

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 68 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2021 - * 04
WASHINGTON, D.C. 20549
Form 19b-4 Amendment No. (req. for Amendments *)

Filing by Municipal Securities Rulemaking Board
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 3C(b)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
Section 806(e)(2) *	
<input type="checkbox"/>	

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

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

Proposed Rule Change Consisting of Amendments to Rule G-10, on Investor and Municipal Advisory Client Education and Protection, and Rule G-48, on Transactions with Sophisticated Municipal Market Professionals, to Amend Certain Dealer Obligations

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

(Title *)

Date 08/02/2021 Corporate Secretary

By Ronald W. Smith

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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 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

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 (“Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² the Municipal Securities Rulemaking Board (“MSRB” or “Board”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change consisting of amendments to MSRB Rule G-10, on investor and municipal advisory client education and protection, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals (“SMMPs”) (collectively, the “proposed rule change”). The proposed rule change would clarify the scope of the requirements for brokers, dealers and municipal securities dealers (collectively, “dealers”) to provide the required notifications under Rule G-10 to those customers who would best be served by the receipt of the information and make accompanying amendments to Rule G-48 to exclude SMMPs from certain requirements under Rule G-10.³

(a) The text of the proposed rule change is attached as Exhibit 5. The 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

The Board approved the proposed rule change at its meeting on July 21-22, 2021. Questions concerning this filing may be directed to Bri Joiner, Director, Regulatory Compliance, or Lisa Wilhelmy, Assistant Director, Market Regulation, at 202-838-1500.

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change no later than 10 days following Commission approval. The effective date will be no later than 30 days following Commission approval.

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

(a) Purpose

Background

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Under MSRB Rule D-9, a “customer” means “any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.”

In 2017, the MSRB amended Rule G-10 with the goal of, among other things, modernizing the rule and extend the rule's application to municipal advisors.⁴ Prior to that time, the rule only applied to dealers and required dealers to provide a customer with a paper copy of the MSRB's investor brochure after a customer had made a complaint to the dealer.⁵ Recognizing this requirement did not afford customers the best use of the information in a timely manner, the 2017 amendments replaced the post-complaint delivery requirement with more timely delivery requirements.

Rule G-10, as designed, serves to educate and protect investors and municipal advisory clients by providing them with information about the MSRB rules designed to protect them and the process for filing a complaint with the appropriate regulatory authority. The rule currently requires dealers and municipal advisors (collectively, "regulated entities") to provide certain notifications to customers and municipal advisory clients, respectively, once every calendar year. More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information ("required notifications"):

- (i) A statement that the regulated entity is registered with the SEC and the MSRB;
- (ii) The website address for the MSRB; and
- (iii) A statement as to the availability to the customer or municipal advisory client of a brochure that is available on the MSRB's website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.⁶

⁴ See Exchange Act Release No. 79801 (January 13, 2017), 82 FR 7898 (January 23, 2017) (File No. SR-MSRB-2016-15). The 2017 amendments created similar obligations for municipal advisors to provide their municipal advisory clients with certain notifications. The text of the amendments addressed the scope of Rule G-10 obligations for municipal advisors by specifically defining "municipal advisory client" for purposes of Rule G-10 to include "either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act."

⁵ See Exchange Act Release No. 24764 (July 31, 1987), 52 FR 29459 (August 7, 1987) (File No. SR-MSRB-87-6).

⁶ See MSRB's "Information for Municipal Securities Investors," available at <https://www.msrb.org/~media/Files/Resources/MSRB-Investor-Brochure.ashx?la=en> and "Information for Municipal Advisory Clients," available at <https://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=>.

