

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98353; File No. SR-MSRB-2023-05)

September 12, 2023

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval 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

I. Introduction

On July 21, 2023, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) amend MSRB Rule G-3 (“Rule G-3”), on professional qualification requirements, to (i) remove the waiver provisions with respect to municipal advisor representative and municipal advisor principal qualification requirements; (ii) establish a new, criteria-based exemption to permit certain individuals to requalify as a municipal advisor representative 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; and (2) amend MSRB Rule G-8 (“Rule G-8”), on books and records, to establish accompanying recordkeeping requirements (collectively, the “proposed rule change”).

The MSRB requested that the proposed rule change be approved with a compliance date

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of no more than 30 days following the Commission approval date.³

The proposed rule change was published for comment in the Federal Register on July 31, 2023.⁴ The Commission received one comment letter on the proposed rule change.⁵ On August 31, 2023, the MSRB responded to the comment letter.⁶ As further described below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The MSRB explained that it is charged with setting professional qualification standards for brokers, dealers, and municipal securities dealers (collectively, “dealers,” and each individually, a “dealer”), as well as municipal advisors.⁷ Specifically, the MSRB stated that Section 15B(b)(2)(A) of the Act⁸ authorizes the Board to prescribe standards of training, experience, competence, and such other qualifications as it finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.⁹

³ See Exchange Act Release No. 97984 (July 25, 2023), 88 FR 49528, 49529 (July 31, 2023) (File No. SR-MSRB-2023-05) (“Notice”).

⁴ See id. at 49528.

⁵ See Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated August 21, 2023 (“NAMA Letter”).

⁶ See Letter to Secretary, Commission, from Ernesto A. Lanza, Chief Regulatory and Policy Officer, MSRB, dated August 31, 2023 (“MSRB Letter”).

⁷ Notice, 88 FR at 49529.

⁸ 15 U.S.C. 78o-4(b)(2)(A).

⁹ Notice, 88 FR at 49529.

The MSRB also stated that Sections 15B(b)(2)(A)(i)¹⁰ and 15B(b)(2)(A)(iii)¹¹ of the Act 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.¹² The MSRB explained that, accordingly, it 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.¹³

With respect to associated persons of municipal advisors, the MSRB noted that 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.¹⁴ The MSRB explained that 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

¹⁰ 15 U.S.C. 78o-4(b)(2)(A)(i).

¹¹ 15 U.S.C. 78o-4(b)(2)(A)(iii).

¹² Notice, 88 FR at 49529.

¹³ Id.

¹⁴ Id. at 49529 n.3. The MSRB further stated that, pursuant to Section 15B(e)(4)(A)(i) and (ii) of the Exchange Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and MSRB 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. Id. at 49530 n.9.

examination”) prior to being qualified as a municipal advisor representative.¹⁵ The MSRB further explained that, 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 retake 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).¹⁶

In contrast, as MSRB guidance affirms, 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; Rule G-3(e)(ii) requires all persons meeting the definition of municipal advisor principal to be qualified in that position by, among other things, taking and passing both the Series 50 examination and the Municipal Advisor Principal Qualification Examination (“Series 54 examination”); and Rule G-3(e)(iii) requires every municipal advisor firm to have at least one municipal advisor principal.¹⁷ In the Notice, the MSRB stated that, under current 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 retake and pass both the Series 50 examination and Series 54 examination prior to being qualified as a municipal advisor principal, unless a waiver is granted

¹⁵ Id. at 49529 n.3.

¹⁶ Id.

¹⁷ See MSRB, “FAQs on Municipal Advisor Professional Qualification and Examination Requirements,” at Questions 3 & 19 (Dec. 2021), available at <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf> (“MSRB Series 50 Examination FAQs”).

from the Board in “extraordinary cases” pursuant to current Rule G-3(h)(ii).¹⁸ The MSRB also stated that Rule G-3(e)(ii)(C) affords temporary relief to an individual 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.¹⁹

The MSRB indicated that, as part of its rule book modernization initiative and in light of an industry-wide continuing education (“CE”) transformation initiative for broker-dealers,²⁰ it 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.²¹ The MSRB indicated that it filed the proposed rule change to that end.²²

B. Summary of the Proposed Rule Change

The MSRB explained that the proposed rule change would: (1) create a one-time, criteria-based exemption, under Rule G-3, for former municipal advisor representatives to, without

¹⁸ Notice, 88 FR at 49530.

