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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 05

Amendment No. (req. for Amendments *)

Filing by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend MSRB Rule G-3 to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination and Remove Waiver Provisions and to Amend MSRB Rule G-8 to Establish Related Books and Records Requirements

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Bri Last Name * Joiner

Title * Director, Regulatory Compliance

E-mail * bjoiner@msrb.org

Telephone * (202) 838-1500 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Municipal Securities Rulemaking Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 07/21/2023 (Title *)

By Ronald W. Smith Corporate Secretary
(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

rsmith@msrb.org
rg

Digitally signed by
rsmith@msrb.org
Date: 2023.07.21 11:18:19
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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MSRB-2023-05 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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MSRB-2023-05 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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MSRB-2023-05 Exhibits 2a, 2b, 2c.pdf

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

MSRB-2023-05 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is filing with the Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change to amend MSRB Rule G-3, on professional qualification requirements to (i) remove the waiver provisions with respect to municipal advisor representative and principal qualification requirements; (ii) establish a new, criteria-based exemption to permit certain individuals to requalify as a municipal advisor representative³ without reexamination; (iii) retitle and replace Supplementary Material .02, on extraordinary waivers with text specifying the means for electronic delivery of the requisite notice to the MSRB regarding satisfaction of the criteria-based exemption; and (iv) make technical changes to the rule to update certain phrases and clauses. The MSRB also proposes to amend MSRB Rule G-8, on books and records, to establish accompanying recordkeeping requirements (the proposed amendments to Rules G-3 and G-8 collectively make up the “proposed rule change”). The MSRB requests that the proposed rule change be approved with a compliance date of no more than 30 days following the Commission approval date. The proposed rule change is specific to the professional qualification obligations of municipal advisors, including associated persons thereof, under Rule G-3, and does not modify any requirements to firms registered solely as brokers, dealers and/or municipal securities dealers (collectively, “dealers” and each, individually “a dealer”), or associated persons thereof.

(a) The text of the proposed rule change is attached as Exhibit 5. Text proposed to be added is underlined, and text proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Rule G-3(d)(i)(A) defines the term “municipal advisor representative” to mean a natural person associated with a municipal advisor who engages in municipal advisory activities, on the municipal advisor’s behalf, other than a person performing only clerical, administrative, support or similar functions. Rule G-3(d)(ii)(A) requires all persons meeting the definition of a municipal advisor representative to be qualified in that capacity by taking and passing the Municipal Advisor Representative Qualification Examination (“Series 50 examination”) prior to being qualified as a municipal advisor representative. Under current Rule G-3(d)(ii)(B), any person who, after qualifying as a municipal advisor representative, ceases to be associated with a municipal advisor firm for two or more years shall re-take and pass the Series 50 examination, unless a waiver is granted from the Board in “extraordinary cases” pursuant to current Rule G-3(h)(ii).

The proposed rule change was approved by the Board at its April 26-27, 2023, meeting. Questions concerning this filing may be directed to Bri Joiner, Director, Regulatory Compliance or William Otto, Assistant Director, Market Regulation, at 202-838-1500.

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

(a) Purpose

The MSRB is charged with setting professional qualification standards for dealers and municipal advisors. Specifically, Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe 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.⁴ Sections 15B(b)(2)(A)(i)⁵ and 15B(b)(2)(A)(iii)⁶ of the Act also provide that the Board may appropriately classify associated persons of dealers and municipal advisors and require persons in any such class to pass tests prescribed by the Board. Accordingly, over the years, the MSRB has adopted professional qualification standards to ensure that associated persons of dealers and municipal advisors attain and maintain specified levels of competence and knowledge for each qualification category.

Description of the Proposed Rule Change

As part of the MSRB’s rule book modernization initiative and in light of the industry-wide continuing education (CE) transformation initiative for broker-dealers,⁷ the MSRB undertook a review of Rule G-3 to identify opportunities to provide individuals associated with municipal advisor firms increased regulatory flexibility with respect to maintaining their professional qualifications. To that end, the proposed rule change would create a one-time, criteria-based exemption, under Rule G-3, for former municipal advisor representatives to, without reexamination, requalify in that capacity no later than one year after their two-year lapse

⁴ See 15 U.S.C. 78o-4(b)(2)(A).

⁵ See 15 U.S.C. 78o-4(b)(2)(A)(i).

⁶ See 15 U.S.C. 78o-4(b)(2)(A)(iii).

⁷ As industry and market practices evolved in recent years, the MSRB, in coordination with other self-regulatory organizations, advanced rulemaking initiatives to modernize applicable professional qualification and continuing education program requirements for dealers (“CE Transformation”). See e.g., Exchange Act Release No. 95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule G-3 Continuing Education Program Requirements to Harmonize with Industry-Wide Transformation) (File No. SR-MSRB-2022-07).

in qualification. Second, the proposed rule change would remove language from Rule G-3 that currently permits the Board, in extraordinary cases, to waive the reexamination requirements for municipal advisor representatives and principals. Third, the proposed rule change would make certain clarifying amendments to Rule G-3 to address an interpretive question pertaining to a lapse in qualification for an individual associated with a dually registered firm that is both a dealer and a municipal advisor. Fourth, the proposed rule change would retitle and replace the current text of Supplementary Material .02 of Rule G-3 with text specifying the means for electronic delivery of the requisite notice to the MSRB regarding satisfaction of the criteria-based exemption. Additionally, the proposed rule change would make technical amendments to Rule G-3 to update certain phrases, clauses and referenced provisions to, among other things, improve the overall readability of the rule. Finally, the proposed rule change would amend Rule G-8 to require municipal advisors to make and keep certain books and records relating to the exemption to be created under the proposed rule change, as prescribed under Rule G-3(h)(ii)(I).

A more detailed description of the proposed rule change follows.

Clarifying Amendments to Rule G-3(d)(ii)(B)

Currently, pursuant to Rule G-3(d)(ii)(B), on qualification requirements for municipal advisor representatives, any person who ceases to be associated with a municipal advisor⁸ for two or more years after having qualified as a municipal advisor representative, in accordance with the rule, must take and pass the Series 50 examination prior to being qualified as a municipal advisor representative, unless a waiver is granted. Proposed amendments to this provision would provide that any person who ceases to be associated with “or engaged in municipal advisory activities on behalf of” a municipal advisor for two or more years after having qualified by examination as a municipal advisor representative (i.e., experiences a “lapse in qualification”) must take and pass the Series 50 examination unless exempt from such requirement pursuant to Rule G-3(h)(ii), as amended by the proposed rule change.

The proposed amendments to Rule G-3(d)(ii)(B) add the new language “or engaged in municipal advisory activities on behalf of” which is intended to provide clarity on the requirement for an individual associated with a firm that is dually registered as a dealer and municipal advisor. If an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor representative⁹ and instead engages only in

⁸ For purposes of this filing and Exhibit 5, when the term “municipal advisor” is used it refers only to the firm and not associated persons of the firm.

⁹ Pursuant to Section 15B(e)(4)(A)(i) and (ii) of the Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and Rules D-13, G-3(d)(i)(A), and G-3(d)(ii)(A), municipal advisory activities requiring qualification as a municipal advisor representative include providing 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 undertaking a solicitation of a municipal entity or obligated person.

municipal securities business on behalf of the firm for a period of two or more years, then that individual's municipal advisor representative qualification would have lapsed, notwithstanding the fact that such person remains associated with a firm that is also a registered municipal advisor.¹⁰ The proposed amendments to Rule G-3(d)(ii)(B) would also delete the reference to the mention of a waiver (*i.e.*, the clause "a waiver is granted") to clarify that such persons would need to qualify by examination as municipal advisor representatives, unless obtaining the one-time criteria-based exemption.

Relatedly, the proposed rule change would provide a technical amendment to subparagraph (d)(ii)(B) of Rule G-3 by adding the phrase "lapse in qualification" to define for purposes of the rule when a person ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative. The proposed amendments also would replace the phrase "a waiver is granted" with "exempt" to make clear that the waiver provision for extraordinary cases is being deleted and replaced with a criteria-based exemption. The technical amendment to change the word "shall" to "must" is intended to add clarity without changing the meaning of the term. Lastly, the proposed amendments would replace the reference to "subparagraph" (h)(ii) with "paragraph" (h)(ii) to create better uniformity across Rule G-3.

Clarifying Amendments to Rule G-3(e)(ii)(A) and (B)

Currently, pursuant to Rule G-3(e)(ii)(A), on qualification requirements for municipal advisor principals, as a pre-requisite to becoming qualified as a municipal advisor principal a person must take and pass the Series 50 examination. The proposed amendments to this provision would provide that taking and passing the Series 50 examination is the pre-requisite to becoming qualified as a municipal advisor principal "unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule." The proposed amendments to Rule G-3(e)(ii)(A) add the new language "unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule," which is intended to allow for individuals previously qualified as municipal advisor principals to use the criteria-based exemption to obtain requalification with the Series 50 examination and provide clarity as to the application to such individuals. Notwithstanding the availability of the criteria-based exemption from requalification with the Series 50 examination, such municipal advisor principals would still need to take and pass the Municipal Advisor Principal Qualification Examination ("Series 54 examination").

¹⁰ Under Exchange Act Rule 15Ba1-2, SEC Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities ("SEC Form MA-I") is filed with the SEC to indicate natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf. *See* 17 CFR 240.15Ba1-2. Firms are required to promptly amend Form MA-I, pursuant to Exchange Act Rule 15Ba1-5 (17 CFR 240.15Ba1-5), in such cases where an individual ceases to engage in municipal advisory activities on behalf of a firm.

In addition, currently, pursuant to Rule G-3(e)(ii)(B), any person who ceases to be associated with a municipal advisor for two or more years after having qualified as a municipal advisor principal, in accordance with the rule, must take and pass the Series 50 examination and the Series 54 examination prior to being qualified as a municipal advisor principal, unless a waiver is granted under current subparagraph (h)(ii) of this rule. Proposed amendments to this provision would provide that any person who ceases to be associated with “or engaged in municipal advisory activities on behalf of” a municipal advisor for two or more years after having qualified by examination as a municipal advisor principal must take and pass the Series 50 examination unless exempt from such requirement pursuant to Rule G-3(h)(ii), as amended by the proposed rule change.

The proposed amendments to Rule G-3(e)(ii)(B) adds the new language “or engaged in municipal advisory activities on behalf of,” which is intended to provide clarity on the requirement for an individual associated with a firm that is dually registered as a dealer and municipal advisor. For example, if an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor principal and instead engages only in municipal securities business on behalf of the firm for a period of two or more years, then that individual’s municipal advisor representative and municipal advisor principal qualifications would have lapsed, notwithstanding the fact that such person remains associated with a firm that is also a registered municipal advisor. The proposed amendments to Rule G-3(e)(ii)(B) would also delete the reference to the mention of a waiver (i.e., the clause “a waiver is granted”) to clarify that such persons would need to qualify by examination as municipal advisor principals.

Relatedly, proposed amendments to Rule G-3 would contain technical amendments to Rules G-3(e)(ii)(A)(1) and G-3(e)(ii)(B). To clarify the qualification requirements specific to municipal advisor principals, as prescribed under G-3(e)(ii)(A)(1), the proposed rule change would add the phrase “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule” to make clear municipal advisor principals have to requalify by reexamination unless such individuals have obtained the one-time exemption. The proposed rule change would delete the phrase “a waiver is granted” and replace with the clause “exempt from taking the Municipal Advisor Representative Qualification Examination” to make clear that the waiver provision for extraordinary cases is being deleted and replaced with an exemption-based criteria for municipal advisor principals to use for requalification without reexamination for the Series 50 examination. Similarly, as previously mentioned, the word “shall” would be replaced with “must” to promote clarity; and proposed amendments would replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3.

Removal of Extraordinary Waiver Provisions under Rule G-3(h)(ii)

Proposed amendments to Rule G-3(h)(ii) would remove references, in their entirety, to the ability to obtain a waiver in extraordinary cases for a former municipal advisor representative or municipal advisor principal and would replace such language with a criteria-based exemption for former municipal advisor representatives. The MSRB believes that this standard set forth within the four corners of the rule would provide greater flexibility to municipal advisor firms and their associated persons while simultaneously providing greater certainty for firms and such

individuals who may wish to seek an exemption from the obligation to requalify as a municipal advisor representative by reexamination. At this time, the MSRB believes that the objective nature of the criteria-based exemption is preferable to the subjective nature of the waiver provisions in current Rule G-3(h)(ii). Additionally, the removal of the ability to seek and obtain a waiver for municipal advisor principals furthers municipal entity and obligated person protection by ensuring, through requalification by reexamination, individuals have demonstrated knowledge and skills necessary to discharge the responsibilities of a municipal advisor principal, including the vested authority for the supervision, oversight and management of firms' municipal advisory activities and that of its associated persons.¹¹

Relatedly, proposed amendments to Supplementary Material .02, on waivers, under Rule G-3 would retitle that paragraph to "affirmation notification" and delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and would replace it with text that specifies how notice regarding use of the criteria-based exemption would be required to be submitted to the MSRB.

The proposed rule change to amend Rule G-3(h)(ii) to establish the criteria-based conditions that would be required to be met in order to qualify for an exemption are described below.

Proposed Rule Change to Adopt Rule G-3(h)(ii)(A)-(I) to Establish Conditions for Obtaining the Criteria-Based Exemption

The proposed rule change would amend Rule G-3(h)(ii) to prescribe that an individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if the specified conditions under proposed Rule G-3(h)(ii)(A)-(I) are met. Specifically, proposed amendments to adopt Rule G-3(h)(ii)(A)-(I) would establish nine specified criteria-based conditions that must be met in

¹¹ The MSRB has previously stated that the Series 54 examination is intended to ensure that a person seeking to qualify as a municipal advisor principal satisfies a specified level of competency and knowledge by measuring a candidate's ability to apply the applicable federal securities laws, including MSRB rules to the municipal advisory activities of a municipal advisor. See Exchange Act Release No. 84341 (October 2, 2018), 83 FR 50708, 50710 (October 9, 2018) (Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G-3, on Professional Qualification Requirements, To Require Municipal Advisor Principals To Become Appropriately Qualified by Passing the Municipal Advisor Principal Qualification Examination) (File No. SR-MSRB-2018-07). In contrast, the MSRB has previously noted that the Series 50 examination ensures a minimum level of knowledge of the job responsibilities and regulatory requirements by passing the general qualification examination. See Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225, 72227 (December 5, 2014) (Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rules G-1, on Separately Identifiable Department or Division of a Bank; G-2, on Standards of Professional Qualification; G-3, on Professional Qualification Requirements; and D-13, on Municipal Advisory Activities) (File No. SR-MSRB-2014-08).

order for an individual (and the municipal advisor firm with which such individual is associated¹² or seeks to be associated) to take advantage of the exemption.

The criteria-based conditions that would be required to be met in order to qualify for an exemption are described below.

(1) The individual was previously qualified as a municipal advisor representative by taking and passing the Series 50 examination.

(2) The individual maintained the municipal advisor representative qualification for a period of at least three consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisor firm(s).

(3) Such qualification lapsed pursuant to proposed amended Rule G-3(d)(ii)(B) and no more than one year has passed since such lapse in qualification.

(4) The individual has not engaged in activities requiring qualification as a municipal advisor representative¹³ during the individual's lapse in qualification.

(5) The individual is not subject to any events or proceedings that resulted in a regulatory action disclosure report, a civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report or termination disclosure report on SEC Form MA-I.¹⁴

(6) The individual has not previously obtained the exemption from requalification by examination described in the proposed amended Rule G-3(h)(ii).¹⁵

¹² The MSRB notes that an individual who has associated with a municipal advisor firm may not engage in any municipal advisory activities, as defined under Rule D-13 and described in Section 15B(e)(4)(A)(i) and (ii) of the Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and the rules and regulations promulgated thereunder (*i.e.*, activities involving the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities or undertaking a solicitation of a municipal entity or obligated person), until such time that the individual has satisfied the conditions set forth under the rule.

¹³ See Rule G-3(d)(i)(A).

¹⁴ The MSRB included these types of disclosures in the exemption criteria, as opposed to other types of disclosures required by SEC Form MA-I, because these relate most closely to violations of municipal advisor-related or investment-related regulations, rules, or industry standards of conduct.

¹⁵ Should an individual's municipal advisor representative qualification lapse again after such person obtains the criteria-based exemption, that individual would be required to requalify by taking and passing the Series 50 examination.

(7) Prior to engaging in municipal advisory activities on behalf of the municipal advisor firm with which the individual is to associate (or reassociate), as evidenced by the filing of SEC Form MA-I, the municipal advisor firm provided, and the individual completed, CE covering, at minimum, the subject areas of: (i) the principles of fair dealing; (ii) the applicable regulatory obligations under Rules G-20, on gifts and gratuities, G-37, on political contributions and prohibitions on municipal securities business and municipal advisory business, G-40, on advertising by municipal advisors, and G-8, on books and records to be made and maintained; (iii) for non-solicitor municipal advisors, the core conduct standards under Rule G-42, including the fiduciary duty obligations owed to municipal entity clients, or for solicitor municipal advisors, the core obligations of Rule G-46; and (iv) any changes to applicable securities laws and regulations, including applicable MSRB rules that were adopted since the individual was last associated with a municipal advisor.

(8) Prior to engaging in municipal advisory activities on behalf of the municipal advisor firm with which the individual is to associate (or reassociate), as evidenced by the filing of an SEC Form MA-I, the municipal advisor firm provided, and the individual reviewed the compliance policies and procedures of the municipal advisor firm.

(9) Upon satisfaction of the conditions set forth in the paragraphs above, the municipal advisor firm filed a completed SEC Form MA-I with the SEC with respect to such individual. Within 30 days of the acceptance¹⁶ of a completed SEC Form MA-I identifying such individual as engaging in municipal advisory activities on behalf of the municipal advisor firm, the municipal advisor firm provided the notification (“affirmation notification”) electronically to the MSRB that the individual met the criteria in order to be exempt from the requalification requirements of Rule G-3(d)(ii)(B) following a lapse in qualification.

The affirmation notification would be required to be on firm letterhead and include the following information:

1. The municipal advisor firm’s MSRB ID number;
2. The first and last name of the individual seeking to obtain the exemption;
3. The individual’s FINRA Central Registration Depository (CRD) number if applicable;
4. The start date of the individual’s association (or reassociation) with the municipal advisor firm;
5. An affirmative statement that the municipal advisor has undertaken a diligent effort to reasonably conclude that the individual met the applicable requirements set forth in proposed amended Rule G-3(h)(ii);

¹⁶ The SEC does not make the form acceptance date publicly available, but this information is made available to the form submitter as part of the form filing process.

6. An affirmative statement attesting that the municipal advisor firm provided both the requisite CE and the municipal advisor's compliance policies and procedures to the individual for review along with the date the individual completed the CE and review of the municipal advisor's compliance policies and procedures provided by the municipal advisor firm;
7. The date the municipal advisor firm filed SEC Form MA-I (and the date of its acceptance) on behalf of the individual as required under subparagraph (h)(ii)(I); and
8. A signature by the individual seeking to obtain the criteria-based exemption and a signature by a municipal advisor principal of the municipal advisor firm each attesting the accuracy of certain content set forth in the affirmation notification. Specifically, the individual must sign the affirmation notification attesting that the conditions outlined in proposed amended Rule G-3(h)(ii)(A) through (H) were met. And, a municipal advisor principal must sign the affirmation notification, on behalf of the municipal advisor firm, attesting that, based on the exercise of reasonable diligence, the conditions outlined in proposed amended Rule G-3(h)(ii)(A) through (I) were met.¹⁷

Additionally, the affirmation notification required to be provided to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I, pursuant to subparagraph (h)(ii)(I) of this rule would be required to be sent to Compliance@msrb.org, in accordance with proposed amended Supplementary Material .02 of Rule G-3.

The conditions are designed to ensure that individuals seeking to obtain the exemption (*i.e.*, requalification without reexamination) have and maintain the baseline level of knowledge and experience, and have exhibited conduct aligned with being a fiduciary, which is in furtherance of municipal entity and obligated person protection. The MSRB believes that the criteria outlined above balance the goal of providing reasonable regulatory flexibility with the demands of the fiduciary standard applicable to municipal advisors. For example, the requirement that individuals were duly qualified as a municipal advisor representative for at least three consecutive years prior to, for example, seeking other career opportunities in related capacities (*i.e.*, working for a dealer or municipal entity) or stepping away for family obligations ensures that a reasonable level of professional experience has been established before an individual can obtain the exemption. In contrast, this period is not so long as to hinder the ability, at a given point, for an individual to, for example, temporarily engage in other meaningful roles within the municipal securities industry or to step away due to family obligations.

At the same time, these conditions are designed to enhance an individual's familiarity with regulatory and business developments that occurred while they were not associated with a

¹⁷ The MSRB notes that the respective individual and firm signature requirements are intended to differentiate and confirm the distinct responsibilities and obligations of the individual seeking to obtain the criteria-based exemption and those of the municipal advisor firm itself, as evidenced by the signature of a municipal advisor principal on behalf of the municipal advisor firm.

municipal advisor firm, before reengaging in municipal advisory activities, but are not so unduly burdensome as to hinder reassociation. The requirement to provide the MSRB with notice of individuals who have obtained the exemption (i.e., by submitting the affirmation notification to the MSRB) is designed to facilitate transparency and provide an audit trail regarding an individual's status as a municipal advisor representative. The MSRB will use the affirmation notification, as described in the proposed amended Rule G-3(h)(ii)(I), to help identify qualified municipal advisor representatives and keep the list of such representatives updated on the MSRB's website.¹⁸ Additionally, the conditions pertaining to requisite filings with the SEC also provide an audit trail and permit the entities charged with examination and enforcement authority to confirm compliance with relevant obligations.