Given there has been a reasonable implementation period to allow the MSRB time to obtain meaningful insight on the operation of the rule, the MSRB conducted a retrospective review of the obligations under Rule G-10. The MSRB identified an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule to better align the scope of the rule's application. The proposed rule change is specific to the dealer obligations under Rule G-10 and the MSRB is not proposing to modify municipal advisors' obligations under the rule because the obligation municipal advisors have under Rule G-10 is already limited in scope in that a municipal advisor must provide the required notifications promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement. The obligation dealers currently have under Rule G-10 is broader in that each dealer must provide the required notifications to all customers, including SMMPs, even if those customers have not effected any transaction in municipal securities and may never effect a transaction in municipal securities.⁷ Recognizing that MSRB Rule G-48 underscores the differences between dealer obligations to non-SMMP customers and SMMP customers, the MSRB also assessed whether a modification to Rule G-48 was warranted.

Proposed Amendments to Rules G-10 and G-48: Dealer Obligation to Make Required Notifications

I. Customer Receipt of Required Notifications

The proposed amendment to Rule G-10(a), would require dealers to provide the notifications to those customers for whom a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position. Narrowing the scope to those customers that engage in municipal securities transactions would reduce the burden of remitting the notifications unnecessarily to all customers, while ensuring that dealers remit the notifications to customers who would most benefit from receiving them. Customers who do not receive the notifications directly pursuant to Rule G-10(a) will still have access to them as section (b) of Rule G-10 would require each dealer to have the required notifications available on its website for the benefit of such customers. As a result, the MSRB does not believe there is a detrimental impact to such customers and believes that not receiving the notifications may avoid confusion for customers who currently receive such notifications even though they have not effected a municipal securities transaction or hold municipal securities.

⁷ On December 7, 2020, the MSRB issued MSRB Request for Input on Strategic Goals and Priorities, available at <https://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2020-19.ashx??n=1>, with a comment period deadline of January 11, 2021. Two commenters recommended changes to certain dealer obligations under Rule G-10. See Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (BDA), dated January 11, 2021. See also Letter from Leslie Norwood, Managing Director and Associate General Counsel and Bernard Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated January 11, 2021.

The proposed rule change would also amend Rule G-48 to modify a dealer's obligation under Rule G-10. Specifically, the proposed amendment to add section (f) to Rule G-48 would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to Rule G-10(a).⁸ The MSRB believes that customers who meet the definition of SMMPs under Rule D-15 are sophisticated in their understanding of the municipal market. In the event that an SMMP is seeking the information found in the required notifications, including the MSRB's website address, dealer registration status and how to file a complaint with the appropriate regulatory agency, a sophisticated customer is likely to know the information, or seek access to it from the dealer's or MSRB's website. The proposed amendment to Rule G-48 balances the burden on dealers to remit the required notifications to SMMPs against the usefulness of SMMPs receiving such notifications when the information is otherwise readily available. This modified obligation dealers have with respect to SMMPs is proposed section (f) of Rule G-48, in keeping with the placement of other modified obligations for transactions with SMMPs under Rule G-48.

II. Exception for Dealers Subject to Carrying Agreements

The proposed amendments to Rule G-10 would apply to all dealers, with two general exceptions: (i) a dealer that does not have customers, or (ii) a dealer that is a party to a carrying agreement in which the carrying dealer has agreed to comply with the requirement to provide notifications under the rule. The proposed amendment to section (c) of Rule G-10 would provide that any dealer that does not have customers, or who is a party to a carrying agreement in which the carrying dealer has agreed to comply with the required notification requirements, would be exempt from the Rule G-10(a) requirements. The MSRB recognizes that customer accounts may be held at other dealers, subject to a carrying agreement, and that the carrying dealers are responsible for providing account statements and trade confirmations. Therefore, the proposed amendment to Rule G-10(c) is meant to acknowledge common business practices and facilitate carrying dealers' compliance with the requirement to provide notifications under the rule, on behalf of other dealers.⁹ Additionally, the proposed amendments would expressly clarify that the dealer would not be subject to the notifications requirement, under Rule G-10(a), in cases where dealers conduct a limited business and are not considered to have customers.