¹⁹ Id. at 49537.

²⁰ The MSRB indicated that, 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”). Id. at 49529 n.7 (citing, as an example, Exchange Act Release No. 95684 (Sept. 7, 2022), 87 FR 56137 (Sept. 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)).

²¹ Id. at 49529.

²² Id.

reexamination, requalify in that capacity no later than one year after their two-year lapse in qualification; (2) remove language from Rule G-3 that currently permits the Board, in extraordinary cases, to waive the reexamination requirements for municipal advisor representatives and municipal advisor principals; (3) 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; (4) 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; (5) 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; and (6) 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).²³

The MSRB explained that the proposed rule change is 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.²⁴

The MSRB further explained that 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 dealers, or associated

²³ Id.

²⁴ Id. at 49535.

persons thereof.²⁵

A more detailed description of the proposed rule change follows.

i. Proposed Amendments to Rule G-3(d)(ii)(B)

The MSRB noted that 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 advisor²⁶ 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.²⁷ The MSRB stated that its 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.²⁸

The proposed amendments to Rule G-3(d)(ii)(B) would add the new language “or engaged in municipal advisory activities on behalf of,” which the MSRB stated is intended to provide clarity on the requirement for an individual associated with a firm that is dually

²⁵ Id. at 49529.

²⁶ For purposes of this Order, when the term “municipal advisor” is used it refers only to the firm and not associated persons of the firm. See also id. at 49529 n.8 (same, for purposes of the Notice and Exhibit 5 thereto).

²⁷ Id. at 49529.

²⁸ Id. at 49529-30.

registered as a dealer and municipal advisor.²⁹ The MSRB explained that if an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor representative 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 the fact that such person remains associated with a firm that is also a registered municipal advisor.³⁰ The MSRB noted that the proposed amendments to Rule G-3(d)(ii)(B) also would delete the mention of a waiver (i.e., the clause "a waiver is granted") because, subsequent to the proposed rule change, such persons would need to qualify by examination as municipal advisor representatives, unless obtaining the one-time criteria-based exemption.³¹

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

The MSRB noted that currently, pursuant to Rule G-3(e)(ii)(A), as a pre-requisite to becoming qualified as a municipal advisor principal a person must take and pass the Series 50 examination.³² The MSRB stated that its proposed amendments to this provision would provide that taking and passing the Series 50 examination is the pre-requisite to becoming qualified as a

²⁹ Id. at 49530.

³⁰ Id. The MSRB stated that, under Exchange Act Rule 15Ba1-2 (17 CFR 240.15Ba1-2), SEC Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities ("SEC Form MA-I" or "Form MA-I") is filed with the Commission to indicate natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf. Id. at 49530 n.10. The MSRB further stated that firms are required to promptly amend SEC 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. Id.

³¹ Id. at 49530.

³² Id.

municipal advisor principal “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule,”³³ which the MSRB stated 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 explicitly provide for its application to such individuals.³⁴ The MSRB explained that, 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 Series 54 examination.³⁵

In addition, the MSRB noted that 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.³⁶ The MSRB stated that its 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.³⁷

33 Id.

34 Id.

35 Id.

36 Id.

37 Id.

The proposed amendments to Rule G-3(e)(ii)(B) would add the new language “or engaged in municipal advisory activities on behalf of,” which the MSRB stated 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.³⁸ For example, the MSRB explained that 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.³⁹ The proposed amendments to Rule G-3(e)(ii)(B) would also delete the mention of a waiver (i.e., the clause “a waiver is granted”), which the MSRB stated is intended to specify that such persons would need to qualify by examination as municipal advisor principals.⁴⁰

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

The MSRB stated that its 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.⁴¹ The MSRB indicated it believes that this standard set forth within the four corners of the rule would provide

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id. at 49531.

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.⁴² The MSRB also indicated it believes, at this time, 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).⁴³ Additionally, the MSRB stated that 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, that 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.⁴⁴

⁴² Id.

