change would extend the Board's guidance provided by the 1998 Notice to municipal advisors.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act²⁹ provides that:

[t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of

(3) A statement as to the availability to the customer of an investor brochure that includes information describing FINRA BrokerCheck.

²⁸ See supra note 3.

²⁹ 15 U.S.C. 78o-4(b)(2).

municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

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)³¹ and 15B(b)(2)(C)³² of the Exchange Act. The proposed rule change would help prevent fraudulent and manipulative practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and municipal financial products, and protect investors, municipal entities, obligated persons and the public interest by developing more comprehensive and modern customer and municipal advisory client complaint and recordkeeping rules. The proposed rule change would overhaul Rule G-10 so that the rule would more clearly focus on customer and municipal advisory client education and protection. Further, the proposed rule change would enhance the Board's related recordkeeping requirements under Rule G-8 about written customer and municipal advisory client complaints to require that regulated entities keep more detailed information about written customer or municipal advisory client complaints in an electronic format.

³⁰ 15 U.S.C. 78o-4(b)(2)(C).

³¹ 15 U.S.C. 78o-4(b)(2).

³² 15 U.S.C. 78o-4(b)(2)(C).

The proposed rule change would align the Board's customer and municipal advisory client complaint rules and related recordkeeping requirements with those of other financial regulators. By so doing, the proposed rule change will likely promote compliance with Board rules by providing regulated entities with the opportunity to streamline their compliance procedures, and thus promote compliance with MSRB rules and reduce their compliance costs.

In addition, the proposed amendments to Rules G-8 and G-9 would enhance the ability of other financial regulators to conduct more cost-effective and efficient inspections and surveillance of regulated entities by requiring that all regulated entities keep and maintain their electronic records of written customer or municipal advisory client complaints for six years. The Board believes that the ability to more cost-effectively and efficiently monitor written customer and municipal advisory client complaints will promote compliance with Board rules. Increased compliance with Board rules will likely reduce the frequency and magnitude of compliance issues that could potentially result in harm to investors, municipal entities, or obligated persons, or undermine the public's confidence in the municipal securities market.

Section 15B(b)(2)(L)(iv) of the Exchange Act³³ requires that rules adopted by the Board:

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change's extension of Rule G-10's customer education and protection requirements and the related Rules G-8 and G-9 recordkeeping requirements to municipal advisors does represent an additional burden on municipal advisors, including small municipal advisors. However, the Board believes that the regulatory burden will be relatively limited and is

³³ 15 U.S.C. 78o-4(b)(2)(L)(iv).

necessary to protect municipal entity and obligated person clients, and the integrity of the municipal securities and municipal advisory marketplaces.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,³⁴ which provides that the MSRB's rules shall

prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would enhance the current customer complaint recordkeeping requirements under Rule G-8 by requiring that dealers keep more detailed information about written customer complaints in an electronic format and then would extend those recordkeeping requirements to municipal advisors. Further, the proposed rule change would extend the six-year record retention period applicable to customer complaints to municipal advisory client complaints. As noted above, the MSRB believes that the proposed amendments to Rule G-8 related to books and records, and Rule G-9 related to the retention of those records, will promote compliance with and facilitate enforcement of MSRB rules, including Rule G-10 and other applicable securities laws and regulations.

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

Section 15B(b)(2)(C) of the Exchange Act³⁵ 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. In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act³⁶ provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not

³⁴ 15 U.S.C. 78o-4(b)(2)(G).

³⁵ 15 U.S.C. 78o-4(b)(2)(C).

³⁶ 15 U.S.C. 78o-4(b)(2)(L)(iv).

necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.³⁷ In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this document.

The MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Exchange Act.

While the MSRB believes that the proposed rule changes represent a reduction in burden compared to the existing Rule G-10, the MSRB recognizes that the recordkeeping requirements associated with the proposed rule change may impose some initial costs on dealers that currently comply with FINRA Rule 4530 but need to adopt a new set of complaint codes. The MSRB also recognizes that dealers that are not currently FINRA members may experience a greater burden as the proposed recordkeeping requirements may constitute a new activity that they have not previously performed. The MSRB does not believe, however, that the potentially greater burden on dealers that are not FINRA members is significant enough to constitute a burden on competition.

The MSRB recognizes that the proposal represents a new requirement on municipal advisors and that the recordkeeping requirements in particular may disproportionately impact

³⁷ Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>.

small municipal advisors. However, the MSRB does not believe that the overall burden of the proposed rule change is significant or that the impact on small municipal advisors will materially alter the competitive landscape. To the extent the proposed rule changes do lead some firms to exit the market or consolidate, based on the SEC's analysis in its order adopting the municipal advisor rules, the MSRB believes that the market for municipal advisory activities is likely to remain competitive.³⁸

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

Written comments were neither solicited nor received on the proposed rule change.

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

³⁸ Securities Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67608 (Nov. 12, 2013).

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-2016-15 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-2016-15. 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-2016-15 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.³⁹

Brent J. Fields
Secretary

³⁹ 17 CFR 200.30-3(a)(12).