Relatedly, technical amendments to Rule G-3(h) would retitle the header from "Waiver of Qualification Requirements" to "Waiver of and Exemption from Qualification Requirements" to promote clarity. Technical amendments to Rule G-3(h)(ii) replace the introductory sentence "The requirements of paragraph (d)(ii)(A) and (e)(ii)(A) may be waived by the Board in extraordinary cases for a municipal advisor representative or municipal advisor principal" with the new introductory sentence "An individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if all of the following conditions are met" for purposes of setting forth the enumerated criteria outlined under the provision.

Finally, as previously mentioned, the proposed amendments to Supplementary Material .02, on waivers, under Rule G-3 would retitle the paragraph header from "Waivers" to "Affirmation Notification" and delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and would replace it with text that specifies how the firm would submit to the MSRB the affirmation notification asserting that the criteria-based exemption has been met.

Timing for Completing the Requisite CE, Review of Compliance Policies and Procedures, and Making the Requisite Form Filings

The MSRB has consistently stated that individuals should take and pass the Series 50 examination before completing the necessary form filings to become associated persons of municipal advisor firms or before registering as municipal advisor firms.¹⁹ As a result, an individual associating with a municipal advisor firm and seeking to use the exemption should, in the following order:

- i) take and complete the requisite CE (e.g., resources available through trade associations or the MSRB, firm-developed materials, or off-the-shelf purchased materials);

¹⁸ The MSRB publishes a list of registered municipal advisors and qualified municipal advisor professionals (available at: <https://www.msrb.org/Municipal-Advisors>).

¹⁹ See Question 17 of "FAQs on Municipal Advisor Professional Qualification and Examination Requirements" (available at: <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf>).

- ii) review the municipal advisor firm’s compliance policies and procedures;
- iii) have the municipal advisor firm complete SEC Form MA-I in accordance with the instructions in the form and file the form electronically with the SEC; and
- iv) submit the requisite affirmation notification to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I.

Whereas, solo-practitioners seeking to use the exemption should in the following order:

- i) take and complete the requisite CE (e.g., resources available through trade associations or the MSRB, firm-developed materials, or off-the-shelf purchased materials);
- ii) review the developed compliance policies and procedures of the municipal advisor firm;
- iii) complete SEC Form MA-I in accordance with the instructions in the form and file the form electronically with the SEC;
- iv) complete SEC Form MA: Application For Municipal Advisor Registration/ Annual Update Of Municipal Advisor Registration/ Amendment of A Prior Application For Registration (“SEC Form MA”) in accordance with the instructions in the form and file the form electronically with the SEC;²⁰
- v) complete MSRB Form A-12, on registration, in accordance with the instructions outlined in the MSRB Registration Manual²¹ and file the form electronically with the MSRB;²² and
- vi) submit the requisite affirmation notification to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I.

Proposed Amendments Related to G-8, on Books and Records to Be Made and Maintained

Proposed amendments to Rule G-8, on books and records, would add recordkeeping obligations designed to help facilitate and document compliance with proposed amendments to

²⁰ Filing Form MA and Form MA-I is mandatory for municipal advisor firms that are required to register with the SEC. See 17 CFR 240.15Ba1-2(a) and (b).

²¹ The MSRB Registration Manual is available at <https://www.msrb.org/sites/default/files/MSRB-Registration-Manual.pdf>.

²² Pursuant to Rule A-12, on registration, a municipal advisor must register with the MSRB before engaging in municipal advisory activities; prior to their MSRB registration, they must register with the SEC and have such registration approved.

Rule G-3. Specifically, the proposed rule change would add new paragraph (C) to subsection (h)(vii) of Rule G-8 requiring municipal advisor firms to make and maintain the following records to evidence compliance with the requirements of Rule G-3(h)(ii)(A)-(I):

- A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., copy of the print-out of the individual exam results²³ or exam result certification letter provided by the MSRB);
- Documentation supporting the municipal advisor firm’s exercise of reasonable diligence in determining that the conditions outlined in Rule G-3(h)(ii)(A) through (I) were met in making the required affirmation notification in accordance with Rule G-3(h)(ii)(I)(8) (e.g., copies of relevant SEC form filings reviewed; records related to continuing education provided and completed; compliance policies and procedures provided and reviewed; and attestations or other documentation to support such a determination);
- A copy of the affirmation notification sent to the MSRB as required by Rule G-3(h)(ii)(I); and
- A record evidencing that the affirmation notification was made in the prescribed manner and within the required period of time as described in Rule G-3(h)(ii)(I) (e.g., automatic email delivery receipt).

As aforementioned, the proposed rule change outlining the specific recordkeeping requirements supports the municipal advisor principal’s supervision, review and sign-off that the conditions for the exemption have been met, which supports regulatory compliance.

Relatedly, technical amendments to Rule G-8(h)(vii) would retitle the paragraph header from “Records Concerning Compliance with Continuing Education Requirements” to “Records Concerning Compliance with Professional Qualification Requirements of Rule G-3” to clarify the broader recordkeeping obligations and documentation requirements proposed in draft amendments to Rule G-8(h)(vii) that are accompanying proposed rule changes to Rule G-3(h)(ii). The other technical changes would reposition the word “and” and make other minor grammatical changes to the items in the series to aid readability.

(b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,²⁴ which authorizes the MSRB to prescribe standards of training,

²³ See Question 11 of “FAQs on Municipal Advisor Professional Qualification and Examination Requirements” (available at: <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf>) in which the MSRB reminds individuals that the test center will provide a print-out of individuals’ exam results.

²⁴ 15 U.S.C. 78o-4(b)(2)(A).

experience, competence, and such other qualifications as the Board finds necessary or appropriate for the protection of municipal entities or obligated persons; and Section 15B(b)(2)(C) of the Act,²⁵ which provides that the MSRB's rules shall, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among regulators, and, in general, to protect municipal entities, obligated persons, and the public interest.

Under Section 15B(b)(2)(A) of the Act,²⁶ the proposed rule change is appropriate and in the public interest because more efficient, effective and flexible professional qualification requirements for municipal advisor representatives will lead to a broader applicant pool from which municipal advisor firms may hire. A broader municipal advisor representative applicant pool is in the public interest and will help protect municipal entities or obligated persons because such pool can improve the quality of municipal advisor representative candidates and increase diversity in the industry. By expanding the potential number of municipal advisor representative candidates, a firm may have greater choice in hiring qualified individuals. For example, individuals that may disassociate with a municipal advisor firm may determine to associate with a dealer in a public finance banker capacity or to work for a municipal entity. Such individuals may receive valuable and directly applicable experience from a different vantage point in the industry that would augment their prior and future experience as a municipal advisor representative upon reassociating with a municipal advisor firm. This difference in perspective and experience could put such municipal advisor representative candidates in a position to provide more informed advice than they may otherwise have provided.

Similarly, a broader applicant pool increases the likelihood of greater diversity among municipal advisor representatives who can bring new perspectives to their work and the advice that they provide to their municipal entity and obligated person clients. Additionally, by hiring well-qualified candidates, firms can build bench strength and work to leverage institutional knowledge; thereby enhancing the informed advice provided to a municipal advisor firm's municipal entity and obligated person clients.

At the same time, the proposed rule change requires the satisfaction of conditions that establish safeguards and ensure that only qualified candidates may seek to obtain the criteria-based exemption from requalification, thereby furthering municipal entity and obligated person protection and the public interest. Specifically, the stated criteria of at least three years of experience before eligibility for the criteria-based exemption and no more than three years since ceasing to be associated with a municipal advisor firm is in furtherance of municipal entity and obligated person protection because these criteria support individuals maintaining their baseline level of experience and competence. The MSRB believes that the three-year thresholds, as opposed to a longer or shorter period, appropriately support the ability to establish a necessary and meaningful level of proficiency as a municipal advisor representative prior to obtaining the exemption. In contrast, while ensuring that such regulatory flexibility is available for a limited

²⁵ 15 U.S.C. 78o-4(b)(2)(C).

²⁶ 15 U.S.C. 78o-4(b)(2)(A).

period of time, on a one-time basis, individuals retain the value of that established proficiency and can more readily adapt to changes in market practices or regulatory requirements upon reengaging in a municipal advisor representative capacity.

Prevention of Fraudulent and Manipulative Acts and Practices

In accordance with Section 15B(b)(2)(C) of the Act,²⁷ the proposed rule change also would continue to prevent fraudulent and manipulative acts and practices by ensuring that municipal advisor representatives meet competence, training, experience and qualification standards, and such protections would not be diminished by the proposed rule change. As noted above, the stated criteria of at least three years of experience before eligibility for the exemption and no more than three years since ceasing to be associated with a municipal advisor firm support individuals in maintaining their baseline level of experience and competence. In addition, the proposed rule change would require individuals seeking to obtain the exemption to, upon associating (or reassociating) with a municipal advisor firm, receive relevant and updated core training pertaining to regulatory obligations under applicable securities laws and regulations, including MSRB rules, which furthers the prevention of manipulative acts and practices. The MSRB believes that the three-year thresholds coupled with the more robust CE training requirements continue to support the establishment of the necessary experience, competence, and training, which in turn serves to help prevent fraudulent and manipulative practices and protect municipal entities, obligated persons, and the public interest.

Protection of Municipal Entities, Obligated Persons, and the Public Interest

Consistent with Section 15B(b)(2)(C) of the Act²⁸ and the above discussion, the proposed rule change would continue to protect municipal entities, obligated persons and the public interest because municipal advisor representatives would be required to obtain CE pertaining to specified topics and regulatory obligations under applicable securities laws and regulations, including MSRB rules in order to requalify as a municipal advisor professional. Additionally, such individuals would not be able to obtain the criteria-based exemption if they either engaged in activities requiring qualification as a municipal advisor representative during their lapse in qualification or they are subject to any events or proceedings that resulted in a regulatory action disclosure report, a civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report or terminations disclosure report on the SEC Form MA-I. These conditions help ensure that basic municipal entity and obligated person protections remain in place while also providing municipal advisor representatives flexibility to pursue other meaningful roles within the municipal securities industry or to step away for other reasons; and benefits municipal advisor firms by providing the increased ability to attract qualified talent.

²⁷ 15 U.S.C. 78o-4(b)(2)(C).

²⁸ Id.

As noted above, a broader municipal advisor representative applicant pool is in the public interest and will help protect municipal entities and obligated persons because it can improve the quality of municipal advisor representative candidates and increase diversity in the municipal advisory industry, all of which could enhance the quality of advice provided to municipal entity and obligated person clients.

Finally, the MSRB believes that the removal of the ability of a municipal advisor representative or principal to apply to the Board and, potentially, receive a waiver from the obligation to requalify by reexamination would further protect municipal entities and obligated persons. As discussed, the proposed rule change would replace such ability with the criteria-based exemption. However, it would not extend such exemption to municipal advisor principals because the MSRB believes principals should be subject to additional regulatory requirements given their supervisory, oversight, and management duties, and the current criteria-based exemption does not contemplate such rigor and heightened regulatory requirements. In practice, the MSRB has not received or granted waiver requests for municipal advisor principals. Requiring all municipal advisor principals to requalify by reexamination following a lapse in qualification ensures municipal entity and obligated person protection by necessitating that municipal advisor principals satisfy a specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, in order to perform their duties.²⁹

Fostering Cooperation and Coordination

Proposed amendments to Rule G-8, on books and records, would add specific recordkeeping obligations designed to help facilitate and document compliance with proposed amendments to Rule G-3. Specifically, the proposed amendments would add a new paragraph (C) to subsection (h)(vii) of Rule G-8 that would require municipal advisor firms to make and maintain records to evidence their due diligence to ensure compliance with the criteria-based exemption by individuals seeking to obtain the exemption, and of the affirmation notification provided to the MSRB required by proposed amendments to Rule G-3(h)(ii)(I). The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act³⁰ because the specific documentation obligation and related books and records obligations stemming from the proposed amendments to Rule G-8(h)(vii)(C) would foster cooperation by providing examining authorities with the necessary information to assist them in examining for

²⁹ As discussed in the section below regarding burden on competition, current Rule G-3(e)(ii)(C) permits solo-practitioners (or individuals associating or re-associating with a firm and designated as a principal) who are qualified as municipal advisor representatives to function as municipal advisor principals for up to 120 days before having to take and pass the Series 54 examination. In concert with the proposed rule change, these provisions would allow such individuals to start their own firm, requalify as municipal securities representatives without reexamination, and then qualify as municipal advisor principals.

³⁰ 15 U.S.C. 78o-4(b)(2)(C).

and evaluating compliance with the criteria-based exemption. The MSRB further believes that the rigor of such review by examining authorities for compliance with the prescribed recordkeeping obligations would foster municipal entity and obligated person protection because municipal advisor firms would take due care to ensure compliance with the qualification standards under the criteria-based exemption and that only such individuals that satisfy such exemption are engaging in municipal advisor activities. Lastly, as aforementioned, the MSRB believes that the proposed amendments to Rule G-8(h)(vii)(C) would help create an audit trail to assist examination and enforcement authorities in their examination for compliance with the criteria-based exemption, fostering cooperation and coordination between regulatory authorities.

Promote Just and Equitable Principles of Trade

The technical amendments outlined throughout are consistent with the provisions of Section 15B(b)(2)(C) of the Act³¹ in that they promote just and equitable principles of trade by ensuring that Rules G-3 and G-8 remain accurate, clear and understandable for the municipal advisory community.

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

Section 15B(b)(2)(C) of the Act³² requires that MSRB rules not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Furthermore, Section 15B(b)(2)(L)(iv) of the Act³³ requires that rules adopted by the MSRB 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 MSRB does not believe that the proposed amendments to Rule G-3 and Rule G-8 would impose any unnecessary or inappropriate burden or impact on competition, as they would provide additional flexibility and certainty to those seeking to associate with municipal advisor firms as municipal advisor representatives and to municipal advisor firms, thereby, enhancing the hiring of qualified, experienced individuals; and they would also support evidencing compliance with the criteria-based exemption.

In determining whether the standards under Section 15B(b)(2)(C)³⁴ and (b)(2)(L)(iv)³⁵ of the Act related to burden on competition and burden on small municipal advisors have been satisfied, the MSRB was guided by the Board’s Policy on the Use of Economic Analysis in

³¹ Id.

³² Id.

³³ 15 U.S.C. 78o-4(b)(2)(L)(iv).

³⁴ 15 U.S.C. 78o-4(b)(2)(C).

³⁵ 15 U.S.C. 78o-4(b)(2)(L)(iv).

MSRB Rulemaking.³⁶ In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed amendments to Rule G-3 and Rule G-8. The proposed amendments to Rule G-3 would create a criteria-based exemption for individuals to requalify in a municipal advisor representative capacity without reexamination after a lapse in qualification. The proposed rule change would remove language from Rule G-3 that currently permits municipal advisor professionals to seek a waiver from the MSRB from the requirement to requalify by reexamination in extraordinary cases. Additionally, the proposed rule change would make accompanying amendments to Rule G-8 to establish books and records requirements related to the criteria-based exemption. The proposed amendments to Rule G-3 and accompanying amendments to Rule G-8 are intended to offer flexibility, provide additional certainty, and eliminate the extraordinary nature of the waiver process for individuals and municipal advisor firms without reducing protection for municipal entity and obligated person clients who expect that municipal advisor professionals have satisfied professional qualification standards. Specifically, proposed amendments to Rule G-3 would afford an individual whose qualification as a municipal advisor representative has lapsed the opportunity to forego requalification by reexamination if certain, specified conditions are met.

Although the proposed amendments to Rule G-3 and Rule G-8 would be applied equally to all individuals seeking to associate with municipal advisor firms and to all such municipal advisor firms, the MSRB acknowledges potential burdens on competition for small or solo-practitioner municipal advisor firms with respect to the exemption's CE requirements and because the exemption does not extend to municipal advisor principals. As a result, although all firms would benefit from the proposed rule change for municipal advisor representatives, solo-practitioners and smaller municipal advisor firms may experience a smaller benefit than larger municipal advisor firms due to the fact the exemption would not extend to those seeking to associate and function in a principal-level capacity. However, as discussed in detail below, the MSRB believes the proposed amendments to Rule G-3 and Rule G-8 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act³⁷ or 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.³⁸

Benefits, Costs and Effect on Competition

The main benefit of proposed amendments to Rule G-3 and Rule G-8 would be to create a criteria-based exemption and related recordkeeping requirements. The MSRB considered the

³⁶ Policy on the Use of Economic Analysis in MSRB Rulemaking is available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

³⁷ 15 U.S.C. 78o-4(b)(2)(C).

³⁸ 15 U.S.C. 78o-4(b)(2)(L)(iv).

economic impact associated with the proposed amendments to Rule G-3 relative to the baseline, which is the current extraordinary waiver provision and assessed incremental changes in the benefits and costs in a proposed future state with a criteria-based exemption for municipal advisor representatives.

The MSRB believes that the proposed rule change provides multiple benefits to the eligible population of individuals seeking to associate with municipal advisor firms as municipal advisor representatives, and municipal advisor firms without impairing the protections afforded to municipal entity and obligated person clients of municipal advisor firms. First, by increasing the amount of time in which an individual may maintain their qualification as a municipal advisor representative without reexamination, the proposed rule change provides flexibility for certain individuals to, for example, explore other career opportunities in the municipal securities industry or to step away to address life events, such as childcare or pursue higher education. As a result, the criteria-based exemption provided by the proposed rule change may increase demand for individuals seeking to reassociate in a municipal advisor representative capacity without having to retake the Series 50 examination.

The proposed rule change would require CE that includes coverage of specific subject areas and regulatory topics, which would ensure the most useful and up-to-date training is provided to individuals who wish to take advantage of the proposed exemption, therefore benefiting municipal entity and obligated person clients who may receive municipal advisory services from the firms with which such persons are associated. Furthermore, the proposed rule change reduces uncertainty for individuals seeking to requalify by providing clarity on the specific criteria needed to requalify without reexamination; and therefore, expedites the period by which such individuals can begin to engage in municipal advisory activities. In addition, municipal advisor firms would be better positioned to assess a potential hire's qualifications by evaluating the conditions specified in the proposed rule change. Finally, while Rule G-3 does not currently require a minimum number of years of past experience to reassociate with a municipal advisor firm within the specified two-year period, the MSRB believes establishing eligibility criterion of at least three consecutive years of past experience to qualify for the criteria-based exemption promotes municipal entity and obligated person protection by ensuring individuals have an established baseline level of knowledge and experience.

The MSRB believes there is the potential for one-time upfront costs for municipal advisor firms related to revising CE training materials and existing compliance policies and procedures to facilitate compliance with the proposed amendments to Rule G-3 and Rule G-8. However, these associated costs should be minor (see Table 1). Additionally, under the criteria individuals and municipal advisor firms must meet to obtain the exemption, there may be additional ongoing cost components to firms associated with conducting due diligence when rehiring a previously qualified municipal advisor representative and administering the specified CE required to meet the exemption. The MSRB estimates the aforementioned cost components at approximately four hours incrementally (see Table 1), given that some current costs already exist associated with CE and performing due diligence in the baseline state. However, for municipal advisor firms that do not hire an individual with a lapsed qualification, there would be minimal additional costs incurred. Lastly, individuals who are away from the industry for more than three years would be required to take and pass the Series 50 examination again under the proposed rule

change, as the waiver request provisions, available only in extraordinary cases, would no longer be available. However, given the limited use of the waiver process currently,³⁹ the MSRB does not believe the elimination of this option would have a significant impact on individuals seeking to reassociate in a municipal advisor representative capacity.

Table 1. Estimated Incremental Compliance Costs for each Municipal Advisor Firm⁴⁰

Cost Components	Assumed Hourly Rate	Number of Hours	Cost Per Firm
Upfront Cost			
a) Revision of Policies and Procedures	\$ 536	3	\$ 1,608
b) Training	\$ 616	1	\$ 616
Ongoing Cost			
a) Due Diligence and Continuing Education	\$ 502	4	\$ 2,008

Reasonable Alternative Approaches and Effects on Competition

One alternative the MSRB considered was to update the qualification requirements of Rule G-3(d)(ii)(B)⁴¹ by changing the existing time for when a person ceases to be associated

³⁹ To date, the MSRB has received only two waiver requests. The two requests were specific only to waiving the Series 50 examination (i.e., not a Series 54 examination waiver request), with one of the waivers being received following the publication of MSRB Notice 2022-13. See MSRB Notice 2022-13 (Request for Comment on Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination) (“RFC”) (December 1, 2022) (available at: <https://msrb.org/sites/default/files/2022-11/2022-13.pdf>).