⁴³ Id.

⁴⁴ Id. The MSRB indicated it 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. Id. at 49531 n.11 (citing Exchange Act Release No. 84341 (Oct. 2, 2018), 83 FR 50708, 50710 (Oct. 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 indicated it has previously stated that the Series 50 examination ensures a minimum level of knowledge of the job responsibilities and regulatory requirements by passing the general qualification examination. Id. (citing Exchange Act Release No. 73708 (Dec. 1, 2014), 79 FR 72225, 72227 (Dec. 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)).

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

The MSRB stated that 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.⁴⁵ Specifically, the MSRB stated that the proposed amendments to adopt Rule G-3(h)(ii)(A)-(I) would establish nine specified criteria-based conditions that must be met in order for an individual (and the municipal advisor firm with which such individual is associated⁴⁶ or seeks to be associated) to take advantage of the exemption.⁴⁷

The MSRB described the criteria-based conditions that would be required to be met in order to qualify for the exemption as follows:⁴⁸

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

⁴⁵ Id. at 49531.

⁴⁶ The MSRB noted that an individual who has associated with a municipal advisor firm would be prohibited from engaging 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 proposed rule change. Id. at 49531 n.12.

⁴⁷ Id. at 49531.

⁴⁸ Id. at 49531-32.

(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 representative⁴⁹ 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, 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.⁵⁰

(6) The individual has not previously obtained the exemption from requalification by examination described in the proposed amended Rule G-3(h)(ii).⁵¹

(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

⁴⁹ See id. at 49531 n.13 (citing Rule G-3(d)(i)(A)).

⁵⁰ The MSRB explained that it included these types of disclosures in the proposed 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. Id. at 49531 n.14.

⁵¹ The MSRB noted that, should an individual's municipal advisor representative qualification lapse again after such person obtains the criteria-based exemption under the proposed rule change, that individual would be required to requalify by taking and passing the Series 50 examination. Id. at 49531 n.15.

obligations under MSRB 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 MSRB Rule G-42, including the fiduciary duty obligations owed to municipal entity clients, or for solicitor municipal advisors, the core obligations of MSRB 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 Commission with respect to such individual. Within 30 days of the acceptance⁵² 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.

⁵² The MSRB noted that the Commission currently 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. *Id.* at 49532 n.16.

The MSRB stated that the affirmation notification would be required to be on firm letterhead and include the following information:⁵³

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 Financial Industry Regulatory Authority ("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 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 proposed amended Rule G-3(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

⁵³ Id. at 49532.

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.⁵⁴

According to the MSRB, the proposed conditions were designed to ensure that individuals seeking to obtain the exemption (i.e., requalification without reexamination) have obtained and maintained the baseline level of knowledge and experience, and have exhibited conduct aligned with being a fiduciary, which the MSRB indicated is in furtherance of municipal entity and obligated person protection.⁵⁵ The MSRB indicated it 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.⁵⁶ For example, the MSRB explained that the requirement that individuals be duly qualified as a municipal advisor representative for at least three consecutive years prior to, for example, seeking other career opportunities in related capacities (e.g., 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.⁵⁷ In contrast, the MSRB noted that this period is not so

⁵⁴ The MSRB noted 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. Id. at 49532 n.17.

⁵⁵ Id. at 49532.

⁵⁶ Id.

⁵⁷ Id.

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 from their position due to family obligations.⁵⁸

According to the MSRB, these conditions were also 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 not be so unduly burdensome as to hinder reassociation.⁵⁹ The MSRB explained that the proposed 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.⁶⁰ The MSRB indicated that it 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 its website.⁶¹ Additionally, the MSRB stated that the conditions pertaining to requisite filings with the SEC would also provide an audit trail and permit the entities charged with examination and enforcement authority to confirm compliance with relevant obligations.⁶²

v. Proposed Amendments to Supplementary Material .02, on Waivers, under Rule G-3

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ The MSRB noted that it currently publishes a list of registered municipal advisors and qualified municipal advisor professionals at <https://www.msrb.org/Municipal-Advisors>. Id. at 49532 n.18.

⁶² Id. at 49532.

