



Municipal Securities Rulemaking Board

May 10, 2017

Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comment on SR-MSRB-2017-02

Dear Secretary:

On March 22, 2017, the Municipal Securities Rulemaking Board (MSRB) filed with the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change to amend MSRB Rule G-3, on professional qualification requirements; amend MSRB Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers and municipal advisors; and make certain conforming and technical changes (collectively, the “proposed rule change”). The SEC published notice of the proposed rule change on March 29, 2017,¹ and notice was then published in the Federal Register on April 4, 2017.² The SEC received one comment letter in response to the proposed rule change from the National Association of Municipal Advisors (NAMA).³ This letter is in response to NAMA’s comment letter.

NAMA continues to support the establishment of continuing education requirements for municipal advisor firms, noting that it is imperative for municipal advisor professionals to continue to expand their knowledge and improve their professional skills beyond the Municipal Advisor Representative Qualification Examination (Series 50 exam).⁴ NAMA also suggested, consistent with comments made in response to the related request for comment,⁵ that certain

¹ Exchange Act Release No. 80327 (Mar. 29, 2017).

² 82 FR 16449 (Apr. 4, 2017).

³ See letter from Susan Gaffney, Executive Director, NAMA, dated Apr. 25, 2017.

⁴ It is important to note, and as the MSRB has previously stated, the Series 50 exam does not itself bestow the requisite degree of knowledge and expertise needed to provide a municipal entity or obligated person client with informed advice.

⁵ MSRB Regulatory Notice 2016-24, Request for Comment on Draft Provisions to Establish a Continuing Education Requirement for Municipal Advisors (“draft amendments”) (September 30, 2016).

aspects of the proposed rule change require additional focus and resolution prior to implementation. The MSRB substantially addressed such comments in its rule filing with the SEC.

First, NAMA recommended that the MSRB develop guidance to help municipal advisor firms, especially small municipal advisor firms, better understand how to conduct a needs analysis, and provide examples of the types of training that can be sought to meet the requirements of the regulation. NAMA noted that such guidance is needed prior to municipal advisors being able to implement a useful and meaningful training program, which may require delaying implementation.

The MSRB noted in its filing that it recognizes that additional guidance on conducting a needs analysis and how to implement a continuing education program may benefit municipal advisor firms. The MSRB articulated that it intends to provide guidance to municipal advisor firms in understanding their obligations to develop a continuing education program before the proposed rule change is implemented.⁶ Such guidance will include a sample needs analysis, a sample training plan and a non-exclusive list of delivery mechanisms that a municipal advisor firm could use in delivering and documenting training. Importantly, such guidance will be designed to assist a municipal advisor firm in tailoring the development and implementation of a continuing education program based on regulatory developments, the size and organizational structure of the firm and the municipal advisory activities the firm engages in. Such guidance will not promote a one-size-fits-all continuing education program and will not create a safe harbor. The MSRB intends, as commonly is the practice, to provide implementation guidance in a webinar shortly following approval of the proposed rule change. In addition, the MSRB intends to issue additional guidance, including sample documentation, at least 90 days prior to the implementation date.⁷ Importantly, while the MSRB is proposing a January 1, 2018 effective date, municipal advisors would have until December 31, 2018 to complete a needs analysis, develop a written training plan and deliver the appropriate training to comply with the annual training requirements for calendar year 2018. Accordingly, the MSRB believes that municipal advisor firms will have sufficient time to implement procedures reasonably designed to achieve compliance with the continuing education requirements.

⁶ The MSRB has requested that the proposed rule change be approved with an implementation date of January 1, 2018.

⁷ In addition, as NAMA noted, the CE Council, of which the MSRB is a participant, provides sample continuing education documents. While such samples were not created for municipal advisors, such samples certainly provide guidance on the framework of a securities industry continuing education program.

Secondly, NAMA repeated the view that a municipal advisor firm that does not have any municipal entity clients should not have to include fiduciary duty obligations in its continuing education program and requested that the MSRB consider a “non-substantive, but clarifying change” to make this clear in the proposed rule change. The MSRB believes that NAMA’s suggested change would materially change the spirit and intent of the proposed rule change. As the MSRB noted in the filing, the fiduciary duty standard is a keystone principal of the regulatory framework for municipal advisors and every municipal advisor firm needs to address the fiduciary duty obligation in its continuing education program. Recognizing that municipal advisory activities can vary from firm to firm, the proposed rule change affords a municipal advisor firm sufficient flexibility to determine the extent and scope of the fiduciary duty training that needs to be included in its continuing education program based on the municipal advisory activities in which the firm engages.

Thirdly, NAMA requested further clarification on the scope and parameters of the provision providing an appropriate examining authority the ability to require a municipal advisor firm to provide training for individuals or a group of individuals. This provision is designed to provide the appropriate examining authority the discretion to determine, in the course of examining and enforcing compliance with MSRB rules, whether an associated person(s) of a municipal advisor firm requires additional training.⁸ This provision is consistent with similar authority provided under current MSRB Rule G-3(i)(ii)(D) with respect to the continuing education requirements for brokers, dealers and municipal securities dealers.

Lastly, NAMA indicated that the MSRB should address the economic impact its rulemaking has on sole-practitioners and small municipal advisor firms, stressing that the MSRB should empirically look at the cumulative economic or administrative burden created by the adoption of rules establishing a regulatory framework for municipal advisor firms.

As discussed in the filing, Section 15B(b)(2)(L)(ii) of the Securities Exchange Act of 1934 mandates that the MSRB prescribe continuing education requirements for municipal advisors. The Act also provides that the MSRB rules may 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.⁹ In determining whether this standard has been met, and

⁸ Under proposed MSRB Rule G-3(i)(ii)(D) “appropriate examining authority” means “a registered securities association with respect to a municipal advisor that is a member of such association, or the Commission, or the Commission’s designees, with respect to any other municipal advisor.”

⁹ 15 U.S.C. 78o-4(b)(2)(L)(iv).

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in accordance with its Policy on the Use of Economic Analysis in MSRB Rulemaking,¹⁰ the MSRB has evaluated and articulated the economic impact associated with the proposed rule change in the filing.

The MSRB has been implementing a municipal advisor regulatory framework, as mandated through the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act, for several years. As the MSRB has recently stated, it plans to assess retrospectively the impact and effectiveness of the municipal advisory framework once it is more fully in place.¹¹ At its meeting in April, the Board discussed the importance of this future analysis to understanding the benefits and costs of the municipal advisory regulatory regime.¹²

The MSRB continues to believe that the proposed rule change is consistent with its statutory mandate to prescribe continuing education requirements for municipal advisors with the goal of ensuring that covered persons of municipal advisors are kept abreast of issues that may affect their job responsibilities and of regulatory developments in furtherance of the protection of investors. In addition, the MSRB believes that the proposed amendments to its related recordkeeping rule will enhance the ability of municipal advisors to evidence compliance with the requirements, under MSRB Rule G-3, related to the administration of a municipal advisor's continuing education program.

If you have any questions, please feel free to contact me or Bri Joiner, Manager, Professional Qualifications at (202) 838-1500.

Sincerely,



Gail Marshall
Associate General Counsel

¹⁰ Policy on the Use of Economic Analysis in MSRB Rulemaking, available at: <http://msrb.org/rules-and-interpretations/economic-analysis-policy>.

¹¹ See MSRB Press Release, *MSRB Holds Quarterly Board Meeting*, (May 1, 2017) available at: <http://msrb.org/News-and-Events/Press-Releases/2017/MSRB-Holds-Quarterly-Board-Meeting-April-2017.aspx>.

¹² Id.