⁴⁰ The hourly rate data was gathered from the 2013 SEC’s Final Rule on Registration of Municipal Advisors. See Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67594, 67609 (November 12, 2013) (File No. S7-45-10). The data reflects the 2023 hourly rate level after adjusting for the annual wage inflation rate of 2% between 2013 and 2021. See The Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries Private Industry (available at: <https://fred.stlouisfed.org/series/ECIWAG>). The MSRB uses a blended hourly rate in each category of costs when a task can be performed by different levels of professionals. For example, while the revision of compliance policies and procedures can be conducted by either an in-house attorney (average hourly rate \$521) or outside counsel (average hourly rate \$550), the MSRB chooses the blended hourly rate of \$536 for this analysis. Similarly, for training, the MSRB uses the average rate for a Chief Compliance Officer and a compliance attorney; and for ongoing costs, the MSRB uses the hourly rate for a compliance attorney. The number of hours for each task is based on the MSRB’s internal estimate.

⁴¹ As previously mentioned, Rule G-3(d)(ii)(B) currently provides, “Any person who ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph

with a municipal advisor firm from two to five years, instead of from two to three years as currently proposed. Although neither the alternative nor the proposed rule change would permit the granting of a waiver regardless of the time period, individuals would be given greater flexibility when making decisions to temporarily cease their association with municipal advisor firms and can have certainty that they can reassociate with a more limited compliance burden for themselves and the municipal advisor firms.⁴² Moreover, a five-year absence from the municipal advisory business could result in a more significant gap in knowledge and experience, and an individual who returns after such an absence may not be fully aware of the latest regulatory and industry changes. The MSRB believes those individuals who cease to engage in municipal advisory activities for more than three years may benefit from retaking the Series 50 examination, which is designed to ensure a baseline level of knowledge exists about rules and regulations, and the regulatory framework in which such individuals operate, as well as to protect municipal entity and obligated person clients who may rely on advice from qualified municipal advisor representatives.

Another alternative the MSRB considered was, instead of requiring CE to include coverage of specific subject areas and topics, an individual would complete catch-up CE for the relevant time period such person ceased association with a municipal advisor firm in order to satisfy the exemption's criteria. The MSRB determined that this alternative would be challenging for solo-practitioners looking to establish a municipal advisor firm because such individuals would not have previous training materials readily available, potentially creating a burden on competition between a solo-practitioner and individuals seeking to join (or reassociate with) existing firms. The MSRB notes that while such solo-practitioners may not have developed CE training materials addressing all of the prescribed subject matters; such firms would be able to utilize "off-the-shelf content" or widely available industry educational materials (to the extent such materials meet the requirements set forth in the proposed rule change), which would be a less burdensome approach than creating new CE materials.⁴³ Thus, the MSRB has deemed the

(d)(ii)(A) shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless a waiver is granted pursuant to subparagraph (h)(ii) of this rule.”

⁴² As noted above, an individual may obtain the criteria-based exemption under the proposed rule change only once.

⁴³ The MSRB has previously noted that the CE requirements for municipal advisors affords municipal advisors the flexibility to deliver CE in the most convenient and effective manner possible based on the firms' business model. In addition, the MSRB noted industry trade associations may be a good source of CE training materials, in addition to podcasts, webinars and educational materials developed by the MSRB. See Exchange Act Release No. 80327 (March 29, 2017), 82 FR 16449, 16454 (April 4, 2017) (Notice of Filing of a Proposed Rule Change to Rule G-3, on Professional Qualification Requirements, and Rule G-8, on Books and Records, To Establish Continuing Education Requirements for Municipal Advisors and Accompanying Recordkeeping Requirements) (File No. SR-MSRB-2017-02).

proposed rule change as superior to potential alternative approaches, including for small municipal advisor firms or solo-practitioners.

As previously noted, while an individual and a firm seeking to associate such an individual in the capacity of a municipal advisor principal may receive fewer benefits, still, all municipal advisor firms would benefit from the proposed rule change allowing individuals to requalify in the capacity of municipal advisor representatives.⁴⁴ The MSRB acknowledges that there may be a potential burden on competition on solo-practitioners or small municipal advisor firms because the criteria-based exemption does not extend to municipal advisor principals. Specifically, individuals seeking to act as a municipal advisor principal would still have to take and pass the Series 54 examination in order to engage in principal-level activities. Rule G-3(e)(ii)(C) affords temporary relief to an individual (and the municipal advisor firm with which such individual associates) who is qualified as a municipal advisor representative, but is functioning in the capacity of a municipal advisor principal, for a period of 120 days after becoming designated as a municipal advisor principal, to take and pass the Series 54 examination. As a result, all such persons, including those persons seeking to be solo-practitioners and seeking to associate with small (or larger) municipal advisor firms would be able to function in the principal-level capacity for a limited period of time before having to take and pass the Series 54 examination.

Municipal advisor principals are subject to additional regulatory standards given their supervisory, oversight and management duties and the MSRB believes that requiring all municipal advisor principals to requalify by reexamination following a lapse in qualification helps to ensure municipal entity and obligated person protection. Specifically, notwithstanding the fact that small municipal advisor firms may experience a smaller benefit than larger firms, the MSRB believes that reexamination is necessary for all individuals seeking to function in a principal-level capacity. The process of reexamination ensures that the specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, is sufficiently demonstrated. Accordingly, in light of these considerations, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act⁴⁵ or 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.⁴⁶

At present, the MSRB cannot evaluate the magnitude of the efficiency gains or losses quantitatively, but believes the overall benefits accumulated over time for market participants would outweigh the minimal upfront and ongoing costs associated with the proposed

⁴⁴ The MSRB notes, pursuant to Rule G-3(e)(ii), on qualification requirements, the Series 50 examination is a pre-requisite to becoming qualified as a municipal advisor principal.

⁴⁵ 15 U.S.C. 78o-4(b)(2)(C).

⁴⁶ 15 U.S.C. 78o-4(b)(2)(L)(iv).

amendments to Rule G-3 and Rule G-8. The proposed amendments to Rule G-3 would make it easier for individuals seeking to requalify as municipal advisor representatives to reassociate with a municipal advisor firm and for municipal advisor firms to recruit experienced professionals. In addition, the increased number of skilled professionals furthers capital formation because municipal entity and obligated person clients would have ranging areas of expertise to select from when utilizing the services of municipal advisor representatives. Finally, the MSRB believes the proposed amendments to Rule G-3 and Rule G-8 improve the municipal securities market's operational efficiency and promote regulatory certainty by providing individuals with a specific exemption process to requalify as municipal advisor representatives and to begin engaging in municipal advisory activities on behalf of municipal advisor firms.

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

As previously mentioned, the MSRB sought public comment on draft amendments to Rule G-3 in an RFC published on December 1, 2022.⁴⁷ The MSRB received three comment letters in response to the RFC.⁴⁸ The comments are summarized below by topic and MSRB responses are provided.

General Support for the Proposed Rule Change

All three commenters agreed with the MSRB's assertion that the proposed rule change would benefit, more than burden, municipal advisor firms and would provide increased regulatory flexibility and certainty for municipal advisor representatives and municipal advisor firms. Commenters generally agreed with the requirements for obtaining the criteria-based exemption, including the three-year-minimum-maximum thresholds, as well as the obligation that a municipal advisor firm submit a notice to the MSRB affirming an individual's eligibility for the exemption by having met the criteria enumerated in the proposed rule change.

Continuing Education Criteria

The draft amendments reflected in the RFC would have required that upon associating with a municipal advisor firm, an individual would complete CE consistent with the requirements of current Rule G-3(i)(ii)(B) for the period of time since the individual was last associated with a municipal advisor firm ("CE catch-up requirement"), as part of the criteria-

⁴⁷ See supra note 38.

⁴⁸ See Letters from Chris Charles, President, Wulff, Hansen & Co. ("Wulff Hansen Letter"), dated December 29, 2022; Susan Gaffney, Executive Director, National Association of Municipal Advisors ("NAMA Letter"), dated January 30, 2023; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA Letter"), dated January 30, 2023. All comment letters are available at <https://www.msrb.org/sites/default/files/2023-03/All-Comments-to-Notice-2022-13.pdf>.

based exemption. In response, NAMA requested clarification on the proposed CE catch-up requirements. NAMA also sought clarification as to how such CE catch-up requirement would be expected to be delivered. NAMA specifically questioned how a solo-practitioner starting their own municipal advisor firm could obtain the exemption since there would be no prior, firm-administered continuing education to deliver to satisfy the CE catch-up requirement.⁴⁹ SIFMA also commented that requiring an individual to merely catch up on a firm's previously administered continuing education upon re-entry to the industry may, in practice, result in repetitive, outdated, or confusing information.⁵⁰

In response, the MSRB revised the proposal to make the exemption's CE criteria more practicable and streamlined, so that it is not dependent on previously administered CE. As reflected in the proposed rule change, CE would be required to include coverage of specified subject areas and topics, set forth in the proposal, rather than mandating the completion of previously issued CE for the period of time since the individual seeking to obtain the criteria-based exemption was last associated with a municipal advisor firm.

The MSRB believes that these revisions provide a more practical approach for an individual to comply with the CE requirements in order to qualify for the criteria-based exemption, in that it allows municipal advisor firms to ensure the most useful and up-to-date CE is provided to the individual. At the same time, the revisions would be more workable for solo-practitioners, particularly those establishing a new firm that's never been registered. Since such firms were not previously in existence, they would not have previous CE to provide to take advantage of the draft criteria-based exemption. The revisions, reflected in the proposed rule change, permit such individuals to take advantage of the criteria-based exemption and mitigates the potential for a burden on competition that may otherwise exist between solo-practitioners and those seeking to associate (or reassociate) with an established municipal advisor firm. Finally, the revised approach would permit municipal advisor firms to tailor the required CE training materials to the individual seeking the criteria-based exemption, consistent with the enumerated topic areas in the proposed rule change, to better ensure the most relevant information is covered.

Mechanics of Exemption Requirements

The draft amendments reflected in the RFC would have required that, prior to the individual engaging in municipal advisory activities on behalf of the municipal advisor firm, the firm file a completed SEC Form MA-I on behalf of the individual seeking to obtain the exemption and provide electronic notification to the MSRB that the individual has met the criteria to be exempt from the qualification requirements under the rule.

NAMA commented that further clarification would be beneficial as to timing for completing the CE requirements, when SEC Form MA-I is to be filed, and when the relevant

⁴⁹ NAMA Letter at 3-4.

⁵⁰ SIFMA Letter at 2.

affirmation notification is due to the MSRB.⁵¹ In addition, NAMA suggested that a compliance resource explaining how a solo-practitioner can initially enter or re-enter the municipal securities industry before formally completing the requisite forms to establish a municipal advisor firm (and to associate such individual with the municipal advisor firm) would be beneficial. Relatedly, SIFMA requested that the MSRB consider compliance resources to assist regulated entities (and their associated persons) in understanding the relevant professional qualification and CE requirements, particularly for firms dually registered as a dealer and municipal advisor.⁵²

In response, the MSRB revised the proposal (as reflected in the proposed rule change) to address the timing and sequence of satisfying the exemption's criteria, the filing of SEC Form MA-I (and SEC Form MA, as applicable), and the submission of the affirmation notification to the MSRB. Additionally, the MSRB anticipates publishing a compliance resource in close proximity to the compliance date of the rule in response to comments from NAMA and SIFMA, which would highlight the regulatory obligations for municipal advisors and dealers with respect to professional qualification standards, CE requirements, and related registration matters.

Greater Harmonization with FINRA Rules and Related Requirements for Broker-Dealers

SIFMA and NAMA expressed the desire for greater harmonization between the criteria set forth in the draft amendments and the qualification maintenance provisions available to broker-dealers, specifically those under FINRA rules, to reduce regulatory burdens for individuals who serve in multiple registered capacities.⁵³ The standards related to qualification maintenance for dealers (and their associated persons) were adopted by the MSRB in October 2022.⁵⁴ However, there are currently no such prescribed qualification maintenance standards⁵⁵ (e.g., required annual CE or requisite hours) for municipal advisor representatives equivalent to the prescribed qualification maintenance standards for municipal securities professionals of dealers.

The proposed rule change seeks to provide municipal advisor representatives with greater flexibility than they have today, which also will provide some parity with the flexibility afforded to dealers. However, the MSRB is mindful of the distinctions between dealers and municipal advisors, including the differences in the applicable qualification maintenance standards as well as the application of a federal fiduciary duty for municipal advisors, but not dealers. After careful

⁵¹ NAMA Letter at 1.

⁵² SIFMA Letter at 2.

⁵³ SIFMA Letter at 1-2; NAMA Letter at 5.

⁵⁴ See Exchange Act Release No. 95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) (File No. SR-MSRB-2022-07).

⁵⁵ See Rules G-3(a)(ii)(C), G-3(b)(ii)(C), G-3(b)(iv)(B)(3), G-3(c)(ii)(C) and G-3(i)(i)(C) for qualification maintenance standards applicable to dealers.

consideration, the MSRB continues to believe that the proposed rule change reflects the appropriate balance of flexibility for individuals seeking to requalify without reexamination and for their associated municipal advisor firms with the MSRB's municipal entity protection mandate, as well as the fiduciary duty owed by municipal advisors to their municipal entity clients. The MSRB does not believe that further harmonization with the maintenance qualification standard for dealers (and their associated persons) is appropriate given the distinct nature of municipal advisory activities, including the fiduciary duty owed by municipal advisors to municipal entity clients. In contrast, while dealers are obligated under Rule G-17 to deal fairly with all persons, including municipal entities and obligated persons, they generally engage in arm's-length transactions with such clients and have financial and other interests that may differ from them; therefore, the MSRB believes the three-year mandatory experience requirement and three-year maximum out-of-the-industry requirement recognize the uniqueness of the regulatory framework. Hence, the MSRB determined not to revise the draft proposal to be more consistent with qualification maintenance standards available to dealers.

Application of Exemption to Municipal Advisor Principals

Commenters expressed a belief that the criteria-based exemption from requalification by reexamination should be extended to include municipal advisor principals.⁵⁶ After careful consideration, the MSRB continues to believe that such relief should not be extended to municipal advisor principals because the supervisory, oversight and management duties of municipal advisor principals make an exemption from requalification by reexamination inappropriate. Even if such an exemption were contemplated, it would require additional, more stringent criteria than those proposed for municipal advisor representatives to appropriately reflect the heightened responsibilities of a municipal advisor principal. This would result in two different standards and thus additional regulatory complexity in this area.

However, as noted above in relation to the impact of the proposal on solo-practitioners and small municipal advisor firms, solo-practitioners (and individuals associating or re-associating with a firm and designated as a principal) may avail themselves of the provisions under current Rule G-3(e)(ii)(C), which in concert with the proposed rule change, make it possible for a solo-practitioner to start their own firm, requalify as a municipal advisor representative without reexamination and function as a municipal advisor principal for a limited period of time (i.e., 120 days) before having to take and pass the Series 54 examination. Relatedly, for an individual who was once qualified as a municipal advisor principal and who is associating or re-associating with a municipal advisor firm and is expected to take on a principal-level role at the firm, such individual would be able to function in the principal-level capacity for the aforementioned limited period of time before having to take and pass the Series 54 examination.

Other Comments Considered

⁵⁶ NAMA Letter at 4-5; SIFMA Letter at 2; and Wulff Hansen Letter at 3.

Wulff Hansen objected to the criterion that would have prohibited an individual seeking the exemption from engaging in municipal advisory activities during a lapse in qualification. Wulff Hansen noted that such a prohibition does not recognize that the SEC permits certain individuals to engage in municipal advisory activities without registration because they qualify for an exclusion or exemption from registration requirements, for example, the underwriter exclusion, as prescribed under Section 15B(e)(4)(C) of the Act (15 U.S.C. 78o-4(e)(4)(C)).⁵⁷ In response to this comment, the revisions reflected in the proposed rule change clarify that an individual must not have engaged in activities requiring qualification as a municipal advisor representative during the individual's lapse in qualification.

Wulff Hansen also suggested that the MSRB retain the ability to grant waivers for individuals in highly exceptional circumstances that do not qualify for the criteria-based exemption set forth in the draft amendments.⁵⁸ The MSRB believes that retention of such a waiver process is unnecessary in light of how few waiver requests the Board has received.⁵⁹ Additionally, as discussed above, the MSRB believes that municipal advisor principals should be required to take and pass the requisite qualification examination in light of the heightened responsibilities performed by such persons. Finally, the MSRB believes that retention of such a waiver provision would result in less objective and predictable requalification standards than those provided for in the proposed rule change.

6. Extension of Time Period for Commission Action

The MSRB does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁶⁰

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

⁵⁷ Wulff Hansen Letter at 1.

⁵⁸ Id. at 2.

⁵⁹ Supra note 37.

⁶⁰ 15 U.S.C. 78s(b)(2).

10. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervisions Act

Not applicable.

11. Exhibits

Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 2a MSRB Notice 2022-13 (December 1, 2022)

Exhibit 2b List of Comment Letters Received in Response to MSRB Notice 2022-13

Exhibit 2c Comments Received in Response to MSRB Notice 2022-13

Exhibit 5 Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-MSRB-2023-05)
 Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-3 to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination and Remove Waiver Provisions and to Amend MSRB Rule G-8 to Establish Related Books and Records Requirements

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

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

The MSRB filed with the Commission a proposed rule change to amend MSRB Rule G-3, on professional qualification requirements to (i) remove the waiver provisions with respect to municipal advisor representative and principal qualification requirements; (ii) establish a new, criteria-based exemption to permit certain individuals to requalify as a municipal advisor representative³ without reexamination; (iii) retitle and replace Supplementary Material .02, on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Rule G-3(d)(i)(A) defines the term “municipal advisor representative” to mean a natural person associated with a municipal advisor who engages in municipal advisory activities, on the municipal advisor’s behalf, other than a person performing only clerical, administrative, support or similar functions. Rule G-3(d)(ii)(A) requires all persons meeting the definition of a municipal advisor representative to be qualified in that capacity by taking and passing the Municipal Advisor Representative Qualification

extraordinary waivers with text specifying the means for electronic delivery of the requisite notice to the MSRB regarding satisfaction of the criteria-based exemption; and (iv) make technical changes to the rule to update certain phrases and clauses. The MSRB also proposes to amend MSRB Rule G-8, on books and records, to establish accompanying recordkeeping requirements (the proposed amendments to Rules G-3 and G-8 collectively make up the “proposed rule change”). The MSRB requests that the proposed rule change be approved with a compliance date of no more than 30 days following the Commission approval date. The proposed rule change is specific to the professional qualification obligations of municipal advisors, including associated persons thereof, under Rule G-3, and does not modify any requirements to firms registered solely as brokers, dealers and/or municipal securities dealers (collectively, “dealers” and each, individually “a dealer”), or associated persons thereof.

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2023-SEC-Filings>, 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

Examination (“Series 50 examination”) prior to being qualified as a municipal advisor representative. Under current Rule G-3(d)(ii)(B), any person who, after qualifying as a municipal advisor representative, ceases to be associated with a municipal advisor firm for two or more years shall re-take and pass the Series 50 examination, unless a waiver is granted from the Board in “extraordinary cases” pursuant to current Rule G-3(h)(ii).

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 MSRB is charged with setting professional qualification standards for dealers and municipal advisors. Specifically, Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe 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.⁴ Sections 15B(b)(2)(A)(i)⁵ and 15B(b)(2)(A)(iii)⁶ of the Act also provide that the Board may appropriately classify associated persons of dealers and municipal advisors and require persons in any such class to pass tests prescribed by the Board. Accordingly, over the years, the MSRB has adopted professional qualification standards to ensure that associated persons of dealers and municipal advisors attain and maintain specified levels of competence and knowledge for each qualification category.

Description of the Proposed Rule Change

As part of the MSRB’s rule book modernization initiative and in light of the industry-wide continuing education (CE) transformation initiative for broker-dealers,⁷ the MSRB

⁴ See 15 U.S.C. 78o-4(b)(2)(A).

⁵ See 15 U.S.C. 78o-4(b)(2)(A)(i).

⁶ See 15 U.S.C. 78o-4(b)(2)(A)(iii).

⁷ As industry and market practices evolved in recent years, the MSRB, in coordination with other self-regulatory organizations, advanced rulemaking initiatives to modernize applicable professional qualification and continuing education program requirements for dealers (“CE Transformation”). See e.g., Exchange Act Release No. 95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule G-3 Continuing Education Program

undertook a review of Rule G-3 to identify opportunities to provide individuals associated with municipal advisor firms increased regulatory flexibility with respect to maintaining their professional qualifications. To that end, the proposed rule change would create a one-time, criteria-based exemption, under Rule G-3, for former municipal advisor representatives to, without reexamination, requalify in that capacity no later than one year after their two-year lapse in qualification. Second, the proposed rule change would remove language from Rule G-3 that currently permits the Board, in extraordinary cases, to waive the reexamination requirements for municipal advisor representatives and principals. Third, the proposed rule change would make certain clarifying amendments to Rule G-3 to address an interpretive question pertaining to a lapse in qualification for an individual associated with a dually registered firm that is both a dealer and a municipal advisor. Fourth, the proposed rule change would retitle and replace the current text of Supplementary Material .02 of Rule G-3 with text specifying the means for electronic delivery of the requisite notice to the MSRB regarding satisfaction of the criteria-based exemption. Additionally, the proposed rule change would make technical amendments to Rule G-3 to update certain phrases, clauses and referenced provisions to, among other things, improve the overall readability of the rule. Finally, the proposed rule change would amend Rule G-8 to require municipal advisors to make and keep certain books and records relating to the exemption to be created under the proposed rule change, as prescribed under Rule G-3(h)(ii)(I).

A more detailed description of the proposed rule change follows.