Relatedly, the MSRB stated that the proposed rule change would amend Supplementary Material .02, on waivers, under Rule G-3 to retitle the paragraph header from “Waivers” to “Affirmation Notification.”⁶³ The MSRB stated that the proposed rule change would also delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and replace it with text that specifies how the firm would be required to submit to the MSRB the affirmation notification asserting that the criteria-based exemption has been met.⁶⁴ Specifically, the MSRB stated that the affirmation notification would be required to be sent to Compliance@msrb.org.⁶⁵

vi. Proposed Amendments to Rule G-8, on Books and Records to Be Made and Maintained

The MSRB stated that its proposed amendments to Rule G-8, on books and records, would add recordkeeping obligations designed to help facilitate and document compliance with its proposed amendments to Rule G-3.⁶⁶ Specifically, the MSRB stated that 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 certain records to evidence compliance with the requirements of Rule G-3(h)(ii)(A)-(I).⁶⁷ The MSRB described these records as follows:⁶⁸

⁶³ Id. at 49531, 49532.

⁶⁴ Id. at 49531, 49532.

⁶⁵ Id. at 49532.

⁶⁶ Id. at 49533.

⁶⁷ Id.

⁶⁸ Id.

- A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., a copy of the print-out of the individual examination results⁶⁹ or examination 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 proposed amended Rule G-3(h)(ii)(A) through (I) were met in making the required affirmation notification in accordance with proposed amended Rule G-3(h)(ii)(I)(8) (e.g., copies of relevant SEC form filings reviewed; records related to CE 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 proposed amended 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 proposed amended Rule G-3(h)(ii)(I) (e.g., automatic email delivery receipt).

The MSRB noted that 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.⁷⁰

vii. Proposed Technical Amendments to Rule G-3 and Rule G-8

⁶⁹ The MSRB stated that Question 11 of the MSRB Series 50 Examination FAQs reminds individuals that the test center will provide a print-out of their examination results. Id. at 49533 n.23.

⁷⁰ Id. at 49533.

Finally, the MSRB stated that the proposed rule change would make the following technical amendments to Rule G-3 and Rule G-8 (the “technical amendments”):

- With respect to Rule G-3(d)(ii)(B), the MSRB stated that the proposed rule change would: (i) add 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; (ii) 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; (iii) change the word “shall” to “must,” which is intended to add clarity without changing the meaning of the term; and (iv) replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3;⁷¹
- With respect to Rules G-3(e)(ii)(A)(1) and G-3(e)(ii)(B), the MSRB stated that the proposed rule change would: (i) to clarify the qualification requirements specific to municipal advisor principals, as prescribed under Rule G-3(e)(ii)(A)(1), 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; (ii) 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; (iii) replace

⁷¹ Id. at 49530.

the word “shall” with “must” to promote clarity; and (iv) replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3;⁷²

- With respect to Rule G-3(h), the MSRB stated that the proposed rule change would retitle the header from “Waiver of Qualification Requirements” to “Waiver of and Exemption from Qualification Requirements” to promote clarity;⁷³
- With respect to Rule G-3(h)(ii), the MSRB stated that the proposed rule change would 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;⁷⁴ and
- With respect to Rule G-8(h)(vii), the MSRB stated that the proposed rule change would:
 - (i) 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); and
 - (ii) reposition the word

⁷² Id. at 49530-31.

⁷³ Id. at 49532.

⁷⁴ Id.

“and” and make other minor grammatical changes to the items in the series to aid readability.⁷⁵

III. Summary of Comments Received to the Proposed Rule Change

The Commission received one comment letter⁷⁶ on the proposed rule change, as well as a response⁷⁷ from the MSRB to the comment letter. The commenter expressed support for the proposed rule change.⁷⁸ Among other things, the commenter stated that “the requirements specified in the amendments are reasonable and helpful for MAs to navigate and implement.”⁷⁹

In addition to expressing support for the proposed rule change, the commenter addressed certain content that it believes should be included in a compliance resource that the MSRB represented it anticipates publishing in close proximity to the compliance date of the rule which would highlight the regulatory obligations for municipal advisors (and dealers) with respect to professional qualification standards, CE requirements, and related registration matters.⁸⁰ The commenter stated that this MSRB compliance resource should, among other things: (i) address remaining questions about “the sequence of events that need to occur for an MA to take advantage of the amendments” in the proposed rule change; (ii) address longstanding questions on “how a MA new to the profession and yet to be associated with a firm can take the Series 50

⁷⁵ Id. at 49533.

⁷⁶ See NAMA Letter.

⁷⁷ See MSRB Letter.

⁷⁸ NAMA Letter at 1.

⁷⁹ Id. For purposes of the comment letter, the commenter defined the term “MA” to include “municipal advisory firms and individual municipal advisors.” Id.

⁸⁰ Id. See Notice, 88 FR at 49538.

exam[ination];” and (iii) because the MSRB’s proposed exemption for the Series 50 examination does not also apply to the Series 54 examination as the commenter desired, “clearly explain how a MA will be able to utilize and MA firms comply with the Series 50 exemption and meet the Series 54 requirements to engage in MA activity.”⁸¹

The MSRB responded that it had outlined, within the Notice itself, the sequence of events and timing for satisfying the criteria-based exemption, including as applied to solo-practitioners.⁸² With respect to the compliance resource that the MSRB anticipates publishing in close proximity to the rule’s compliance date, the MSRB stated that the resource will: (i) restate the sequence of events that must be undertaken to satisfy the criteria-based exemption; (ii) include additional materials related to Rule G-3(e)(ii)(C), which the MSRB stated permits an individual who is duly qualified as a municipal advisor representative and has been designated by the municipal advisor firm as a municipal advisor principal a period of 120 days, after being designated, to take and pass the Series 54 examination, thereby allowing individuals qualified as municipal advisor representatives, including those seeking to be solo-practitioners, to function in the principal-level capacity for a limited time before taking and passing the Series 54 examination; and (iii) address additional questions outside the scope of the present proposal

⁸¹ NAMA Letter at 1.

⁸² MSRB Letter at 2. The MSRB also restated that sequence of events in its response. See id. at 2-3. With respect to solo-practitioners, the MSRB stated in part that such individuals “should,” “in the following order,” complete and file SEC Form MA-I and then complete and file SEC Form MA: Application for Municipal Advisor Registration (“SEC Form MA” or “Form MA”). Notice, 88 FR at 49533; MSRB Letter at 2. Pursuant to Exchange Act Rule 15Ba1-2(c) (17 CFR 250.15Ba1-2(c)), Form MA shall be considered filed with the Commission upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA-I. However, Exchange Act Rule 15Ba1-2(c) does not specify an order in which Forms MA and MA-I must be submitted.

related to professional qualification and CE standards, and registration requirements for municipal advisors and dealers.⁸³ Finally, with respect to the commenter's desire to extend the MSRB's proposed exemption for the Series 50 examination to the Series 54 examination, the MSRB reiterated its belief that extending the proposed rule change to municipal advisor principals is not warranted because, as set forth in the Notice: (i) such an extension would be inappropriate due to the heightened supervisory, oversight, and management responsibilities of municipal advisor principals; and (ii) even if such relief were appropriate, additional, more stringent requirements would be necessary in consideration of these broader obligations, resulting in two different standards and additional regulatory complexity.⁸⁴

IV. Discussion and Commission's Findings

The Commission has carefully considered the proposed rule change, the comment letter received, and the MSRB's response thereto. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission has reviewed Section 15B(b)(2)(A) of the Act, which provides, in part, that: (1) the MSRB's rules shall provide that a municipal advisor's ability to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities is conditioned on meeting such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons; and (2) in connection with the definition and application of such

⁸³ MSRB Letter at 3.

⁸⁴ Id.; see Notice, 88 FR at 49534, 49537, 49539.

standards, the MSRB may appropriately classify municipal advisors and their associated persons, specify that all or any portion of such standards shall be applicable to any such class, and require persons in any such class to pass examinations.⁸⁵ The Commission also has reviewed Section 15B(b)(2)(C) of the Act, which provides, in part, that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest; and not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁸⁶ Additionally, the Commission has considered Section 15B(b)(2)(G) of the Act, which provides, in part, that the MSRB's rules shall prescribe records to be made and kept by municipal advisors.⁸⁷ Finally, the Commission has reviewed Section 15B(b)(2)(L)(iv) of the Act, which provides that the MSRB's rules shall 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.⁸⁸

After such review, the Commission believes that the proposed rule change is appropriate in the public interest and for the protection of municipal entities and obligated persons consistent with Section 15B(b)(2)(A) of the Act, designed to prevent fraudulent and manipulative acts and

⁸⁵ 15 U.S.C. 78o-4(b)(2)(A).