Clarifying Amendments to Rule G-3(d)(ii)(B)

Currently, pursuant to Rule G-3(d)(ii)(B), on qualification requirements for municipal advisor representatives, any person who ceases to be associated with a municipal advisor⁸ for two or more years after having qualified as a municipal advisor representative, in accordance with the rule, must take and pass the Series 50 examination prior to being qualified as a municipal advisor representative, unless a waiver is granted. Proposed amendments to this provision would provide that any person who ceases to be associated with “or engaged in municipal advisory activities on behalf of” a municipal advisor for two or more years after having qualified by examination as a municipal advisor representative (i.e., experiences a “lapse in qualification”) must take and pass the Series 50 examination unless exempt from such requirement pursuant to Rule G-3(h)(ii), as amended by the proposed rule change.

The proposed amendments to Rule G-3(d)(ii)(B) add the new language “or engaged in municipal advisory activities on behalf of” which is intended to provide clarity on the requirement for an individual associated with a firm that is dually registered as a dealer and municipal advisor. If an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor representative⁹ and instead engages only in municipal securities business on behalf of the firm for a period of two or more years, then that individual’s municipal advisor representative qualification would have lapsed, notwithstanding

⁸ For purposes of this filing and Exhibit 5, when the term “municipal advisor” is used it refers only to the firm and not associated persons of the firm.

⁹ Pursuant to Section 15B(e)(4)(A)(i) and (ii) of the Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and Rules D-13, G-3(d)(i)(A), and G-3(d)(ii)(A), municipal advisory activities requiring qualification as a municipal advisor representative include providing 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 undertaking a solicitation of a municipal entity or obligated person.

the fact that such person remains associated with a firm that is also a registered municipal advisor.¹⁰ The proposed amendments to Rule G-3(d)(ii)(B) would also delete the reference to the mention of a waiver (i.e., the clause “a waiver is granted”) to clarify that such persons would need to qualify by examination as municipal advisor representatives, unless obtaining the one-time criteria-based exemption.

Relatedly, the proposed rule change would provide a technical amendment to subparagraph (d)(ii)(B) of Rule G-3 by adding the phrase “lapse in qualification” to define for purposes of the rule when a person ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative. The proposed amendments also would replace the phrase “a waiver is granted” with “exempt” to make clear that the waiver provision for extraordinary cases is being deleted and replaced with a criteria-based exemption. The technical amendment to change the word “shall” to “must” is intended to add clarity without changing the meaning of the term. Lastly, the proposed amendments would replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3.

Clarifying Amendments to Rule G-3(e)(ii)(A) and (B)

Currently, pursuant to Rule G-3(e)(ii)(A), on qualification requirements for municipal advisor principals, as a pre-requisite to becoming qualified as a municipal advisor principal a

¹⁰ Under Exchange Act Rule 15Ba1-2, SEC Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities (“SEC Form MA-I”) is filed with the SEC to indicate natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf. See 17 CFR 240.15Ba1-2. Firms are required to promptly amend Form MA-I, pursuant to Exchange Act Rule 15Ba1-5 (17 CFR 240.15Ba1-5), in such cases where an individual ceases to engage in municipal advisory activities on behalf of a firm.

person must take and pass the Series 50 examination. The proposed amendments to this provision would provide that taking and passing the Series 50 examination is the pre-requisite to becoming qualified as a municipal advisor principal “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule.” The proposed amendments to Rule G-3(e)(ii)(A) add the new language “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule,” which is intended to allow for individuals previously qualified as municipal advisor principals to use the criteria-based exemption to obtain requalification with the Series 50 examination and provide clarity as to the application to such individuals. Notwithstanding the availability of the criteria-based exemption from requalification with the Series 50 examination, such municipal advisor principals would still need to take and pass the Municipal Advisor Principal Qualification Examination (“Series 54 examination”).

In addition, currently, pursuant to Rule G-3(e)(ii)(B), any person who ceases to be associated with a municipal advisor for two or more years after having qualified as a municipal advisor principal, in accordance with the rule, must take and pass the Series 50 examination and the Series 54 examination prior to being qualified as a municipal advisor principal, unless a waiver is granted under current subparagraph (h)(ii) of this rule. Proposed amendments to this provision would provide that any person who ceases to be associated with “or engaged in municipal advisory activities on behalf of” a municipal advisor for two or more years after having qualified by examination as a municipal advisor principal must take and pass the Series 50 examination unless exempt from such requirement pursuant to Rule G-3(h)(ii), as amended by the proposed rule change.

The proposed amendments to Rule G-3(e)(ii)(B) adds the new language “or engaged in municipal advisory activities on behalf of,” which is intended to provide clarity on the requirement for an individual associated with a firm that is dually registered as a dealer and municipal advisor. For example, if an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor principal and instead engages only in municipal securities business on behalf of the firm for a period of two or more years, then that individual’s municipal advisor representative and municipal advisor principal qualifications would have lapsed, notwithstanding the fact that such person remains associated with a firm that is also a registered municipal advisor. The proposed amendments to Rule G-3(e)(ii)(B) would also delete the reference to the mention of a waiver (i.e., the clause “a waiver is granted”) to clarify that such persons would need to qualify by examination as municipal advisor principals.

Relatedly, proposed amendments to Rule G-3 would contain technical amendments to Rules G-3(e)(ii)(A)(1) and G-3(e)(ii)(B). To clarify the qualification requirements specific to municipal advisor principals, as prescribed under G-3(e)(ii)(A)(1), the proposed rule change would add the phrase “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule” to make clear municipal advisor principals have to requalify by reexamination unless such individuals have obtained the one-time exemption. The proposed rule change would delete the phrase “a waiver is granted” and replace with the clause “exempt from taking the Municipal Advisor Representative Qualification Examination” to make clear that the waiver provision for extraordinary cases is being deleted and replaced with an exemption-based criteria for municipal advisor principals to use for requalification without reexamination for the Series 50 examination. Similarly, as previously mentioned, the word “shall” would be replaced with “must” to promote clarity; and

proposed amendments would replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3.

Removal of Extraordinary Waiver Provisions under Rule G-3(h)(ii)

Proposed amendments to Rule G-3(h)(ii) would remove references, in their entirety, to the ability to obtain a waiver in extraordinary cases for a former municipal advisor representative or municipal advisor principal and would replace such language with a criteria-based exemption for former municipal advisor representatives. The MSRB believes that this standard set forth within the four corners of the rule would provide greater flexibility to municipal advisor firms and their associated persons while simultaneously providing greater certainty for firms and such individuals who may wish to seek an exemption from the obligation to requalify as a municipal advisor representative by reexamination. At this time, the MSRB believes that the objective nature of the criteria-based exemption is preferable to the subjective nature of the waiver provisions in current Rule G-3(h)(ii). Additionally, the removal of the ability to seek and obtain a waiver for municipal advisor principals furthers municipal entity and obligated person protection by ensuring, through requalification by reexamination, individuals have demonstrated knowledge and skills necessary to discharge the responsibilities of a municipal advisor principal, including the vested authority for the supervision, oversight and management of firms’ municipal advisory activities and that of its associated persons.¹¹

¹¹ The MSRB has previously stated that the Series 54 examination is intended to ensure that a person seeking to qualify as a municipal advisor principal satisfies a specified level of competency and knowledge by measuring a candidate’s ability to apply the applicable federal securities laws, including MSRB rules to the municipal advisory activities of a municipal advisor. See Exchange Act Release No. 84341 (October 2, 2018), 83 FR 50708, 50710 (October 9, 2018) (Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G-3, on Professional Qualification Requirements, To Require Municipal Advisor Principals To Become Appropriately Qualified by Passing the Municipal Advisor Principal Qualification Examination) (File No. SR-MSRB-2018-07). In contrast,

Relatedly, proposed amendments to Supplementary Material .02, on waivers, under Rule G-3 would retitle that paragraph to “affirmation notification” and delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and would replace it with text that specifies how notice regarding use of the criteria-based exemption would be required to be submitted to the MSRB.

The proposed rule change to amend Rule G-3(h)(ii) to establish the criteria-based conditions that would be required to be met in order to qualify for an exemption are described below.

Proposed Rule Change to Adopt Rule G-3(h)(ii)(A)-(I) to Establish Conditions for Obtaining the Criteria-Based Exemption

The proposed rule change would amend Rule G-3(h)(ii) to prescribe that an individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if the specified conditions under proposed Rule G-3(h)(ii)(A)-(I) are met. Specifically, proposed amendments to adopt Rule G-3(h)(ii)(A)-(I) would establish nine specified criteria-based conditions that must be met in

the MSRB has previously noted that the Series 50 examination ensures a minimum level of knowledge of the job responsibilities and regulatory requirements by passing the general qualification examination. See Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225, 72227 (December 5, 2014) (Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rules G-1, on Separately Identifiable Department or Division of a Bank; G-2, on Standards of Professional Qualification; G-3, on Professional Qualification Requirements; and D-13, on Municipal Advisory Activities) (File No. SR-MSRB-2014-08).

order for an individual (and the municipal advisor firm with which such individual is associated¹² or seeks to be associated) to take advantage of the exemption.

The criteria-based conditions that would be required to be met in order to qualify for an exemption are described below.

(1) The individual was previously qualified as a municipal advisor representative by taking and passing the Series 50 examination.

(2) The individual maintained the municipal advisor representative qualification for a period of at least three consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisor firm(s).

(3) Such qualification lapsed pursuant to proposed amended Rule G-3(d)(ii)(B) and no more than one year has passed since such lapse in qualification.

(4) The individual has not engaged in activities requiring qualification as a municipal advisor representative¹³ during the individual's lapse in qualification.

(5) The individual is not subject to any events or proceedings that resulted in a regulatory action disclosure report, a civil judicial action disclosure report, customer

¹² The MSRB notes that an individual who has associated with a municipal advisor firm may not engage in any municipal advisory activities, as defined under Rule D-13 and described in Section 15B(e)(4)(A)(i) and (ii) of the Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and the rules and regulations promulgated thereunder (i.e., activities involving the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities or undertaking a solicitation of a municipal entity or obligated person), until such time that the individual has satisfied the conditions set forth under the rule.

¹³ See Rule G-3(d)(i)(A).

complaint/arbitration/civil litigation disclosure report, criminal action disclosure report or termination disclosure report on SEC Form MA-I.¹⁴

(6) The individual has not previously obtained the exemption from requalification by examination described in the proposed amended Rule G-3(h)(ii).¹⁵

(7) Prior to engaging in municipal advisory activities on behalf of the municipal advisor firm with which the individual is to associate (or reassociate), as evidenced by the filing of SEC Form MA-I, the municipal advisor firm provided, and the individual completed, CE covering, at minimum, the subject areas of: (i) the principles of fair dealing; (ii) the applicable regulatory obligations under Rules G-20, on gifts and gratuities, G-37, on political contributions and prohibitions on municipal securities business and municipal advisory business, G-40, on advertising by municipal advisors, and G-8, on books and records to be made and maintained; (iii) for non-solicitor municipal advisors, the core conduct standards under Rule G-42, including the fiduciary duty obligations owed to municipal entity clients, or for solicitor municipal advisors, the core obligations of Rule G-46; and (iv) any changes to applicable securities laws and regulations, including applicable MSRB rules that were adopted since the individual was last associated with a municipal advisor.

(8) Prior to engaging in municipal advisory activities on behalf of the municipal advisor firm with which the individual is to associate (or reassociate), as evidenced by the filing of an

¹⁴ The MSRB included these types of disclosures in the exemption criteria, as opposed to other types of disclosures required by SEC Form MA-I, because these relate most closely to violations of municipal advisor-related or investment-related regulations, rules, or industry standards of conduct.

¹⁵ Should an individual's municipal advisor representative qualification lapse again after such person obtains the criteria-based exemption, that individual would be required to requalify by taking and passing the Series 50 examination.

SEC Form MA-I, the municipal advisor firm provided, and the individual reviewed the compliance policies and procedures of the municipal advisor firm.

(9) Upon satisfaction of the conditions set forth in the paragraphs above, the municipal advisor firm filed a completed SEC Form MA-I with the SEC with respect to such individual. Within 30 days of the acceptance¹⁶ of a completed SEC Form MA-I identifying such individual as engaging in municipal advisory activities on behalf of the municipal advisor firm, the municipal advisor firm provided the notification (“affirmation notification”) electronically to the MSRB that the individual met the criteria in order to be exempt from the requalification requirements of Rule G-3(d)(ii)(B) following a lapse in qualification.

The affirmation notification would be required to be on firm letterhead and include the following information:

1. The municipal advisor firm’s MSRB ID number;
2. The first and last name of the individual seeking to obtain the exemption;
3. The individual’s FINRA Central Registration Depository (CRD) number if applicable;
4. The start date of the individual’s association (or reassociation) with the municipal advisor firm;
5. An affirmative statement that the municipal advisor has undertaken a diligent effort to reasonably conclude that the individual met the applicable requirements set forth in proposed amended Rule G-3(h)(ii);
6. An affirmative statement attesting that the municipal advisor firm provided both the requisite CE and the municipal advisor’s compliance policies and procedures to the

¹⁶ The SEC does not make the form acceptance date publicly available, but this information is made available to the form submitter as part of the form filing process.

individual for review along with the date the individual completed the CE and review of the municipal advisor's compliance policies and procedures provided by the municipal advisor firm;

7. The date the municipal advisor firm filed SEC Form MA-I (and the date of its acceptance) on behalf of the individual as required under subparagraph (h)(ii)(I); and

8. A signature by the individual seeking to obtain the criteria-based exemption and a signature by a municipal advisor principal of the municipal advisor firm each attesting the accuracy of certain content set forth in the affirmation notification. Specifically, the individual must sign the affirmation notification attesting that the conditions outlined in proposed amended Rule G-3(h)(ii)(A) through (H) were met. And, a municipal advisor principal must sign the affirmation notification, on behalf of the municipal advisor firm, attesting that, based on the exercise of reasonable diligence, the conditions outlined in proposed amended Rule G-3(h)(ii)(A) through (I) were met.¹⁷

Additionally, the affirmation notification required to be provided to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I, pursuant to subparagraph (h)(ii)(I) of this rule would be required to be sent to Compliance@msrb.org, in accordance with proposed amended Supplementary Material .02 of Rule G-3.

The conditions are designed to ensure that individuals seeking to obtain the exemption (i.e., requalification without reexamination) have and maintain the baseline level of knowledge

¹⁷ The MSRB notes that the respective individual and firm signature requirements are intended to differentiate and confirm the distinct responsibilities and obligations of the individual seeking to obtain the criteria-based exemption and those of the municipal advisor firm itself, as evidenced by the signature of a municipal advisor principal on behalf of the municipal advisor firm.

and experience, and have exhibited conduct aligned with being a fiduciary, which is in furtherance of municipal entity and obligated person protection. The MSRB believes that the criteria outlined above balance the goal of providing reasonable regulatory flexibility with the demands of the fiduciary standard applicable to municipal advisors. For example, the requirement that individuals were duly qualified as a municipal advisor representative for at least three consecutive years prior to, for example, seeking other career opportunities in related capacities (i.e., working for a dealer or municipal entity) or stepping away for family obligations ensures that a reasonable level of professional experience has been established before an individual can obtain the exemption. In contrast, this period is not so long as to hinder the ability, at a given point, for an individual to, for example, temporarily engage in other meaningful roles within the municipal securities industry or to step away due to family obligations.

At the same time, these conditions are designed to enhance an individual's familiarity with regulatory and business developments that occurred while they were not associated with a municipal advisor firm, before reengaging in municipal advisory activities, but are not so unduly burdensome as to hinder reassociation. The requirement to provide the MSRB with notice of individuals who have obtained the exemption (i.e., by submitting the affirmation notification to the MSRB) is designed to facilitate transparency and provide an audit trail regarding an individual's status as a municipal advisor representative. The MSRB will use the affirmation notification, as described in the proposed amended Rule G-3(h)(ii)(I), to help identify qualified municipal advisor representatives and keep the list of such representatives updated on the MSRB's website.¹⁸ Additionally, the conditions pertaining to requisite filings with the SEC also

¹⁸ The MSRB publishes a list of registered municipal advisors and qualified municipal advisor professionals (available at: <https://www.msrb.org/Municipal-Advisors>).

provide an audit trail and permit the entities charged with examination and enforcement authority to confirm compliance with relevant obligations.

Relatedly, technical amendments to Rule G-3(h) would retitle the header from “Waiver of Qualification Requirements” to “Waiver of and Exemption from Qualification Requirements” to promote clarity. Technical amendments to Rule G-3(h)(ii) replace the introductory sentence “The requirements of paragraph (d)(ii)(A) and (e)(ii)(A) may be waived by the Board in extraordinary cases for a municipal advisor representative or municipal advisor principal” with the new introductory sentence “An individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if all of the following conditions are met” for purposes of setting forth the enumerated criteria outlined under the provision.

Finally, as previously mentioned, the proposed amendments to Supplementary Material .02, on waivers, under Rule G-3 would retitle the paragraph header from “Waivers” to “Affirmation Notification” and delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and would replace it with text that specifies how the firm would submit to the MSRB the affirmation notification asserting that the criteria-based exemption has been met.

Timing for Completing the Requisite CE, Review of Compliance Policies and Procedures, and Making the Requisite Form Filings

The MSRB has consistently stated that individuals should take and pass the Series 50 examination before completing the necessary form filings to become associated persons of municipal advisor firms or before registering as municipal advisor firms.¹⁹ As a result, an

¹⁹ See Question 17 of “FAQs on Municipal Advisor Professional Qualification and Examination Requirements” (available at: <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf>).

individual associating with a municipal advisor firm and seeking to use the exemption should, in the following order:

- i) take and complete the requisite CE (e.g., resources available through trade associations or the MSRB, firm-developed materials, or off-the-shelf purchased materials);
- ii) review the municipal advisor firm's compliance policies and procedures;
- iii) have the municipal advisor firm complete SEC Form MA-I in accordance with the instructions in the form and file the form electronically with the SEC; and
- iv) submit the requisite affirmation notification to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I.

Whereas, solo-practitioners seeking to use the exemption should in the following order:

- i) take and complete the requisite CE (e.g., resources available through trade associations or the MSRB, firm-developed materials, or off-the-shelf purchased materials);
- ii) review the developed compliance policies and procedures of the municipal advisor firm;
- iii) complete SEC Form MA-I in accordance with the instructions in the form and file the form electronically with the SEC;
- iv) complete SEC Form MA: Application For Municipal Advisor Registration/ Annual Update Of Municipal Advisor Registration/ Amendment of A Prior Application For Registration ("SEC Form MA") in accordance with the instructions in the form and file the form electronically with the SEC;²⁰

²⁰ Filing Form MA and Form MA-I is mandatory for municipal advisor firms that are required to register with the SEC. See 17 CFR 240.15Ba1-2(a) and (b).

v) complete MSRB Form A-12, on registration, in accordance with the instructions outlined in the MSRB Registration Manual²¹ and file the form electronically with the MSRB;²² and

vi) submit the requisite affirmation notification to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I.

Proposed Amendments Related to G-8, on Books and Records to Be Made and Maintained

Proposed amendments to Rule G-8, on books and records, would add recordkeeping obligations designed to help facilitate and document compliance with proposed amendments to Rule G-3. Specifically, the proposed rule change would add new paragraph (C) to subsection (h)(vii) of Rule G-8 requiring municipal advisor firms to make and maintain the following records to evidence compliance with the requirements of Rule G-3(h)(ii)(A)-(I):

- A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., copy of the print-out of the individual exam results²³ or exam result certification letter provided by the MSRB);
- Documentation supporting the municipal advisor firm's exercise of reasonable diligence in determining that the conditions outlined in Rule G-3(h)(ii)(A) through (I) were met in

²¹ The MSRB Registration Manual is available at <https://www.msrb.org/sites/default/files/MSRB-Registration-Manual.pdf>.

²² Pursuant to Rule A-12, on registration, a municipal advisor must register with the MSRB before engaging in municipal advisory activities; prior to their MSRB registration, they must register with the SEC and have such registration approved.

²³ See Question 11 of "FAQs on Municipal Advisor Professional Qualification and Examination Requirements" (available at: <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf>) in which the MSRB reminds individuals that the test center will provide a print-out of individuals' exam results.

making the required affirmation notification in accordance with Rule G-3(h)(ii)(I)(8) (e.g., copies of relevant SEC form filings reviewed; records related to continuing education provided and completed; compliance policies and procedures provided and reviewed; and attestations or other documentation to support such a determination);

- A copy of the affirmation notification sent to the MSRB as required by Rule G-3(h)(ii)(I); and
- A record evidencing that the affirmation notification was made in the prescribed manner and within the required period of time as described in Rule G-3(h)(ii)(I) (e.g., automatic email delivery receipt).

As aforementioned, the proposed rule change outlining the specific recordkeeping requirements supports the municipal advisor principal's supervision, review and sign-off that the conditions for the exemption have been met, which supports regulatory compliance.

Relatedly, technical amendments to Rule G-8(h)(vii) would retitle the paragraph header from "Records Concerning Compliance with Continuing Education Requirements" to "Records Concerning Compliance with Professional Qualification Requirements of Rule G-3" to clarify the broader recordkeeping obligations and documentation requirements proposed in draft amendments to Rule G-8(h)(vii) that are accompanying proposed rule changes to Rule G-3(h)(ii). The other technical changes would reposition the word "and" and make other minor grammatical changes to the items in the series to aid readability.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,²⁴ which authorizes the MSRB to prescribe standards of training,

²⁴ 15 U.S.C. 78o-4(b)(2)(A).

experience, competence, and such other qualifications as the Board finds necessary or appropriate for the protection of municipal entities or obligated persons; and Section 15B(b)(2)(C) of the Act,²⁵ which provides that the MSRB's rules shall, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among regulators, and, in general, to protect municipal entities, obligated persons, and the public interest.