⁸⁶ 15 U.S.C. 78o-4(b)(2)(C).

⁸⁷ 15 U.S.C. 78o-4(b)(2)(G).

⁸⁸ 15 U.S.C. 78o-4(b)(2)(L)(iv).

practices consistent with Section 15B(b)(2)(C) of the Act, and will: (i) foster cooperation and coordination among regulators consistent with Section 15B(b)(2)(C) of the Act; (ii) promote just and equitable principles of trade consistent with Section 15B(b)(2)(C) of the Act; (iii) protect municipal entities, obligated persons, and the public interest consistent with Section 15B(b)(2)(C) of the Act; and (iv) not impose an inappropriate impact or burden on efficiency, competition, or capital formation, including with respect to small municipal advisors, consistent with Sections 15B(b)(2)(C) and 15B(b)(2)(L)(iv) of the Act.

A. Appropriate in the Public Interest and for the Protection of Municipal Entities and Obligated Persons

The Commission believes that, consistent with Section 15B(b)(2)(A) of the Act,⁸⁹ the proposed rule change is appropriate in the public interest and for the protection of municipal entities and obligated persons. In particular, the new, criteria-based exemption from requalification by reexamination applicable to municipal advisor representatives (including the increase in the amount of time in which an individual may maintain their qualification as a municipal advisor representative without reexamination) will likely result in fewer individuals being required to retake the Series 50 examination, which would expand the potential number of municipal advisor representative candidates. A broader municipal advisor representative applicant pool is in the public interest and may help protect municipal entities and obligated persons by offering firms a greater choice in hiring qualified individuals who could potentially draw upon their diverse perspectives, experience, education, and/or institutional knowledge to enhance the informed advice provided to a municipal advisor firm's municipal entity and obligated person clients.

⁸⁹ 15 U.S.C. 78o-4(b)(2)(A).

For example, as the MSRB noted, individuals that may disassociate with a municipal advisor firm may determine to associate with a dealer in a public finance capacity or to work for a municipal entity.⁹⁰ 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.⁹¹ Similarly, the proposed rule change provides flexibility for certain individuals to step away from their position to pursue higher education and then return to the municipal advisory industry. This diversity of perspective, experience, education, and/or institutional knowledge could put such municipal advisor representative candidates in a position to provide more informed advice than they may otherwise have provided.

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 process 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.

At the same time, and as further described in Sections IV.B. and IV.E. below, the proposed rule change requires the satisfaction of conditions that establish safeguards and help ensure that only qualified candidates may obtain the criteria-based exemption from requalification, thereby furthering municipal entity and obligated person protection and the public interest.

⁹⁰ Notice, 88 FR at 49533.

⁹¹ Id. at 49533-34.

Because the proposed rule change would likely lead to a broader municipal advisor representative applicant pool, improve the quality of municipal advisor representative candidates, and increase diversity in the municipal advisory industry—all while requiring the satisfaction of conditions that establish safeguards and help ensure that only qualified candidates may obtain the criteria-based exemption from requalification—the Commission finds that the proposed rule change is appropriate in the public interest and for the protection of municipal entities and obligated persons consistent with Section 15B(b)(2)(A) of the Act.

B. Prevention of Fraudulent and Manipulative Acts and Practices

The Commission believes that, consistent with Section 15B(b)(2)(C) of the Act,⁹² Rule G-3 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. 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, provide for a baseline level of experience and competence for individuals availing themselves of the exemption. 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 because such trainings serve to educate individuals about the avoidance of such manipulative acts and practices.

⁹² 15 U.S.C. 78o-4(b)(2)(C).

Because the three-year thresholds coupled with the more robust CE requirements would continue to support municipal advisor representatives in meeting competence, training, experience, and qualification standards, and such protections would not be diminished by the proposed rule change, the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices consistent with Section 15B(b)(2)(C) of the Act.