Under Section 15B(b)(2)(A) of the Act,²⁶ the proposed rule change is appropriate and in the public interest because more efficient, effective and flexible professional qualification requirements for municipal advisor representatives will lead to a broader applicant pool from which municipal advisor firms may hire. A broader municipal advisor representative applicant pool is in the public interest and will help protect municipal entities or obligated persons because such pool can improve the quality of municipal advisor representative candidates and increase diversity in the industry. By expanding the potential number of municipal advisor representative candidates, a firm may have greater choice in hiring qualified individuals. For example, individuals that may disassociate with a municipal advisor firm may determine to associate with a dealer in a public finance banker capacity or to work for a municipal entity. Such individuals may receive valuable and directly applicable experience from a different vantage point in the industry that would augment their prior and future experience as a municipal advisor representative upon reassociating with a municipal advisor firm. This difference in perspective

²⁵ 15 U.S.C. 78o-4(b)(2)(C).

²⁶ 15 U.S.C. 78o-4(b)(2)(A).

and experience could put such municipal advisor representative candidates in a position to provide more informed advice than they may otherwise have provided.

Similarly, a broader applicant pool increases the likelihood of greater diversity among municipal advisor representatives who can bring new perspectives to their work and the advice that they provide to their municipal entity and obligated person clients. Additionally, by hiring well-qualified candidates, firms can build bench strength and work to leverage institutional knowledge; thereby enhancing the informed advice provided to a municipal advisor firm's municipal entity and obligated person clients.

At the same time, the proposed rule change requires the satisfaction of conditions that establish safeguards and ensure that only qualified candidates may seek to obtain the criteria-based exemption from requalification, thereby furthering municipal entity and obligated person protection and the public interest. Specifically, the stated criteria of at least three years of experience before eligibility for the criteria-based exemption and no more than three years since ceasing to be associated with a municipal advisor firm is in furtherance of municipal entity and obligated person protection because these criteria support individuals maintaining their baseline level of experience and competence. The MSRB believes that the three-year thresholds, as opposed to a longer or shorter period, appropriately support the ability to establish a necessary and meaningful level of proficiency as a municipal advisor representative prior to obtaining the exemption. In contrast, while ensuring that such regulatory flexibility is available for a limited period of time, on a one-time basis, individuals retain the value of that established proficiency and can more readily adapt to changes in market practices or regulatory requirements upon reengaging in a municipal advisor representative capacity.

Prevention of Fraudulent and Manipulative Acts and Practices

In accordance with Section 15B(b)(2)(C) of the Act,²⁷ the proposed rule change also would continue to prevent fraudulent and manipulative acts and practices by ensuring that municipal advisor representatives meet competence, training, experience and qualification standards, and such protections would not be diminished by the proposed rule change. As noted above, the stated criteria of at least three years of experience before eligibility for the exemption and no more than three years since ceasing to be associated with a municipal advisor firm support individuals in maintaining their baseline level of experience and competence. In addition, the proposed rule change would require individuals seeking to obtain the exemption to, upon associating (or reassociating) with a municipal advisor firm, receive relevant and updated core training pertaining to regulatory obligations under applicable securities laws and regulations, including MSRB rules, which furthers the prevention of manipulative acts and practices. The MSRB believes that the three-year thresholds coupled with the more robust CE training requirements continue to support the establishment of the necessary experience, competence, and training, which in turn serves to help prevent fraudulent and manipulative practices and protect municipal entities, obligated persons, and the public interest.

Protection of Municipal Entities, Obligated Persons, and the Public Interest

Consistent with Section 15B(b)(2)(C) of the Act²⁸ and the above discussion, the proposed rule change would continue to protect municipal entities, obligated persons and the public interest because municipal advisor representatives would be required to obtain CE pertaining to specified topics and regulatory obligations under applicable securities laws and regulations,

²⁷ 15 U.S.C. 78o-4(b)(2)(C).

²⁸ Id.

including MSRB rules in order to requalify as a municipal advisor professional. Additionally, such individuals would not be able to obtain the criteria-based exemption if they either engaged in activities requiring qualification as a municipal advisor representative during their lapse in qualification or they are subject to any events or proceedings that resulted in a regulatory action disclosure report, a civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report or terminations disclosure report on the SEC Form MA-I. These conditions help ensure that basic municipal entity and obligated person protections remain in place while also providing municipal advisor representatives flexibility to pursue other meaningful roles within the municipal securities industry or to step away for other reasons; and benefits municipal advisor firms by providing the increased ability to attract qualified talent.

As noted above, a broader municipal advisor representative applicant pool is in the public interest and will help protect municipal entities and obligated persons because it can improve the quality of municipal advisor representative candidates and increase diversity in the municipal advisory industry, all of which could enhance the quality of advice provided to municipal entity and obligated person clients.

Finally, the MSRB believes that the removal of the ability of a municipal advisor representative or principal to apply to the Board and, potentially, receive a waiver from the obligation to requalify by reexamination would further protect municipal entities and obligated persons. As discussed, the proposed rule change would replace such ability with the criteria-based exemption. However, it would not extend such exemption to municipal advisor principals because the MSRB believes principals should be subject to additional regulatory requirements given their supervisory, oversight, and management duties, and the current criteria-based

exemption does not contemplate such rigor and heightened regulatory requirements. In practice, the MSRB has not received or granted waiver requests for municipal advisor principals.

Requiring all municipal advisor principals to requalify by reexamination following a lapse in qualification ensures municipal entity and obligated person protection by necessitating that municipal advisor principals satisfy a specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, in order to perform their duties.²⁹

Fostering Cooperation and Coordination

Proposed amendments to Rule G-8, on books and records, would add specific recordkeeping obligations designed to help facilitate and document compliance with proposed amendments to Rule G-3. Specifically, the proposed amendments would add a new paragraph (C) to subsection (h)(vii) of Rule G-8 that would require municipal advisor firms to make and maintain records to evidence their due diligence to ensure compliance with the criteria-based exemption by individuals seeking to obtain the exemption, and of the affirmation notification provided to the MSRB required by proposed amendments to Rule G-3(h)(ii)(I). The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act³⁰ because the specific documentation obligation and related books and records obligations

²⁹ As discussed in the section below regarding burden on competition, current Rule G-3(e)(ii)(C) permits solo-practitioners (or individuals associating or re-associating with a firm and designated as a principal) who are qualified as municipal advisor representatives to function as municipal advisor principals for up to 120 days before having to take and pass the Series 54 examination. In concert with the proposed rule change, these provisions would allow such individuals to start their own firm, requalify as municipal securities representatives without reexamination, and then qualify as municipal advisor principals.

³⁰ 15 U.S.C. 78o-4(b)(2)(C).

stemming from the proposed amendments to Rule G-8(h)(vii)(C) would foster cooperation by providing examining authorities with the necessary information to assist them in examining for and evaluating compliance with the criteria-based exemption. The MSRB further believes that the rigor of such review by examining authorities for compliance with the prescribed recordkeeping obligations would foster municipal entity and obligated person protection because municipal advisor firms would take due care to ensure compliance with the qualification standards under the criteria-based exemption and that only such individuals that satisfy such exemption are engaging in municipal advisor activities. Lastly, as aforementioned, the MSRB believes that the proposed amendments to Rule G-8(h)(vii)(C) would help create an audit trail to assist examination and enforcement authorities in their examination for compliance with the criteria-based exemption, fostering cooperation and coordination between regulatory authorities.

Promote Just and Equitable Principles of Trade

The technical amendments outlined throughout are consistent with the provisions of Section 15B(b)(2)(C) of the Act³¹ in that they promote just and equitable principles of trade by ensuring that Rules G-3 and G-8 remain accurate, clear and understandable for the municipal advisory community.

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

Section 15B(b)(2)(C) of the Act³² requires that MSRB rules not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Furthermore, Section 15B(b)(2)(L)(iv) of the Act³³ requires that rules adopted by the

³¹ Id.

³² Id.

³³ 15 U.S.C. 78o-4(b)(2)(L)(iv).

MSRB 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 MSRB does not believe that the proposed amendments to Rule G-3 and Rule G-8 would impose any unnecessary or inappropriate burden or impact on competition, as they would provide additional flexibility and certainty to those seeking to associate with municipal advisor firms as municipal advisor representatives and to municipal advisor firms, thereby, enhancing the hiring of qualified, experienced individuals; and they would also support evidencing compliance with the criteria-based exemption.

In determining whether the standards under Section 15B(b)(2)(C)³⁴ and (b)(2)(L)(iv)³⁵ of the Act related to burden on competition and burden on small municipal advisors have been satisfied, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.³⁶ In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed amendments to Rule G-3 and Rule G-8. The proposed amendments to Rule G-3 would create a criteria-based exemption for individuals to requalify in a municipal advisor representative capacity without reexamination after a lapse in qualification. The proposed rule change would remove language from Rule G-3 that currently permits

³⁴ 15 U.S.C. 78o-4(b)(2)(C).

³⁵ 15 U.S.C. 78o-4(b)(2)(L)(iv).

³⁶ Policy on the Use of Economic Analysis in MSRB Rulemaking is available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

municipal advisor professionals to seek a waiver from the MSRB from the requirement to requalify by reexamination in extraordinary cases. Additionally, the proposed rule change would make accompanying amendments to Rule G-8 to establish books and records requirements related to the criteria-based exemption. The proposed amendments to Rule G-3 and accompanying amendments to Rule G-8 are intended to offer flexibility, provide additional certainty, and eliminate the extraordinary nature of the waiver process for individuals and municipal advisor firms without reducing protection for municipal entity and obligated person clients who expect that municipal advisor professionals have satisfied professional qualification standards. Specifically, proposed amendments to Rule G-3 would afford an individual whose qualification as a municipal advisor representative has lapsed the opportunity to forego requalification by reexamination if certain, specified conditions are met.

Although the proposed amendments to Rule G-3 and Rule G-8 would be applied equally to all individuals seeking to associate with municipal advisor firms and to all such municipal advisor firms, the MSRB acknowledges potential burdens on competition for small or solo-practitioner municipal advisor firms with respect to the exemption's CE requirements and because the exemption does not extend to municipal advisor principals. As a result, although all firms would benefit from the proposed rule change for municipal advisor representatives, solo-practitioners and smaller municipal advisor firms may experience a smaller benefit than larger municipal advisor firms due to the fact the exemption would not extend to those seeking to associate and function in a principal-level capacity. However, as discussed in detail below, the MSRB believes the proposed amendments to Rule G-3 and Rule G-8 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the

Act³⁷ or 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.³⁸

Benefits, Costs and Effect on Competition

The main benefit of proposed amendments to Rule G-3 and Rule G-8 would be to create a criteria-based exemption and related recordkeeping requirements. The MSRB considered the economic impact associated with the proposed amendments to Rule G-3 relative to the baseline, which is the current extraordinary waiver provision and assessed incremental changes in the benefits and costs in a proposed future state with a criteria-based exemption for municipal advisor representatives.

The MSRB believes that the proposed rule change provides multiple benefits to the eligible population of individuals seeking to associate with municipal advisor firms as municipal advisor representatives, and municipal advisor firms without impairing the protections afforded to municipal entity and obligated person clients of municipal advisor firms. First, by increasing the amount of time in which an individual may maintain their qualification as a municipal advisor representative without reexamination, the proposed rule change provides flexibility for certain individuals to, for example, explore other career opportunities in the municipal securities industry or to step away to address life events, such as childcare or pursue higher education. As a result, the criteria-based exemption provided by the proposed rule change may increase demand for individuals seeking to reassociate in a municipal advisor representative capacity without having to retake the Series 50 examination.

³⁷ 15 U.S.C. 78o-4(b)(2)(C).

³⁸ 15 U.S.C. 78o-4(b)(2)(L)(iv).

The proposed rule change would require CE that includes coverage of specific subject areas and regulatory topics, which would ensure the most useful and up-to-date training is provided to individuals who wish to take advantage of the proposed exemption, therefore benefiting municipal entity and obligated person clients who may receive municipal advisory services from the firms with which such persons are associated. Furthermore, the proposed rule change reduces uncertainty for individuals seeking to requalify by providing clarity on the specific criteria needed to requalify without reexamination; and therefore, expedites the period by which such individuals can begin to engage in municipal advisory activities. In addition, municipal advisor firms would be better positioned to assess a potential hire's qualifications by evaluating the conditions specified in the proposed rule change. Finally, while Rule G-3 does not currently require a minimum number of years of past experience to reassociate with a municipal advisor firm within the specified two-year period, the MSRB believes establishing eligibility criterion of at least three consecutive years of past experience to qualify for the criteria-based exemption promotes municipal entity and obligated person protection by ensuring individuals have an established baseline level of knowledge and experience.

The MSRB believes there is the potential for one-time upfront costs for municipal advisor firms related to revising CE training materials and existing compliance policies and procedures to facilitate compliance with the proposed amendments to Rule G-3 and Rule G-8. However, these associated costs should be minor (see Table 1). Additionally, under the criteria individuals and municipal advisor firms must meet to obtain the exemption, there may be additional ongoing cost components to firms associated with conducting due diligence when rehiring a previously qualified municipal advisor representative and administering the specified CE required to meet the exemption. The MSRB estimates the aforementioned cost components at

approximately four hours incrementally (see Table 1), given that some current costs already exist associated with CE and performing due diligence in the baseline state. However, for municipal advisor firms that do not hire an individual with a lapsed qualification, there would be minimal additional costs incurred. Lastly, individuals who are away from the industry for more than three years would be required to take and pass the Series 50 examination again under the proposed rule change, as the waiver request provisions, available only in extraordinary cases, would no longer be available. However, given the limited use of the waiver process currently,³⁹ the MSRB does not believe the elimination of this option would have a significant impact on individuals seeking to reassociate in a municipal advisor representative capacity.

Table 1. Estimated Incremental Compliance Costs for each Municipal Advisor Firm⁴⁰

³⁹ To date, the MSRB has received only two waiver requests. The two requests were specific only to waiving the Series 50 examination (i.e., not a Series 54 examination waiver request), with one of the waivers being received following the publication of MSRB Notice 2022-13. See MSRB Notice 2022-13 (Request for Comment on Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination) (“RFC”) (December 1, 2022) (available at: <https://msrb.org/sites/default/files/2022-11/2022-13.pdf>).

⁴⁰ The hourly rate data was gathered from the 2013 SEC’s Final Rule on Registration of Municipal Advisors. See Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67594, 67609 (November 12, 2013) (File No. S7-45-10). The data reflects the 2023 hourly rate level after adjusting for the annual wage inflation rate of 2% between 2013 and 2021. See The Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries Private Industry (available at: <https://fred.stlouisfed.org/series/ECIWAG>). The MSRB uses a blended hourly rate in each category of costs when a task can be performed by different levels of professionals. For example, while the revision of compliance policies and procedures can be conducted by either an in-house attorney (average hourly rate \$521) or outside counsel (average hourly rate \$550), the MSRB chooses the blended hourly rate of \$536 for this analysis. Similarly, for training, the MSRB uses the average rate for a Chief Compliance Officer and a compliance attorney; and for ongoing costs, the MSRB uses the hourly rate for a compliance attorney. The number of hours for each task is based on the MSRB’s internal estimate.

Cost Components	Assumed Hourly Rate	Number of Hours	Cost Per Firm
Upfront Cost			
a) Revision of Policies and Procedures	\$ 536	3	\$ 1,608
b) Training	\$ 616	1	\$ 616
Ongoing Cost			
a) Due Diligence and Continuing Education	\$ 502	4	\$ 2,008

Reasonable Alternative Approaches and Effects on Competition

One alternative the MSRB considered was to update the qualification requirements of Rule G-3(d)(ii)(B)⁴¹ by changing the existing time for when a person ceases to be associated with a municipal advisor firm from two to five years, instead of from two to three years as currently proposed. Although neither the alternative nor the proposed rule change would permit the granting of a waiver regardless of the time period, individuals would be given greater flexibility when making decisions to temporarily cease their association with municipal advisor firms and can have certainty that they can reassociate with a more limited compliance burden for themselves and the municipal advisor firms.⁴² Moreover, a five-year absence from the municipal advisory business could result in a more significant gap in knowledge and experience, and an individual who returns after such an absence may not be fully aware of the latest regulatory and industry changes. The MSRB believes those individuals who cease to engage in municipal advisory activities for more than three years may benefit from retaking the Series 50

⁴¹ As previously mentioned, Rule G-3(d)(ii)(B) currently provides, “Any person who ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph (d)(ii)(A) shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless a waiver is granted pursuant to subparagraph (h)(ii) of this rule.”

⁴² As noted above, an individual may obtain the criteria-based exemption under the proposed rule change only once.

examination, which is designed to ensure a baseline level of knowledge exists about rules and regulations, and the regulatory framework in which such individuals operate, as well as to protect municipal entity and obligated person clients who may rely on advice from qualified municipal advisor representatives.

Another alternative the MSRB considered was, instead of requiring CE to include coverage of specific subject areas and topics, an individual would complete catch-up CE for the relevant time period such person ceased association with a municipal advisor firm in order to satisfy the exemption's criteria. The MSRB determined that this alternative would be challenging for solo-practitioners looking to establish a municipal advisor firm because such individuals would not have previous training materials readily available, potentially creating a burden on competition between a solo-practitioner and individuals seeking to join (or reassociate with) existing firms. The MSRB notes that while such solo-practitioners may not have developed CE training materials addressing all of the prescribed subject matters; such firms would be able to utilize "off-the-shelf content" or widely available industry educational materials (to the extent such materials meet the requirements set forth in the proposed rule change), which would be a less burdensome approach than creating new CE materials.⁴³ Thus, the MSRB has deemed the

⁴³ The MSRB has previously noted that the CE requirements for municipal advisors affords municipal advisors the flexibility to deliver CE in the most convenient and effective manner possible based on the firms' business model. In addition, the MSRB noted industry trade associations may be a good source of CE training materials, in addition to podcasts, webinars and educational materials developed by the MSRB. See Exchange Act Release No. 80327 (March 29, 2017), 82 FR 16449, 16454 (April 4, 2017) (Notice of Filing of a Proposed Rule Change to Rule G-3, on Professional Qualification Requirements, and Rule G-8, on Books and Records, To Establish Continuing Education Requirements for Municipal Advisors and Accompanying Recordkeeping Requirements) (File No. SR-MSRB-2017-02).

proposed rule change as superior to potential alternative approaches, including for small municipal advisor firms or solo-practitioners.

As previously noted, while an individual and a firm seeking to associate such an individual in the capacity of a municipal advisor principal may receive fewer benefits, still, all municipal advisor firms would benefit from the proposed rule change allowing individuals to requalify in the capacity of municipal advisor representatives.⁴⁴ The MSRB acknowledges that there may be a potential burden on competition on solo-practitioners or small municipal advisor firms because the criteria-based exemption does not extend to municipal advisor principals. Specifically, individuals seeking to act as a municipal advisor principal would still have to take and pass the Series 54 examination in order to engage in principal-level activities. Rule G-3(e)(ii)(C) affords temporary relief to an individual (and the municipal advisor firm with which such individual associates) who is qualified as a municipal advisor representative, but is functioning in the capacity of a municipal advisor principal, for a period of 120 days after becoming designated as a municipal advisor principal, to take and pass the Series 54 examination. As a result, all such persons, including those persons seeking to be solo-practitioners and seeking to associate with small (or larger) municipal advisor firms would be able to function in the principal-level capacity for a limited period of time before having to take and pass the Series 54 examination.

Municipal advisor principals are subject to additional regulatory standards given their supervisory, oversight and management duties and the MSRB believes that requiring all municipal advisor principals to requalify by reexamination following a lapse in qualification

⁴⁴ The MSRB notes, pursuant to Rule G-3(e)(ii), on qualification requirements, the Series 50 examination is a pre-requisite to becoming qualified as a municipal advisor principal.

helps to ensure municipal entity and obligated person protection. Specifically, notwithstanding the fact that small municipal advisor firms may experience a smaller benefit than larger firms, the MSRB believes that reexamination is necessary for all individuals seeking to function in a principal-level capacity. The process of reexamination ensures that the specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, is sufficiently demonstrated. Accordingly, in light of these considerations, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act⁴⁵ or 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.⁴⁶

At present, the MSRB cannot evaluate the magnitude of the efficiency gains or losses quantitatively, but believes the overall benefits accumulated over time for market participants would outweigh the minimal upfront and ongoing costs associated with the proposed amendments to Rule G-3 and Rule G-8. The proposed amendments to Rule G-3 would make it easier for individuals seeking to requalify as municipal advisor representatives to reassociate with a municipal advisor firm and for municipal advisor firms to recruit experienced professionals. In addition, the increased number of skilled professionals furthers capital formation because municipal entity and obligated person clients would have ranging areas of expertise to select from when utilizing the services of municipal advisor representatives. Finally,

⁴⁵ 15 U.S.C. 78o-4(b)(2)(C).

⁴⁶ 15 U.S.C. 78o-4(b)(2)(L)(iv).

the MSRB believes the proposed amendments to Rule G-3 and Rule G-8 improve the municipal securities market's operational efficiency and promote regulatory certainty by providing individuals with a specific exemption process to requalify as municipal advisor representatives and to begin engaging in municipal advisory activities on behalf of municipal advisor firms.

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

As previously mentioned, the MSRB sought public comment on draft amendments to Rule G-3 in an RFC published on December 1, 2022.⁴⁷ The MSRB received three comment letters in response to the RFC.⁴⁸ The comments are summarized below by topic and MSRB responses are provided.

General Support for the Proposed Rule Change

All three commenters agreed with the MSRB's assertion that the proposed rule change would benefit, more than burden, municipal advisor firms and would provide increased regulatory flexibility and certainty for municipal advisor representatives and municipal advisor firms. Commenters generally agreed with the requirements for obtaining the criteria-based exemption, including the three-year-minimum-maximum thresholds, as well as the obligation that a municipal advisor firm submit a notice to the MSRB affirming an individual's eligibility for the exemption by having met the criteria enumerated in the proposed rule change.

⁴⁷ See supra note 38.

⁴⁸ See Letters from Chris Charles, President, Wulff, Hansen & Co. ("Wulff Hansen Letter"), dated December 29, 2022; Susan Gaffney, Executive Director, National Association of Municipal Advisors ("NAMA Letter"), dated January 30, 2023; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA Letter"), dated January 30, 2023. All comment letters are available at <https://www.msrb.org/sites/default/files/2023-03/All-Comments-to-Notice-2022-13.pdf>.

Continuing Education Criteria

The draft amendments reflected in the RFC would have required that upon associating with a municipal advisor firm, an individual would complete CE consistent with the requirements of current Rule G-3(i)(ii)(B) for the period of time since the individual was last associated with a municipal advisor firm (“CE catch-up requirement”), as part of the criteria-based exemption. In response, NAMA requested clarification on the proposed CE catch-up requirements. NAMA also sought clarification as to how such CE catch-up requirement would be expected to be delivered. NAMA specifically questioned how a solo-practitioner starting their own municipal advisor firm could obtain the exemption since there would be no prior, firm-administered continuing education to deliver to satisfy the CE catch-up requirement.⁴⁹ SIFMA also commented that requiring an individual to merely catch up on a firm’s previously administered continuing education upon re-entry to the industry may, in practice, result in repetitive, outdated, or confusing information.⁵⁰

In response, the MSRB revised the proposal to make the exemption’s CE criteria more practicable and streamlined, so that it is not dependent on previously administered CE. As reflected in the proposed rule change, CE would be required to include coverage of specified subject areas and topics, set forth in the proposal, rather than mandating the completion of previously issued CE for the period of time since the individual seeking to obtain the criteria-based exemption was last associated with a municipal advisor firm.

⁴⁹ NAMA Letter at 3-4.

⁵⁰ SIFMA Letter at 2.

The MSRB believes that these revisions provide a more practical approach for an individual to comply with the CE requirements in order to qualify for the criteria-based exemption, in that it allows municipal advisor firms to ensure the most useful and up-to-date CE is provided to the individual. At the same time, the revisions would be more workable for solo-practitioners, particularly those establishing a new firm that's never been registered. Since such firms were not previously in existence, they would not have previous CE to provide to take advantage of the draft criteria-based exemption. The revisions, reflected in the proposed rule change, permit such individuals to take advantage of the criteria-based exemption and mitigates the potential for a burden on competition that may otherwise exist between solo-practitioners and those seeking to associate (or reassociate) with an established municipal advisor firm. Finally, the revised approach would permit municipal advisor firms to tailor the required CE training materials to the individual seeking the criteria-based exemption, consistent with the enumerated topic areas in the proposed rule change, to better ensure the most relevant information is covered.

Mechanics of Exemption Requirements

The draft amendments reflected in the RFC would have required that, prior to the individual engaging in municipal advisory activities on behalf of the municipal advisor firm, the firm file a completed SEC Form MA-I on behalf of the individual seeking to obtain the exemption and provide electronic notification to the MSRB that the individual has met the criteria to be exempt from the qualification requirements under the rule.

NAMA commented that further clarification would be beneficial as to timing for completing the CE requirements, when SEC Form MA-I is to be filed, and when the relevant affirmation notification is due to the MSRB.⁵¹ In addition, NAMA suggested that a compliance

⁵¹ NAMA Letter at 1.

resource explaining how a solo-practitioner can initially enter or re-enter the municipal securities industry before formally completing the requisite forms to establish a municipal advisor firm (and to associate such individual with the municipal advisor firm) would be beneficial.

Relatedly, SIFMA requested that the MSRB consider compliance resources to assist regulated entities (and their associated persons) in understanding the relevant professional qualification and CE requirements, particularly for firms dually registered as a dealer and municipal advisor.⁵²

In response, the MSRB revised the proposal (as reflected in the proposed rule change) to address the timing and sequence of satisfying the exemption's criteria, the filing of SEC Form MA-I (and SEC Form MA, as applicable), and the submission of the affirmation notification to the MSRB. Additionally, the MSRB anticipates publishing a compliance resource in close proximity to the compliance date of the rule in response to comments from NAMA and SIFMA, which would highlight the regulatory obligations for municipal advisors and dealers with respect to professional qualification standards, CE requirements, and related registration matters.

Greater Harmonization with FINRA Rules and Related Requirements for Broker-Dealers

SIFMA and NAMA expressed the desire for greater harmonization between the criteria set forth in the draft amendments and the qualification maintenance provisions available to broker-dealers, specifically those under FINRA rules, to reduce regulatory burdens for individuals who serve in multiple registered capacities.⁵³ The standards related to qualification maintenance for dealers (and their associated persons) were adopted by the MSRB in October

⁵² SIFMA Letter at 2.

⁵³ SIFMA Letter at 1-2; NAMA Letter at 5.

2022.⁵⁴ However, there are currently no such prescribed qualification maintenance standards⁵⁵ (e.g., required annual CE or requisite hours) for municipal advisor representatives equivalent to the prescribed qualification maintenance standards for municipal securities professionals of dealers.

The proposed rule change seeks to provide municipal advisor representatives with greater flexibility than they have today, which also will provide some parity with the flexibility afforded to dealers. However, the MSRB is mindful of the distinctions between dealers and municipal advisors, including the differences in the applicable qualification maintenance standards as well as the application of a federal fiduciary duty for municipal advisors, but not dealers. After careful consideration, the MSRB continues to believe that the proposed rule change reflects the appropriate balance of flexibility for individuals seeking to requalify without reexamination and for their associated municipal advisor firms with the MSRB's municipal entity protection mandate, as well as the fiduciary duty owed by municipal advisors to their municipal entity clients. The MSRB does not believe that further harmonization with the maintenance qualification standard for dealers (and their associated persons) is appropriate given the distinct nature of municipal advisory activities, including the fiduciary duty owed by municipal advisors to municipal entity clients. In contrast, while dealers are obligated under Rule G-17 to deal fairly with all persons, including municipal entities and obligated persons, they generally engage in arm's-length transactions with such clients and have financial and other interests that may differ from them; therefore, the MSRB believes the three-year mandatory experience requirement and

⁵⁴ See Exchange Act Release No. 95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) (File No. SR-MSRB-2022-07).

⁵⁵ See Rules G-3(a)(ii)(C), G-3(b)(ii)(C), G-3(b)(iv)(B)(3), G-3(c)(ii)(C) and G-3(i)(i)(C) for qualification maintenance standards applicable to dealers.

three-year maximum out-of-the-industry requirement recognize the uniqueness of the regulatory framework. Hence, the MSRB determined not to revise the draft proposal to be more consistent with qualification maintenance standards available to dealers.

Application of Exemption to Municipal Advisor Principals

Commenters expressed a belief that the criteria-based exemption from requalification by reexamination should be extended to include municipal advisor principals.⁵⁶ After careful consideration, the MSRB continues to believe that such relief should not be extended to municipal advisor principals because the supervisory, oversight and management duties of municipal advisor principals make an exemption from requalification by reexamination inappropriate. Even if such an exemption were contemplated, it would require additional, more stringent criteria than those proposed for municipal advisor representatives to appropriately reflect the heightened responsibilities of a municipal advisor principal. This would result in two different standards and thus additional regulatory complexity in this area.

However, as noted above in relation to the impact of the proposal on solo-practitioners and small municipal advisor firms, solo-practitioners (and individuals associating or re-associating with a firm and designated as a principal) may avail themselves of the provisions under current Rule G-3(e)(ii)(C), which in concert with the proposed rule change, make it possible for a solo-practitioner to start their own firm, requalify as a municipal advisor representative without reexamination and function as a municipal advisor principal for a limited period of time (i.e., 120 days) before having to take and pass the Series 54 examination. Relatedly, for an individual who was once qualified as a municipal advisor principal and who is

⁵⁶ NAMA Letter at 4-5; SIFMA Letter at 2; and Wulff Hansen Letter at 3.

associating or re-associating with a municipal advisor firm and is expected to take on a principal-level role at the firm, such individual would be able to function in the principal-level capacity for the aforementioned limited period of time before having to take and pass the Series 54 examination.

Other Comments Considered

Wulff Hansen objected to the criterion that would have prohibited an individual seeking the exemption from engaging in municipal advisory activities during a lapse in qualification. Wulff Hansen noted that such a prohibition does not recognize that the SEC permits certain individuals to engage in municipal advisory activities without registration because they qualify for an exclusion or exemption from registration requirements, for example, the underwriter exclusion, as prescribed under Section 15B(e)(4)(C) of the Act (15 U.S.C. 78o-4(e)(4)(C)).⁵⁷ In response to this comment, the revisions reflected in the proposed rule change clarify that an individual must not have engaged in activities requiring qualification as a municipal advisor representative during the individual's lapse in qualification.

Wulff Hansen also suggested that the MSRB retain the ability to grant waivers for individuals in highly exceptional circumstances that do not qualify for the criteria-based exemption set forth in the draft amendments.⁵⁸ The MSRB believes that retention of such a waiver process is unnecessary in light of how few waiver requests the Board has received.⁵⁹ Additionally, as discussed above, the MSRB believes that municipal advisor principals should be

⁵⁷ Wulff Hansen Letter at 1.

⁵⁸ Id. at 2.

⁵⁹ Supra note 37.

required to take and pass the requisite qualification examination in light of the heightened responsibilities performed by such persons. Finally, the MSRB believes that retention of such a waiver provision would result in less objective and predictable requalification standards than those provided for in 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 may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2023-05 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-2023-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2023-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.⁶⁰

Sherry R. Haywood
Assistant Secretary

⁶⁰ 17 CFR 200.30-3(a)(12).

MSRB Notice

2022-13

Publication Date

December 1, 2022

StakeholdersMunicipal Advisors,
Issuers**Notice Type**

Request for Comment

Comment Deadline

January 30, 2023

Category

Professional Qualification

Affected Rules[Rule G-3](#)

Request for Comment on Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination

Overview

As part of its ongoing retrospective review of its rules and published interpretations, the Municipal Securities Rulemaking Board (MSRB) is issuing this Request for Comment (RFC) seeking comment on draft amendments to MSRB Rule G-3, on professional qualifications. The draft amendments would create a new exemption within Rule G-3 to allow an individual who was previously qualified as a municipal advisor representative by taking and passing the Municipal Advisor Representative Qualification Examination (“Series 50 exam”) to forego requalification by examination if certain conditions are met. The draft amendments would replace the provision on waivers in extraordinary circumstances that currently appears in Rule G-3.

This request for comment is intended to elicit views and input, including on the benefits, burdens, and possible alternatives of the draft amendments. The comments will assist the MSRB in determining whether to pursue these changes further, such as through a future proposed rule change filed with the Securities and Exchange Commission (SEC).

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information they believe would be useful to the MSRB. Comments should be submitted no later than January 30, 2023 and may be submitted by [clicking here](#) or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board,

Receive emails about
MSRB Notices.

1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.¹

Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act² the MSRB is charged with setting professional standards and continuing education (CE) requirements for municipal advisors. Section 15B(b)(2)(A) of the Securities Exchange Act of 1934 (the "Act") authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.³ In connection with such standards, the MSRB has established professional qualification examinations— the Series 50 and Series 54 exams—and CE requirements for municipal advisors.⁴ The MSRB has adopted professional qualification standards to ensure that associated persons of municipal advisors attain and maintain specified levels of competence and knowledge for each qualification category.

As industry and market practices evolved in recent years, the MSRB, in coordination with other self-regulatory organizations (SROs), advanced rulemaking initiatives to modernize applicable professional qualification and CE program requirements for brokers, dealers and municipal securities dealers (individually and collectively, "dealers") (CE Transformation).⁵ The MSRB's recently approved amendments to Rule G-3 with respect to professional qualifications and CE program requirements are designed to afford reasonable flexibility to dealers to develop and maintain a depth of associated persons with professional qualifications.

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

² Pub. Law No. 111-203, 124 Stat. 1376 (2010).

³ See 15 U.S.C. 78o-4(b)(2)(A).

⁴ See 15B(b)(2)(L)(ii)-(iii) of the Act, 15 U.S.C. 78o-4(b)(2)(L)(ii)-(iii).

⁵ See e.g., Securities Exchange Act Release No. 34-95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) ([File No. SR-MSRB-2022-07](#)) (Proposed Rule Change to Amend MSRB Rule G-3 Continuing Education Program Requirements to Harmonize with Industry-Wide Transformation).

The MSRB believes that providing an opportunity for individuals to reassociate with municipal advisors without having to requalify by examination or obtain an examination waiver, if certain conditions are met, would promote greater flexibility for individuals to step away from the municipal securities market for a period of time, including for personal matters such as family needs or educational pursuits. Finally, easing such barriers to reentry would promote greater diversity and inclusion in the municipal securities market by providing municipal advisors with greater flexibility to attract and retain a broader pool of professionals.

Current Requalification Requirements for Municipal Advisor Representatives

MSRB Rule G-3(d)(ii)(B) requires any municipal advisor representative⁶ who ceases to be associated with a municipal advisor firm for two or more years, and thus has their qualification lapse, to requalify as a municipal advisor representative by retaking and passing the Series 50 exam unless a waiver of this requirement is obtained from the Board in extraordinary cases under Rule G-3(h)(ii).⁷

Rule G-3(h)(ii) provides that the re-examination requirement may be waived by the Board in extraordinary cases for a municipal advisor representative or principal. Supplementary Material .02, on waivers, further specifies that waivers are considered in extraordinary cases where the applicant either participated in the development of the Series 50 exam or Series 54 exam as a member of the Board's Professional Qualifications Advisory Committee or was previously qualified as a municipal advisor representative or principal by having taken and passed the Series 50 exam and/or the Series 54 exam, and

⁶ Rule G-3(d)(i)(A) defines the term "municipal advisor representative" to mean a natural person associated with a municipal advisor who engages in municipal advisory activities, on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions. Individuals who engage in municipal advisory activities must qualify as a municipal advisor representative.

⁷ The same requirements apply to any municipal advisor principal whose qualification has lapsed under Rule G-3(e)(ii)(B). Rule G-3(e)(i) defines the term "municipal advisor principal" to mean a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. Individuals who engage in the management, direction or supervision of municipal advisory activities must qualify as a municipal advisor principal.

such qualification lapsed pursuant to subparagraphs (d)(ii)(B) or (e)(ii)(B) of Rule G-3.

Summary of the Draft Amendments

The draft amendments to Rule G-3 and its Supplementary Material would remove provisions related to extraordinary waivers for individuals seeking to reassociate with municipal advisor firms without having to requalify by examination. In lieu of the waiver provisions, the MSRB seeks comment on draft amendments that would create a one-time exemption for an individual seeking to requalify as a municipal advisor representative if specified criteria are met. The draft amendments would not permit individuals seeking to requalify as municipal advisor principals to requalify without examination due to the nature of their roles and responsibilities. Because the fundamental role of municipal advisor principals is the supervision of firms' municipal advisory activities and that of its municipal advisor representatives, the MSRB believes that the supervisory obligations of municipal advisor principals require a heightened level of knowledge and experience that necessitates a more stringent requalification standard than that contemplated by the draft amendments.

A. Criteria for Exemption

The draft amendments would add specified criteria to the rule that, if met, would permit a previously qualified municipal advisor representative to requalify without re-examination. In considering these criteria, the MSRB took into account similar condition-based qualification programs, like FINRA's Maintaining Qualifications Program (MQP).⁸ The MSRB considered that individuals registered with broker-dealers are not subject to a fiduciary duty like municipal advisors and the MSRB understands there is generally no formal waiver or exemption process that exists for investment advisors, who also have a fiduciary duty standard. Accordingly, the MSRB sought to balance the high standards of qualification and competence inherent in the fiduciary relationship applicable to municipal advisors and the protections such standards afford issuers with broader goals consistent with that of the CE Transformation for dealers.

⁸ FINRA's MQP is designed to provide eligible individuals who terminate their registrations with the option of maintaining their qualifications for a requisite time period without having to requalify by exam or having to obtain an exam waiver, if certain conditions are met, including the completion of annual CE. See FINRA Rule 1240(c), Supplementary Material .01 and .02, [and FINRA Regulatory Notice 21-41](#).

As detailed further below, the draft amendments also would require the municipal advisor firm with which the individual is seeking to associate to provide written notice to the MSRB that the individual has met the criteria to requalify without re-examination before the individual engages in municipal advisor activities. Importantly, an exemption from the requirement to requalify by examination based on meeting the draft criteria would be available only once to any previously qualified municipal advisor representative. Should an individual's municipal advisor representative qualification lapse again⁹ after such person avails themselves of the exemption, that individual would be required to requalify by taking and passing the Series 50 exam.

Under the draft amendments, the conditions that would need to be met for individuals to avail themselves of the exemption include:

- The individual was previously qualified as a municipal advisor representative by passing the Series 50 exam.
- The individual maintained such qualification for a period of at least three consecutive years while associated with, and engaging in municipal advisory activity on behalf of, one or more municipal advisor firms.
- No more than three years has passed since the individual was last associated with, and engaging in municipal advisory activity on behalf of, a municipal advisor.
- The individual has not engaged in municipal advisory activity during the period the qualification has lapsed.
- The individual does not have civil judicial or adverse regulatory matters or terminations that the firm would be required to disclose on SEC Form MA or Form MA-I.
- Upon an individual's reassociation with a municipal advisor, after experiencing a lapse in qualification, the municipal advisor must provide, and such individual must complete, all continuing education required under Rule G-3 and any other continuing education that was required by the firm during the period of time

⁹ An individual's qualification may lapse if the individual ceases to be associated with a municipal advisor or ceases to be engaged in municipal advisory activities for two or more years after having qualified as a municipal advisor representative. Therefore, an individual's qualification would lapse after two years if, while continuing to remain associated with a firm that is dually-registered as a municipal advisor and dealer, the individual stopped engaging in municipal advisory activities on behalf of the firm as evidenced by the firm's filing of an amendment to SEC Form MA-I indicating that the individual is no longer an associated person of the municipal advisor firm or no longer engages in municipal advisory activities on its behalf.

in which such individual was not associated with a municipal advisor.

- Upon reassociating with a municipal advisor, the individual reviewed the municipal advisor firm's compliance policies and procedures.
- Prior to the individual engaging in municipal advisory activities on behalf of the municipal advisor, the municipal advisor submits to the SEC a Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities.

B. Notice Requirement Upon Reassociation

Upon reassociation by an individual with a municipal advisor firm, and prior to the individual engaging in municipal advisory activities on behalf of the firm, the draft amendments would require the firm to provide written notice to the MSRB that the individual has met the specified criteria required for the exemption (the "Attestation Notice"). One of the criteria specified to meet the exemption would include that the municipal advisor firm has submitted to the SEC a Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities ("Form MA-I") to satisfy the exemption. The Form MA-I must be filed within the three-year period from the time the individual was last associated with a municipal advisor firm, as evidenced by the date that the municipal advisor firm with which the individual is no longer associated last filed a Form MA-I with the SEC indicating that the individual was no longer engaging in municipal advisory activities on its behalf. The municipal advisor firm seeking to employ such an individual would have 30 days from the date of submission of the Form MA-I to the SEC to submit the Attestation Notice to the MSRB; otherwise, such exemption would no longer be available, and the individual would have to requalify by taking and passing the Series 50 exam.

As proposed, the Attestation Notice would be required to include the following information:

- The municipal advisor's MSRB ID number.
- The individual's name and, as applicable, Central Registration Depository number.
- The start date of the individual's association with the municipal advisor firm.
- An affirmative statement that the municipal advisor has undertaken a diligent effort to establish a reasonable belief that the individual has met the criteria outlined in the exemption.

- An affirmative statement, including signed affirmation from the individual, that the firm provided CE training and training on the municipal advisor's compliance policies and procedures and the date the individual completed the training provided by the firm.
- An affirmative statement that the firm has, prior to or at the time of providing the Attestation Notice to the MSRB, filed the appropriate Form MA-I to the SEC.

Under the draft amendments, a municipal advisor would be required to maintain a record of the Attestation Notice sent to the MSRB.

The MSRB believes that the criteria outlined above balances the goal of providing reasonable regulatory flexibility with the demands of the fiduciary standard applicable to municipal advisors coupled with the MSRB's mandate to protect issuers and maintain high standards for fiduciaries.