C. Foster Cooperation and Coordination among Regulators

In accordance with Section 15B(b)(2)(G) of the Act,⁹³ the proposed amendments to Rule G-8(h)(vii)(C) would prescribe specific records to be made and kept by municipal advisors. The Commission believes that, consistent with Section 15B(b)(2)(C) of the Act,⁹⁴ those amendments would foster cooperation and coordination with persons engaged in regulating municipal securities and municipal financial products. In particular, they would provide all relevant examining and enforcement authorities with the same documentation containing the information necessary to assist them in examining for, investigating, and evaluating compliance with the new, criteria-based exemption under Rule G-3.

The Commission further believes that an in-concert review by all relevant examining and enforcement authorities of the same documentation under the prescribed recordkeeping obligations of the proposed rule change would foster municipal entity and obligated person protection. In particular, municipal advisor firms would be incentivized to 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.

⁹³ 15 U.S.C. 78o-4(b)(2)(G).

⁹⁴ 15 U.S.C. 78o-4(b)(2)(C).

Because the books and records requirements would facilitate efficiency among regulators by providing all relevant examining and enforcement authorities with the same documentation containing the information necessary to assist them in examining for, investigating, and evaluating compliance with the new, criteria-based exemption, the Commission finds that the proposed rule change would foster cooperation and coordination with persons engaged in regulating municipal securities and municipal financial products consistent with Section 15B(b)(2)(C) of the Act.

D. Promote Just and Equitable Principles of Trade

The Commission also believes that, consistent with Section 15B(b)(2)(C) of the Act,⁹⁵ the various technical amendments enumerated above⁹⁶ promote just and equitable principles of trade. Specifically, the Commission believes the technical amendments would ensure that Rules G-3 and G-8 remain accurate, clear, and understandable for the municipal advisory community. If the MSRB's rules are accurate, clear, and understandable, MSRB registrants, including municipal advisors and associated persons, will better be able to comply with the MSRB's rules and apply them in a consistent matter. Accordingly, the Commission finds that the technical amendments promote just and equitable principles of trade consistent with Section 15B(b)(2)(C) of the Act.

E. Protect Municipal Entities, Obligated Persons, and the Public Interest

The Commission believes that, consistent with Section 15B(b)(2)(C) of the Act⁹⁷ and the above discussion, the proposed rule change would continue to protect municipal entities,

⁹⁵ Id.

⁹⁶ Supra, Section II.B.vii.

⁹⁷ 15 U.S.C. 78o-4(b)(2)(C).

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, 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. 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 securities industry or to step away from their position for other reasons; and benefits municipal advisor firms by providing the increased ability to attract qualified talent.

Finally, 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, both of which could enhance the quality of advice provided to municipal entity and obligated person clients.

Because the proposed rule change requires the satisfaction of conditions that establish safeguards and ensure that only qualified municipal advisor representative candidates may obtain the criteria-based exemption from requalification—while also leading to a broader municipal advisor representative applicant pool, improving the quality of municipal advisor representative candidates, and increasing diversity in the municipal advisory industry—the Commission finds

that the proposed rule change protects municipal entities, obligated persons, and the public interest consistent with Section 15B(b)(2)(C) of the Act.

F. No Inappropriate Impact or Burden on Efficiency, Competition, or Capital Formation

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.⁹⁸ Section 15B(b)(2)(C) of the Act⁹⁹ 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 Act¹⁰⁰ requires that MSRB rules 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.

With respect to impact on efficiency, the Commission believes that the proposed rule change would 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. Moreover, as discussed above,¹⁰¹ the Commission believes that the proposed amendments to Rule G-8 would facilitate efficiency among regulators by providing all relevant examining and enforcement authorities with the same documentation

⁹⁸ 15 U.S.C. 78c(f).

⁹⁹ 15 U.S.C. 78o-4(b)(2)(C).

¹⁰⁰ 15 U.S.C. 78o-4(b)(2)(L)(iv).

¹⁰¹ Supra, Section IV.C.

containing the information necessary to assist them in examining for, investigating, and evaluating compliance with the new, criteria-based exemption under Rule G-3.