For example, the requirement that individuals have been duly qualified as a municipal advisor representative for at least three consecutive years ensures a reasonable level of professional experience has been established before individuals step away from engaging in municipal advisory activities and later avail themselves of the exemption. In contrast, this period is not so long as to hinder the ability to step away as needed at points in one's professional career (*e.g.*, individuals who, after three years as a municipal advisor representative, seek the opportunity to pursue an advanced degree or care for family). Additionally, the MSRB believes that completion of three years' worth of CE requirements upon reassociation enhances an individual's familiarity with regulatory and business developments during their time away from the industry but is not so unduly burdensome as to hinder reassociation.

As previously mentioned, the draft amendments which would allow individuals to reassociate with a municipal advisor within the requisite time without having to requalify by exam would replace the current extraordinary waiver process for municipal advisor representatives and municipal advisor principals under MSRB Rule G-3. The MSRB believes that this process would provide greater certainty and flexibility to municipal advisors in their hiring practices than the current waiver provision.

Preliminary Economic Analysis

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Board has historically carefully considered the costs and benefits of new and

amended rules. Accordingly, the Board's policy states that, prior to proceeding with rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted would, in its judgment, meet that need.¹⁰ The MSRB does not believe that the draft amendments would result in any burden on competition in accordance with the purposes of the Act. The MSRB seeks comment on the economic effects of amending MSRB Rule G-3.

Rule G-3 currently provides that a municipal advisor representative or principal whose qualification has lapsed must requalify either by re-taking the appropriate qualification exam or by applying to the Board for a waiver in extraordinary cases. The purpose of the draft amendments is to afford an individual whose qualification has lapsed the opportunity to forego requalification by examination if certain, specified conditions are met. These conditions would include, among other things, that individuals maintained their qualification for at least three consecutive years by being associated with, and engaging in municipal advisory activity on behalf of, one or more municipal advisors prior to their qualification lapsing, and that no more than one year has passed since the individual's qualification lapsed. The draft amendments would also replace the provisions in Rule G-3 governing waivers from the Board from the re-examination requirement.

A. The Need for the Draft Amendments to Rule G-3

The draft amendments are intended to provide flexibility, additional certainty, and eliminate the extraordinary nature of the waiver process without reducing the protection for issuers who expect that a municipal advisor has met established professional qualification standards. For example, under current Rule G-3, municipal advisors that intend to hire individuals seeking a waiver in extraordinary cases may experience a delay in having such an individual begin functioning as a municipal advisor representative until the individual's qualification status is resolved.¹¹ In addition, some individuals may determine to hire legal counsel to assist with applying for a waiver, which would introduce additional economic and time burden. The draft amendments also are intended to provide more certainty for individuals and municipal advisor firms as to how, and whether, an individual can be exempted from having to retake the Series 50 examination. In addition, the draft amendments

¹⁰ See MSRB's [Policy on the Use of Economic Analysis in MSRB Rulemaking](#).

¹¹ Similar statements were made by commenters when the Series 50 exam was first proposed. See [NACP Comment Letter](#) (May 14, 2014).

are also intended to provide greater flexibility and clarity to individuals who pause their career due to personal or other reasons.

Pursuant to Rule G-3(d)(ii)(B), municipal advisor representatives' qualification(s) do not lapse until after a two-year period; as a result, the draft amendments would effectively extend the current two-year period by one additional year, under certain conditions, before an individual must requalify by re-examination. Given the conditions to the exemption, the MSRB does not believe that this additional year would result in a negative impact to issuers. More specifically, to qualify for the exemption an individual would have had to maintain such qualification for a period of at least three consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisor firms, ensuring a sound foundation of experience. While Rule G-3 currently does not require a minimum of experience to reassociate with a municipal advisor firm within two years, the MSRB believes that establishing criteria allowing individuals to reassociate after three years with three years of past experience promotes issuer protection by ensuring individuals have a foundation of professional knowledge.

B. Relevant baselines against which the likely economic impact of the draft changes can be considered

To evaluate the potential impact of the draft amendments, a baseline or baselines must be established as a point of reference to compare the expected state with current Rule G-3. The economic impact of the draft changes is generally viewed as the difference between the baseline state and the expected state. For the purposes of this request for comment, the baseline is the current Rule G-3 sections on professional qualification requirements for municipal advisor representatives and waiver of qualifications requirements. These sections currently provide that requalification after a lapse in qualification is achieved either by re-taking and passing the appropriate qualification exam or by obtaining a waiver from this requirement from the Board in extraordinary cases.

C. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB policy on economic analysis in rulemaking addresses the need to consider reasonable potential alternative regulatory approaches, when applicable. Under this policy, only reasonable regulatory alternatives should be considered and evaluated. One alternative the MSRB considered was to update the qualification requirements of Rule G-3 to change the timeframe for when an individual that has the municipal

advisor representative qualification can be away from the industry without having to requalify by examination from two years to five years. By changing the amount of time, individuals would be given greater flexibility when making decisions to step away from industry and can have certainty that they can return to the industry with only a limited compliance burden on individuals and municipal advisory firms. However, it is necessary to maintain uniform standards for all registered municipal advisors, and an individual who returns to the industry five years after leaving may not be aware of the latest regulatory and industry changes. The MSRB believes those individuals who are away for longer than three years will benefit from retaking the Series 50 examination, which is designed to help ensure that individuals are knowledgeable about the regulatory framework in which they operate, as well as to protect issuers who may rely on financial advice from a qualified municipal advisor. The MSRB therefore deemed this alternative inferior to the draft amendments.

D. Assessing the benefits and costs of the draft changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a draft rule change when the rule change proposal is fully implemented against the context of the economic baselines. The MSRB is currently unable to quantify the economic effects of the draft amendments in totality because not all the information necessary to provide a reasonable estimate is available. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with the draft amendments, the MSRB has considered these costs and benefits primarily in qualitative terms. The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the proposed amendments.

Benefits

Based on the MSRB's review, the draft amendments provide several benefits to individuals. First, by increasing the number of years after which an individual can requalify without re-examination, the draft amendments would provide flexibility for individuals with a minimum of three years of experience who need to address life events, such as child-caring and seeking higher education, and require absence from the municipal advisory

business.¹² Additionally, the draft amendments would reduce uncertainty by providing clarity on the specific criteria that would allow individuals to requalify without examination and more immediately begin to engage in municipal advisory activities on behalf of a firm with which the individual associates. Thus, municipal advisor firms would be better positioned to assess a potential hire's qualifications by evaluating the conditions specified in Rule G-3.

Finally, to date, the MSRB has only received and approved one waiver request from a previously qualified individual. The new explicit exemptions could potentially increase the number of individuals seeking to return to the industry without having to retake the municipal advisor representative qualification examination without impairing the protections afforded to the issuer and obligated person clients of municipal advisors.

Costs

The MSRB acknowledges the potential for one-time upfront costs for municipal advisor firms related to setting up and/or revising existing policies and procedures related to the draft amendments. However, the MSRB believes that these costs would be minor. In addition, under the criteria individuals and firms must meet under the draft amendments, there may be additional costs to municipal advisory firms associated with conducting due diligence and retraining the individuals. However, for municipal advisor firms who are not hiring an individual with a lapsed qualification, there would be no additional costs incurred.

For individuals who are away from the industry for more than three years, their only option would be to take and pass the Series 50 examination again under the draft amendments, as the waiver request option, available only in extraordinary circumstances, would no longer be available. However, given the limited use of the waiver process, the MSRB does not believe the elimination of this option would have a significant impact on individuals seeking to return to the industry.

In aggregate, the MSRB believes the draft amendments would provide more certainty and impose minimal additional time and costs on municipal advisory firms, likely about three hours in each incidence, especially

¹² Draft amendments may provide greater flexibility to individuals who may be absent from their career to be the primary caregiver for children or for aging family. See [The Female Face of Family Caregiving](#) (November 2018).

considering there are costs associated with training and performing due diligence currently in the baseline state as well.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes the draft amendments would neither impose a burden on competition nor hinder capital formation, as the draft amendments would make it easier for individuals to return to the industry. The MSRB believes that the draft amendments would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing municipal advisors with a clearer understanding of the exemption process for an individual to associate and begin engaging in municipal advisory activities on behalf of a municipal advisor firm. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for market participants would outweigh the minimal upfront costs of revising policies and procedures and the minor ongoing costs when a municipal advisory firm hires an individual exempted from having to retake and pass the Series 50 examination.

The MSRB does not expect that the draft amendments would add a burden on competition for the municipal advisory industry. Those firms that would utilize this process could have an upfront cost for revising policies and procedures for conducting the due diligence in the hiring process and the process of complying with the exemption. Such costs are expected to be minor for all municipal advisory firms and the ongoing costs for hiring an individual that was previously qualified would be proportional to the municipal advisory firm size, as larger-sized firms would presumably hire more individuals than smaller-sized firms. Finally, the reduced burden for requalification would be applicable to all individuals regardless of the size of a municipal advisory firm they are associated with upon re-association.

Request for Comment

The MSRB seeks comments in response to the following questions, as well as on any other topic relevant to the draft amendments. The MSRB particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or relate to the economic analysis, topics, statements or questions raised in this request for comment.

1. Should a one-time, criteria-based exemption from the requirement that an individual requalify as a municipal advisor representative after two years by retaking and passing the Series 50 exam be available to

individuals?

2. Are the criteria to exempt individuals from the requirement to requalify as a municipal advisor representative the appropriate criteria? If not, what other criteria should the MSRB consider?
3. Would the draft amendments, on balance, achieve the objectives of providing greater flexibility and certainty for firms with respect to the requalification process under Rule G-3? Would the draft amendments be beneficial to municipal advisors in assessing the hiring of personnel? If not, how might the MSRB better achieve these objectives while still ensuring that individuals seeking to engage in municipal advisory activities meet the prescribed standards of training, experience, and competence?
4. Is the three-year minimum qualification requirement to be eligible for the draft exemption reasonable? If not, what are more appropriate time frames and why?
5. Should the requisite continuing education training for an individual seeking to have an exemption be more prescriptive? If so, please provide suggestions.
6. Is the three-year period to allow an individual to be eligible for the draft exemption the appropriate amount of time to balance issuer protection with promoting greater flexibility in hiring practices? If not, how can issuer protections be enhanced?
7. Do the draft amendments concerning a municipal advisor's obligation to provide an Affirmation Notice to the MSRB that an individual associating with the firm meets the criteria for the draft exemption present any undue burdens or challenges?
8. How would the draft amendments benefit or burden market participants, particularly in terms of market competition, market efficiency, compliance burdens, or issuer protection?
9. Do the criteria for the draft exemption effectively balance affording greater flexibility to municipal advisors in their hiring process while balancing issuer protection?
10. Are there studies or data available to assist the MSRB in quantifying the benefits and burdens of the draft amendments? Are the burdens of the draft amendments appropriately outweighed by the benefits?

11. What are the likely direct and indirect costs associated with the draft amendments? Who might be affected by these costs and in what way? Is there data on these costs that the MSRB should consider?
12. Would the draft amendments reduce a burden on small municipal advisors or result in a disproportionate and/or undue burden for small municipal advisors? If so, do commenters have any suggestions to address these burdens while still promoting the objectives of the draft amendments?
13. Would the draft amendments reduce a burden on minority and women-owned business enterprise (MWBE), veteran-owned small business enterprise (VOSB) or other special designation municipal advisor firms or would the draft amendments result in a disproportionate and/or undue burden? If so, do commenters have any suggestions to address these burdens while still promoting the objectives of the draft amendments?
14. Would the draft amendments create any undue compliance burdens unique to minority and women-owned business enterprise (MWBE), veteran-owned business enterprise (VBE), or other special designation firms? If so, please provide suggestions on how to alleviate any undue burden or impact.
15. Are there any other potential considerations the MSRB should be aware of related to the draft amendments, or the exemption process outlined in Rule G-3? For example, should the MSRB consider a like exemption that would allow individuals seeking to act in the capacity of a municipal advisor principal the ability to reassociate with a municipal advisor firm without having to requalify by examination after a lapse of qualification? If so, what conditions should be imposed on someone wanting to avail themselves of an exemption and not have to requalify by taking and passing the Series 54 examination?

Questions

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

December 1, 2022

* * * * *

Text of [Proposed] Amendments*

Rule G-3: Professional Qualification Requirements

(a) - (c) No change.

(d) Municipal Advisor Representative

(i) No change.

(ii) Qualification Requirements.

(A) No change.

(B) Any person who ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph (d)(ii)(A) shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless ~~a waiver exempt is granted~~ pursuant to subparagraph (h)(ii) of this rule.

(e) - (g) No change.

(h) Waiver and Exemption from ~~of~~ Qualification Requirements.

(i) No change.

(ii) The requirements of subparagraph (d)(ii)(A) and (e)(ii)(A) shall not apply waived by the Board in extraordinary cases for a municipal advisor representative or municipal advisor principal subject to the following conditions:

(A) The individual was previously qualified as a municipal advisor representative by passing the Municipal Advisor Representative Qualification Examination.

(B) The individual maintained the municipal advisor representative qualification for a period of at least three-consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisors.

(C) Such qualification lapsed pursuant to subparagraphs (d)(ii)(B) of this rule and has not been lapsed for more than one year.

(D) The individual has not engaged in municipal advisory activities during the period the qualification has lapsed.

* Underlining indicates new language; strikethrough denotes deletions.

- (E) The individual does not have any pending civil judicial or adverse regulatory matters or terminations that would cause a disclosure report on the Securities and Exchange Commission's Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities.
- (F) Upon associating with a municipal advisor, the municipal advisor provided, and the individual completed, continuing education, consistent with the requirements of Rule G-3(i)(ii)(B), for the period of time since the individual was last associated with a municipal advisor.
- (G) Upon associating with a municipal advisor, the municipal advisor provided, and the individual reviewed the compliance policies and procedures of the municipal advisor.
- (H) Prior to the individual engaging in municipal advisory activities on behalf of the municipal advisor, the municipal advisor filed a completed Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities with the Securities and Exchange Commission on behalf of the individual, and provided notification electronically to the MSRB that the individual has met the criteria to be exempt from the requirements of subparagraph (d)(ii)(A). The notice required shall be on firm letterhead, signed by a municipal advisor principal of the firm and include the following information:
1. Firm's MSRB ID number;
 2. Individual's name;
 3. Individual's CRD number, if applicable;
 4. Start date of the individual's association with the municipal advisor;
 5. Affirmative statement that the firm has undertaken a diligent effort to have a reasonable belief that the individual has met the requirements of subparagraphs (h)(ii)(A) through (E) above, and the date the individual completed the continuing education training and a review of the municipal advisor's compliance policies and procedures as required under subparagraphs (h)(ii)(F) and (h)(ii)(G) above;
 6. The date the municipal advisor filed the Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities as required under subparagraph (h)(ii)(H).

Municipal advisors must provide the notice required under subparagraph (h)(ii)(H) above in accordance with Supplementary Material .02 of this rule.

Supplementary Material

.01 No change.

~~.02-Waivers.~~ Notification. The notice provided pursuant to subparagraph (h)(ii)(H) must be sent to Compliance@msrb.org or other address or mechanism specified by the Board in a notice made publicly available on the MSRB website. Municipal advisors must maintain a record of the notification sent to the MSRB. ~~The Board will consider waiving the requirement to become qualified as a municipal advisor representative or municipal advisor principal in extraordinary cases where: (1) the applicant participated in the development of the Municipal Advisor Representative Qualification Examination or the Municipal~~

~~Advisor Principal Qualification Examination, as applicable, as a member of the Board's Professional Qualifications Advisory Committee; or (2) the applicant was previously qualified as a municipal advisor representative by passing the Municipal Advisor Representative Qualification Examination and/or was previously qualified as a municipal advisor principal by passing the Municipal Advisor Representative Qualification Examination and the Municipal Advisor Principal Qualification Examination and such qualification lapsed pursuant to subparagraphs (d)(ii)(B) or (e)(ii)(B) of this rule.~~

.03 - .16 No change.

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2022-13 (DECEMBER 1, 2022)

1. National Association of Municipal Advisors: Letter from Susan Gaffney, Executive Director, dated January 30, 2023
2. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated January 30, 2023
3. Wulff, Hansen & Co.: Letter from Chris Charles, President, dated December 29, 2022



January 30, 2023

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1100
Washington, DC. 20005

RE: MSRB Notice 2022-13, Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on MSRB Notice 2022-13, **Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination**.

NAMA represents independent municipal advisory firms and individual municipal advisors (MAs) from across the country and is dedicated to educating and representing its members on regulatory, industry and market issues.

NAMA is supportive of the proposed amendments to Rule A-3 and believe they will achieve the MSRB's goals to allow professionals greater flexibility with their MA status and alleviate the MSRB of conducting the waiver process. Our comments below to the questions posed in the Notice reflect our support.

While NAMA supports the proposed amendments, we recommend that the MSRB develop, with industry input and comment, guidance that can further discuss the definitions and application of the proposed amendments. Such guidance would be very helpful and prevent MAs from having to undertake greater legal assistance to interpret the Rule. One area in particular that we highlight in our answers is how the amended Rule would apply to an individual MA who may establish their own firm or reestablish their former solo practitioner firm while utilizing the exemption. Guidance should also address the timing of how all of this would fall into place – completing applicable FINRA Forms (e.g., U-10), utilizing the Series 50 exemption, having to retake the Series 54 exam or using a Series 54 exemption (if developed), developing WSPs, submitting applicable MA and MA-I forms with the SEC, and other MSRB rules that have implications if the amendments are approved (e.g., Rule G-37).

Further, this Notice brings forward an opportunity to have the MSRB better explain and provide resources for how an MA not yet associated with a firm can first take the Series 50 exam, and per this Notice, reenter the MA profession all before formally joining an MA firm and completing the necessary forms for this process. Over the years, there has been back and forth on this issue and while addressed in #17 of the *FAQs on Municipal Advisor Professional Qualification and Examination Requirements*, it would be very helpful if the MSRB developed a one-page resource or guidance, to assist those who may be starting their MA career or reentering the profession.

1. Should a one-time, criteria based exemption from the requirement that an individual requalify as a municipal advisor representative after two years by retaking and passing the Series 50 exam be available to individuals?

Yes. NAMA supports allowing MAs to utilize a one-time exemption from requalifying if certain criteria are met (as described in the Notice).

2. Are the criteria to exempt to exempt individuals from the requirement to requalify as a MA representative appropriate criteria?

Yes. NAMA supports the criteria specified in the Notice. The MSRB, however should develop guidance on how the requirements can generally be met, and when an individual establishes/reestablishes their own firm and utilizes this exemption. Additionally, we suggest that the MSRB provide clarification to Section (h)(11)(F) of the amended Rule that the CE requirements to be completed must reflect the time away from the business and adhere to their new firm's CE requirements. An example, for example – *If the individual was away from the MA profession for 2 years and joined a firm with an annual 12CE requirement, the individual must acquire 24 CE.*

Further, we interpret this requirement as meaning that the individual would have to accommodate the CE hours/requirements missed, not the specific courses that the firm may have prescribed during the time. The Rule needs greater clarity to the CE requirements and should also address what is required to meet the annual G-42 training requirements under the current Rule and proposed requirements. For instance, how would a firm (including a solo practitioner firm) administer the G-42 annual training requirement when an individual is absent for many years – can it be a one-time refresher, or does the G-42 training need to reflect the numbers of years absent from the profession?

3. Would the draft amendments, on balance, achieve the objectives of providing greater flexibility and certainty for firms with respect to the requalification process under Rule G-3? Would the draft amendments be beneficial to municipal advisors in assessing the hiring of personnel? If not, how might the MSRB better achieve these objectives while still ensuring that individuals seeking to engage in municipal advisory activities meet the prescribed standards of training, experience, and competence?

The draft amendments display the criteria needed so that both the individual and firm would be aware of the requirements necessary to have the individual reengage in the profession. One area that needs clarification is under (h)(11)(F) noting how “upon associating with a municipal advisor” is defined. Additionally, the MSRB should develop applicable guidance as to how the amendments are applied when an individual establishes/reestablishes their own firm, including how the process would be documented and fulfilled.

4. Is the three-year minimum qualification requirement to be eligible for the draft exemption reasonable? If not, what are more appropriate time frames and why?

Placing the requirement in the Rule that an individual must have been a practicing MA for three consecutive years prior to their absence in order to be eligible for the draft exemption, is appropriate. The MSRB should develop guidance on how to comply with this requirement.

5. Should the requisite continuing education training for an individual seeking to have an exemption be more prescriptive? If so, please provide suggestions.

The premise for the proposed CE requirements is appropriate. However, as we comment above, guidance as to how the CE requirements would need to be met and examples to accompany the changes are needed to facilitate full understanding of the CE requirement. There should also be discussion on how an individual when establishing/reestablishing a firm and utilizing the exemption would meet CE requirements that have not existed and do not exist.

6. Is the three-year period to allow an individual to be eligible for the draft exemption the appropriate amount of time to balance issuer protection with promoting greater flexibility in hiring practices? If not, how can issuer protections be enhanced?

NAMA agrees with the proposed amendments that an individual may be away from the MA business for no longer than three years for the exemption to apply.

7. Do the draft amendments concerning a municipal advisor's obligation to provide an Affirmation Notice to the MSRB that an individual associating with the firm meets the criteria for the draft exemption present any undue burdens or challenges?

NAMA does not object to the Affirmation Notice requirement. However, the MSRB should be specific about how such Notice would be completed including by an individual who also self supervises.

8. How would the draft amendments benefit or burden market participants, particularly in terms of market competition, market efficiency, compliance burdens, or issuer protection?