With respect to impact on capital formation, as discussed above,¹⁰² 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. The Commission believes that the potential 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, with respect to competition, the Commission 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. The Commission notes that individuals who are away from their municipal advisor representative capacity (or cease to be engaged in activity requiring qualification as a municipal advisor representative) 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, the Commission does not believe the elimination of this option would

¹⁰² Supra, Section IV.A.

have a significant impact on individuals seeking to reassociate in a municipal advisor representative capacity.

Although the proposed amendments to Rule G-3 and Rule G-8 would benefit, and be applied equally to, all individuals seeking to associate with municipal advisor firms and all such municipal advisor firms, the Commission believes that there are potential burdens on competition for small municipal advisor firms, and solo-practitioners in particular. However, as described below, the Commission believes that these potential burdens are mitigated.

First, the Commission believes that there is a potential burden on competition for solo-practitioners looking to establish a municipal advisor firm because, unlike larger firms, such solo-practitioners may not have developed CE materials addressing all of the prescribed subject matters necessary to meet the exemption's CE requirements. However, the Commission believes that this potential burden is mitigated because the MSRB has indicated that 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.¹⁰³ The MSRB noted that sources of such educational materials may include industry trade associations, in addition to podcasts, webinars, and educational materials developed by the MSRB.¹⁰⁴

Second, the Commission believes that there is a potential burden on competition for solo-practitioners and smaller municipal advisory firms because the new, criteria-based exemption would not extend to those seeking to associate and function in a municipal advisor principal capacity and, as noted above, Rule G-3(e)(iii) requires every municipal advisor firm to have at

¹⁰³ Notice, 88 FR at 49537.

¹⁰⁴ Id. at 49537 n.43.

least one municipal advisor principal. Accordingly, individuals seeking to act as a municipal advisor principal (e.g., a solo-practitioner) would still have to take and pass the Series 54 examination in order to engage in principal-level activities. As a result, although all firms would benefit from the proposed rule change for municipal advisor representatives, smaller municipal advisor firms and solo-practitioners in particular may experience a smaller benefit than larger municipal advisor firms.

The Commission believes that this potential burden is mitigated, however, because the MSRB has indicated that current Rule G-3(e)(ii)(C) permits solo-practitioners (or individuals associating or reassociating 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.¹⁰⁵ The MSRB noted that, 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.¹⁰⁶ 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 several months before having to take and pass the Series 54 examination.¹⁰⁷

¹⁰⁵ Id. at 49534 n.29; MSRB Letter at 3.

¹⁰⁶ Notice, 88 FR at 49534 n.29.

¹⁰⁷ The Commission believes this potential burden may also be mitigated, in part, because the MSRB represented that it anticipates publishing a compliance resource in close proximity to the compliance date of the rule which would highlight the regulatory obligations for municipal advisors (and dealers) with respect to professional qualification standards, CE requirements, and related registration matters. See id. at 49538; MSRB Letter at 3. In addition, in the Notice itself, the MSRB addressed the timing and sequence of satisfying the exemption's criteria, the filing of SEC Form MA-I (and SEC Form MA,

Ultimately, municipal advisor principals are subject to additional regulatory standards given their supervisory, oversight, and management duties. The process of reexamination for municipal advisor principals helps to ensure that the specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, is sufficiently demonstrated.

For the foregoing reasons, the Commission finds that, consistent with Sections 15B(b)(2)(C) and 15B(b)(2)(L)(iv) of the Act, the proposed rule change would not impact or impose any additional burdens on efficiency, competition, or capital formation that are not necessary or appropriate in furtherance of the purposes of the Act.

As noted above, the Commission received one comment letter on the filing. The Commission believes that the MSRB, through its response, addressed the commenter's concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰⁸ that the proposed rule change (SR-MSRB-2023-05) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.¹⁰⁹

Sherry R. Haywood,

Assistant Secretary.

as applicable), and the submission of the affirmation notification to the MSRB, including for solo-practitioners. See Notice, 88 FR at 49532-33; MSRB Letter at 2-3.

¹⁰⁸ 15 U.S.C. 78s(b)(2).

¹⁰⁹ 17 CFR 200.30-3(a)(12).