NAMA does not think that there are burdens, but rather benefits for MAs with the proposed exemption. However, there could be burdens on MAs if the amendments and corresponding guidance are not clear. Guidance – that is discussed with marketplace participants and allows for public comment – is essential, especially to include how to comply when an individual establishes/reestablishes their own firm.

9. Do the criteria for the draft exemption effectively balance affording greater flexibility to municipal advisors in their hiring process while balancing issuer protection?

The exemption provides balance and flexibility to municipal advisors while maintaining integrity for issuer protections and MA hiring processes.

10. Are there studies or data available to assist the MSRB in quantifying the benefits and burdens of the draft amendments? Are the burdens of the draft amendments appropriately outweighed by the benefits?

The amendments provide benefits over burdens.

11. What are the likely direct and indirect costs associated with the draft amendments? Who might be affected by these costs and in what way? Is there data on these costs that the MSRB should consider?

Generally, NAMA cannot identify overall burdening costs associated with the amendments. However, there could be burdens if the amendments are not clear, and guidance is not developed to help MAs best understand and know how to comply with the Rule. This would be especially true for single practitioner firms.

12. Would the draft amendments reduce a burden on small municipal advisors or result in a disproportionate and/or undue burden for small municipal advisors? If so, do commenters have any suggestions to address these burdens while still promoting the objectives of the draft amendments?

We do call into question the burdens on small and single practitioner firms that could accompany the new amendments. Without greater clarification, there could be unnecessary burdens and costs associated with implementation and compliance with the Rule. This is especially true for those individuals who may want to establish their own firm while utilizing the exemption. We strongly request that the MSRB engage in discussing with market participants and developing guidance on the application of the amendments and include how they will apply especially when an individual establishes/reestablishes their own firm.

13. Would the draft amendments reduce a burden on minority and women- owned business enterprise (MWBE), veteran-owned small business enterprise (VOSB) or other special designation municipal advisor firms or would the draft amendments result in a disproportionate and/or undue burden? If so, do commenters have any suggestions to address these burdens while still promoting the objectives of the draft amendments?

We cannot identify any burdens that would specifically apply to MWBE, VOSB or other special designated firms.

14. Would the draft amendments create any undue compliance burdens unique to minority and women-owned business enterprise (MWBE), veteran-owned business enterprise (VBE), or other special designation firms? If so, please provide suggestions on how to alleviate any undue burden or impact.

We cannot identify any compliance burdens that would specifically apply to MWBE, VOSB or other special designated firms.

15. Are there any other potential considerations the MSRB should be aware of related to the draft amendments, or the exemption process outlined in Rule G-3? For example, should the MSRB consider a like exemption that would allow individuals seeking to act in the capacity of a municipal advisor principal the ability to reassociate with a municipal advisor firm without having to requalify by examination after a lapse of qualification? If so, what conditions should be imposed on someone wanting to avail themselves of an exemption and not have to requalify by taking and passing the Series 54 examination?

It is difficult to see how the exemption to the Series 50 requirements would work well without also allowing the Series 54 requirements to have a similar exemption. NAMA supports allowing an MA who

had previously held a principal status to be able to apply an exemption, with corresponding requirements, if they had been away from practicing and serving as a principal MA for up to three years. This would be especially helpful in the case of a solo practitioner who wishes to utilize the Series 50 exemption and be able to retain their principal status in order to begin their practice within the required time frame and meet other requirements. If the Series 54 receives an exemption or not, the MSRB should discuss with market participants and develop guidance on how the sequence of events would work to practically meet the Series 50 and Series 54 exemption requirements.

Additionally, we want to reiterate input you will receive from other organizations. For those municipal advisors who also serve in additional capacities where FINRA qualification rules apply, the MSRB should work to ensure that the changes to Rule G-3 sync well with the applicable FINRA rules.

We support the amendments and appreciate the opportunity to comment. However, we strongly suggest that the MSRB engage in further conversation and develop resources – with input from the community – about how the Amendments will work in practice especially for individuals wishing to establish/reestablish their own firm and utilize the exemption.

Sincerely,

A handwritten signature in cursive script that reads "Susan Gaffney".

Susan Gaffney
Executive Director



January 30, 2023

VIA ELECTRONIC SUBMISSION

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

Re: MSRB Notice 2022-13 – Request for Comment on Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to provide input on the Municipal Securities Rulemaking Board’s (“MSRB’s”) Request for Comment on Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination (the “Notice”).² Overall, SIFMA appreciates the MSRB’s goal to provide greater flexibility for individuals seeking to requalify after having stepped away from the municipal securities market and their role as a regulated municipal advisor for a period of time. SIFMA asks that the MSRB consider our comments below suggesting additional clarifications in furtherance of this goal.

I. Relief Should Be Harmonized with FINRA Rules

SIFMA members appreciate the goal of the proposed amendments to allow for registered professionals to be able to step away from the industry for a time and requalify without examination. This exemption is beneficial for firms to retain talent and beneficial for professionals who may want to spend a few years in an unregulated role or otherwise away from the industry. We agree that the flexibility these proposed changes provide supports diversity, equity and inclusion efforts in the municipal securities market by easing barriers to re-entry for

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

² MSRB Notice 2022-13 (December 1, 2022).

individuals who have stepped away from a regulated role for family needs, educational pursuits, or other employment.

SIFMA members, however, do believe strongly that these amendments should be harmonized with the recent changes to Rule G-3³ covering broker dealers. Further, SIFMA members feel that Rule G-3 should be harmonized in this area with FINRA Rules 1210 and 1240 and the FINRA Maintaining Qualifications Program. There are many individuals that hold multiple registrations who are qualified as a broker dealer and broker dealer principal as well as a municipal advisor and municipal advisor principal. We feel having two completely different sets of rules for municipal advisors and broker dealers, in this instance, is unduly complicated, expensive, and burdensome both for firms and individuals seeking to requalify. For these reasons, SIFMA members do not feel it is necessary to have a different requalification process for municipal advisors and broker dealers, but instead seek to have the process be uniform to reduce the regulatory burden and increase the likelihood of compliance.

Additionally, the differing continuing education requirements for municipal advisors and broker dealers seeking to requalify should be further reviewed, as merely completing the prior 3 years of a municipal advisor's new firm's continuing education upon return to the industry may in practice be repetitive or create confusion due to outdated information.

II. Relief Should be Extended to Municipal Advisor Principals

SIFMA believes that this relief for municipal advisors should be extended to municipal advisor principals, as the relief for registered broker dealers also covers broker dealer principals. Consistency across rule sets, whenever possible, aids in compliance as well as reduces costs and regulatory risks. We do not agree that a municipal advisor's role as a fiduciary should preclude similar treatment or require more limited relief. All regulated persons in municipal securities have specific roles, duties and obligations that must be known and fulfilled. Whether an individual is a fiduciary or not doesn't change the amount of required industry knowledge, but merely requires an acknowledgement and understanding of that role.

III. Compliance Resources on Professional Qualifications Would Be Helpful

SIFMA members feel that over time, the license requirements to become a regulated individual in the municipal securities industry have become increasingly complicated, as have the rules regarding continuing education and requalification, when applicable. We ask that the MSRB consider compliance resources in this area, to aid individuals and firms seeking to comply with the rules.

* * *

Thank you for considering SIFMA's comments. Overall, SIFMA appreciates the MSRB's goals of these proposed amendments to Rule G-3 to create greater flexibility for those who have stepped away from being a municipal advisor for a period of time and seek to requalify. SIFMA

³ 87 Fed. Reg. 56137 (Sept. 13, 2022).

asks that the MSRB consider our comments in furtherance of these goals. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood
Managing Director
and Associate General Counsel

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

Bri Joiner, Director, Regulatory Compliance

Billy Otto, Assistant Director, Market Regulation

Saliha Olgun, Interim Chief Regulatory Officer

Gail Marshall, Senior Advisor to Chief Executive Officer

WULFF, HANSEN & CO.
ESTABLISHED 1931
INVESTMENT BANKERS
100 SMITH RANCH ROAD, SUITE 330
SAN RAFAEL, CALIFORNIA 94903
(415) 421-8900

December 29, 2022

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

Dear Mr. Smith:

We are writing in response to the MSRB's Request for Comment described in Notice 2022-13 regarding an exemption for Municipal Advisor Representatives from requalification by examination. Wulff, Hansen & Co. is a registered municipal advisor, broker/dealer, and investment advisor.

The MSRB asks a number of questions in the Notice, some of which are addressed below:

1. Should a one-time, criteria-based exemption from the requirement that an individual requalify as a municipal advisor representative after two years by retaking and passing the Series 50 exam be available to individuals?

Yes; this is appropriate and does not put issuers at risk.

2. Are the criteria to exempt individuals from the requirement to requalify as a municipal advisor representative the appropriate criteria? If not, what other criteria should the MSRB consider?

We believe that most of the criteria are appropriate and reasonable, except the one requiring the individual to have refrained from providing municipal advice during the period. This would unfairly penalize persons whose occupation during the period allowed them to provide such advice using one of the available exemptions from the registration requirements. For example, we fail to see why a person whose career led her to join an underwriting firm, where her work had allowed her to provide advice using the underwriter exemption, should not be eligible for the exemption. Another person, who left a municipal advisory firm to accept a position with a government where he provided advice using the municipal entity exemption, would also be illogically denied use of the exemption. The same would apply to an attorney who did bond counsel work after leaving an advisory firm and then wished to return.

3. Would the draft amendments, on balance, achieve the objectives of providing greater flexibility and certainty for firms with respect to the requalification process under Rule G-3? Would the draft amendments be beneficial to municipal advisors in assessing the hiring of personnel? If not, how might the MSRB better achieve these objectives while still ensuring that individuals seeking to engage in municipal advisory activities meet the prescribed standards of training, experience, and competence?

The amendments would provide greater flexibility and certainty, but we would suggest retaining the ability for MSRB to grant a waiver for persons in highly exceptional circumstances who did not qualify for the exemption. Such waivers would presumably be very rare, but retaining the ability to grant one would be useful. An example of appropriate circumstances for a waiver might be a person who left a municipal advisor for four years to work for a regulator of municipal advisors and then wished to return to the industry.

4. Is the three-year minimum qualification requirement to be eligible for the draft exemption reasonable? If not, what are more appropriate time frames and why?

Yes, three years seems appropriate.

5. Should the requisite continuing education training for an individual seeking to have an exemption be more prescriptive? If so, please provide suggestions.

Given that each firm's CE is tailored to its particular business, the requirement should definitely not be more prescriptive.

6. Is the three-year period to allow an individual to be eligible for the draft exemption the appropriate amount of time to balance issuer protection with promoting greater flexibility in hiring practices? If not, how can issuer protections be enhanced?

Three years seems a reasonable and appropriate period of time.

7. Do the draft amendments concerning a municipal advisor's obligation to provide an Affirmation Notice to the MSRB that an individual associating with the firm meets the criteria for the draft exemption present any undue burdens or challenges?

Assuming that MSRB provides firms with guidance as to reasonable expectations for how firms should document the facts underlying the Affirmation, it should not be unduly burdensome.

8. How would the draft amendments benefit or burden market participants, particularly in terms of market competition, market efficiency, compliance burdens, or issuer protection?

They would simplify the ability of persons to move in and out of the municipal advisory business, thus increasing the supply of potential advisor representatives, which in turn should benefit both the industry and its issuer customers.

9. Do the criteria for the draft exemption effectively balance affording greater flexibility to municipal advisors in their hiring process while balancing issuer protection?

Yes.

10. Are there studies or data available to assist the MSRB in quantifying the benefits and burdens of the draft amendments? Are the burdens of the draft amendments appropriately outweighed by the benefits?

We are not aware of such studies or data.

11. What are the likely direct and indirect costs associated with the draft amendments? Who might be affected by these costs and in what way? Is there data on these costs that the MSRB should consider?

We do not believe the amendments would increase anyone's costs in material way compared with the current regime.

12. Would the draft amendments reduce a burden on small municipal advisors or result in a disproportionate and/or undue burden for small municipal advisors? If so, do commenters have any suggestions to address these burdens while still promoting the objectives of the draft amendments?

As a small municipal advisor, we do not believe that the proposal would increase our costs.

13. Would the draft amendments reduce a burden on minority and women-owned business enterprise (MWBE), veteran-owned small business enterprise (VOSB) or other special designation municipal advisor firms or would the draft amendments result in a disproportionate and/or undue burden? If so, do commenters have any suggestions to address these burdens while still promoting the objectives of the draft amendments?

We cannot see why the amendments would reduce burdens or increase costs for such firms.

14. Would the draft amendments create any undue compliance burdens unique to minority and women-owned business enterprise (MWBE), veteran-owned business enterprise (VBE), or other special designation firms? If so, please provide suggestions on how to alleviate any undue burden or impact.

We cannot see why the amendments would create or reduce burdens or increase costs for such firms.

15. Are there any other potential considerations the MSRB should be aware of related to the draft amendments, or the exemption process outlined in Rule G-3? For example, should the MSRB consider a like exemption that would allow individuals seeking to act in the capacity of a municipal advisor principal the ability to reassociate with a municipal advisor firm without having to requalify by examination after a lapse of qualification? If so, what conditions should be imposed on someone wanting to avail themselves of an exemption and not have to requalify by taking and passing the Series 54 examination?

We would strongly support a similar exemption applying to municipal advisor principals.

Thank you for the opportunity to comment on this proposal.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Chris Charles".

Chris Charles
President

Text of Proposed Amendments**Rule G-3: Professional Qualification Requirements**

No broker, dealer, municipal securities dealer, municipal advisor or person who is a municipal securities representative, municipal securities sales limited representative, limited representative - investment company and variable contracts products, municipal securities principal, municipal fund securities limited principal, municipal securities sales principal, municipal advisor representative or municipal advisor principal (as hereafter defined) shall be qualified for purposes of Rule G-2 unless such broker, dealer, municipal securities dealer, municipal advisor or person meets the requirements of this rule.

(a) - (c) No change.

(d) Municipal Advisor Representative

(i) No change.

(ii) Qualification Requirements.

(A) No change.

(B) Any person who ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph (d)(ii)(A) (a “lapse in qualification”) [shall] must take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless [a waiver is granted] exempt pursuant to [sub]paragraph (h)(ii) of this rule.

(e) Municipal Advisor Principal

(i) No change.

(ii) Qualification Requirements.

(A) To become qualified as a municipal advisor principal a person must:

(1) As a pre-requisite take and pass the Municipal Advisor Representative Qualification Examination, unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule; and

(2) No change.

(B) Any person qualified as a municipal advisor principal who ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor for two or more years at any time after having qualified as a municipal advisor principal in accordance with subparagraph (e)(ii)(A) [shall] must take and pass the Municipal Advisor Representative Qualification Examination [and the Municipal Advisor Principal Qualification Examination prior to being qualified as a municipal advisor principal], unless [a waiver is granted] exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to [sub]paragraph (h)(ii) of this rule, and must take and pass the Municipal Advisor Principal Qualification Examination prior to being qualified as a municipal advisor principal.

(C) No change.

(iii) No change.

(f) - (g) No change.

(h) *Waiver of and Exemption from Qualification Requirements.*

(i) No change.

(ii) [The requirements of paragraph (d)(ii)(A) and (e)(ii)(A) may be waived by the Board in extraordinary cases for a municipal advisor representative or municipal advisor principal.] An individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if all of the following conditions are met:

(A) The individual was previously qualified as a municipal advisor representative by taking and passing the Municipal Advisor Representative Qualification Examination.

(B) The individual maintained the municipal advisor representative qualification for a period of at least three consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisors.

(C) Such qualification lapsed pursuant to subparagraph (d)(ii)(B) of this rule and no more than one year has passed since such lapse in qualification.

(D) The individual has not engaged in activities requiring qualification as a municipal advisor representative, as prescribed under subparagraph (d)(i)(A) of this rule, during the individual's lapse in qualification.

(E) The individual is not subject to any events or proceedings that resulted in a regulatory action disclosure report, civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report, or termination disclosure report on the Commission's Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities ("Commission Form MA-I").

(F) The individual has not previously obtained the exemption described in paragraph (h)(ii) of this rule.

(G) Prior to engaging in municipal advisory activities on behalf of the municipal advisor with which the individual is to associate (or reassociate), as evidenced by the filing of Commission Form MA-I, the municipal advisor provided, and the individual completed, continuing education covering, at minimum, the subject areas of:

(1) principles of fair dealing;

(2) the applicable regulatory obligations under Rules G-20, on gifts and gratuities; G-37, on political contributions and prohibitions on municipal securities business and municipal advisory business, G-40, on advertising by municipal advisors, and G-8, on books and records to be made and maintained;

(3) for non-solicitor municipal advisors, the core conduct standards under Rule G-42, including the fiduciary duty obligations owed to municipal entity clients, or for solicitor municipal advisors, the core obligations of Rule G-46; and

(4) any changes to applicable securities laws and regulations, including applicable MSRB rules that were adopted since the individual was last associated with a municipal advisor.

(H) Prior to engaging in municipal advisory activities on behalf of the municipal advisor with which the individual is to associate (or reassociate), as evidenced by the filing of Commission Form MA-I, the municipal advisor provided, and the individual reviewed, the compliance policies and procedures of the municipal advisor.

(I) Upon meeting all of the conditions of subparagraphs (h)(ii)(A)-(H) above, the municipal advisor filed a completed Commission Form MA-I. Within 30 days of acceptance, by the Commission, of a completed Commission Form MA-I identifying such individual as engaging in municipal advisory activities on behalf of the municipal advisor, the municipal advisor provided notification electronically to the MSRB (the "affirmation notification") that the individual met the criteria to be exempt from the requirements of subparagraph (d)(ii)(B). The affirmation notification required must be on firm letterhead and include the following information:

(1) Municipal Advisor's MSRB ID number;

(2) Individual's First and Last name;

(3) Individual's FINRA Central Registration Depository (CRD) number, if applicable;

(4) Start date of the individual's association (or reassociation) with the municipal advisor;

(5) Affirmative statement that the municipal advisor has undertaken a diligent effort to reasonably conclude that the individual met the applicable requirements of this paragraph (h)(ii);

(6) Affirmative statement attesting that the municipal advisor provided both the requisite continuing education and the municipal advisor's compliance policies and procedures to the individual for review along with the date the individual completed the continuing education and review of the municipal advisor's compliance policies and procedures provided by the municipal advisor;

(7) Date the municipal advisor filed Commission Form MA-I (and the date of acceptance) with respect to the individual as required under subparagraph (h)(ii)(I) and;

(8) Signature by the individual seeking to obtain the criteria-based exemption attesting that the conditions of subparagraphs (h)(ii)(A) through (h)(ii)(H) have been met and a signature by a municipal advisor principal, on behalf of the municipal advisor, attesting that, based on the exercise of reasonable diligence, the conditions of subparagraphs (h)(ii)(A) through (h)(ii)(I) have been met.

The municipal advisor must provide the affirmation notification required under this paragraph in accordance with Supplementary Material .02 of this rule.

(i) No change.

Supplementary Material

.01 No change.

.02 [Waivers.] Affirmation Notification. The affirmation notification required to be provided to the MSRB pursuant to subparagraph (h)(ii)(I) of this rule must be sent to Compliance@msrb.org. [The Board will consider waiving the requirement to become qualified as a municipal advisor representative or municipal advisor principal in extraordinary cases where: (1) the applicant participated in the development of the Municipal Advisor Representative Qualification Examination or the Municipal Advisor Principal Qualification Examination, as applicable, as a member of the Board's Professional Qualifications Advisory Committee; or (2) the applicant was previously qualified as a municipal advisor representative by passing the Municipal Advisor Representative Qualification Examination and/or was previously qualified as a municipal advisor principal by passing the Municipal Advisor Representative Qualification Examination and the Municipal Advisor Principal Qualification Examination and such qualification lapsed pursuant to subparagraphs (d)(ii)(B) or (e)(ii)(B) of this rule.]

.03 - .09 No change.

Rule G-8 Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

(a) – (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) - (vi) No change.

(vii) *Records Concerning Compliance with Professional Qualification Requirements of [Continuing Education Requirements] Rule G-3*

(A) Copies of the municipal advisor's needs analysis and written training plan as required by subparagraphs (i)(ii)(B)(1) and (i)(ii)(E)(1) of Rule G-3; [and]

(B) Records documenting the content of the training programs and completion of the programs by each covered person as required by Rule G-3(i)(ii)(B)(3)[.]; and

(C) The following records to evidence compliance with the requirements of Rule G-3(h)(ii)(A)-(I):

(1) A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., copy of the print-out of the individual exam results or exam result certification letter provided by the MSRB);

(2) Documentation supporting the municipal advisor firm's exercise of reasonable diligence in determining that the conditions outlined in Rule G-3(h)(ii)(A) through (I) were met in making the required affirmation notification in accordance with Rule G-3(h)(ii)(I)(8) (e.g., copies of relevant Commission form filings reviewed; records related to continuing education provided and completed; compliance policies and procedures provided and reviewed; and attestations or other documentation to support such a determination);

(3) A copy of the affirmation notification sent to the MSRB required by Rule G-3(h)(ii)(I); and

(4) A record evidencing that the affirmation notification was made in the prescribed manner and within the required period of time as described in Rule G-3(h)(ii)(I) (e.g., automatic email delivery receipt).

(viii) No change.

Supplementary Material

.01 - .02 No change.