III. Supplementary Material to Rule G-10

⁸ In order for a customer to be deemed an SMMP, MSRB Rule D-15 requires dealers to determine the nature of the customer, the customer's sophistication level, and also requires a customer affirmation, as specified in the rule.

⁹ The proposed rule change promotes regulatory consistency with section (b)(2) of FINRA Rule 2267, on Investor Education and Protection, which provides that any member that does not have customers or is a party to a carrying agreement where the carrying firm member complies with the rule is exempt from the requirements of the rule.

The proposed rule change would include supplementary material under Rule G-10 that would provide clarity on the timeframe for delivery of the required notifications. Supplementary Material .01 of Rule G-10 would make clear that the obligation to provide the required notifications once each calendar year to applicable customers would be deemed satisfied if dealers deliver the required notifications at a given point in each calendar year so long as any customers that effected a transaction in municipal securities or held municipal securities after that given date in each calendar year receive the notifications within the following rolling 12-month period. More explicitly, after a dealer provides the required notifications to the applicable customers, the ensuing notifications must be provided within 12 months from the date of the preceding notifications, but may be provided within a shorter time period.¹⁰ The MSRB believes that the proposed amendments would foster greater flexibility with respect to the timing of the required notifications, and would also ensure that each applicable customer receives the required notification within a rolling 12-month period; and thereby, ease operational concerns.

For example, assume a dealer opts to remit the required notifications on June 30, 2022, and in September 2022 a non-SMMP customer who has never held municipal securities effects a transaction in municipal securities for the first time. The dealer would not be required to remit the notifications to that customer in calendar year 2022, but the dealer would be obligated to remit the notification to that customer, and all other applicable customers, on or before June 30, 2023. In no event may a dealer exceed 12 months without remitting the notifications to a non-SMMP customer who has effected a transaction in municipal securities or who holds municipal securities.

The proposed rule change makes technical amendments to streamline the required notifications by deleting the current provision (a)(ii) of Rule G-10 and placing the reference to the website address for the Municipal Securities Rulemaking Board within the proposed amended provision that re-numbers provision (a)(iii) of Rule G-10 to provision (a)(ii). The proposed amendments also re-numbers the remainder of Rule G-10, accordingly.

(b) Statutory Basis

Section 15B(b)(2)(C) of the Exchange Act³⁰ provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

¹⁰ A dealer may, of course, elect to provide the required notification more frequently than a rolling 12-month basis.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2)¹¹ and 15B(b)(2)(C)¹² of the Exchange Act. Rule G-10 would continue to be designed to prevent fraudulent and manipulative acts and the proposed rule change does not diminish such protections. The proposed rule change would help promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest by ensuring that customers who have effected a transaction in municipal securities or hold a municipal securities position, during the requisite period, receive information that would be useful to them in understanding the regulatory framework. The proposed rule change may also avoid confusion because dealers would not have to provide notifications to customers who have not effected any municipal securities transactions. More specifically, the proposed rule change is designed to ensure that applicable customers receive beneficial information, through the MSRB's investor brochure, on how to file a complaint about dealers with the appropriate regulatory authority and an overview of the investor protections provided by MSRB rules. The required notifications, which would be provided once each calendar year, are in support of curbing potential fraudulent and manipulative practices, by creating an awareness amongst customers of the SEC and MSRB.

Additionally, for all other customers, including SMMPs, while dealers will not have to provide the required notifications pursuant to Rule G-10(a), such dealers would have to make the required notifications available on their websites in accordance with the rule, and other applicable MSRB rules and federal securities laws, which is in furtherance of the public interest. The MSRB believes that the proposed amendments to Rule G-48 to effectuate the exemption for remitting notifications to SMMPs, so long as the SMMPs have access to such notifications on a dealer's website, will facilitate transactions in municipal securities and help perfect the mechanism of a free and open market in municipal securities by avoiding the imposition of regulatory burdens upon dealers where they appear to be unnecessary. The MSRB currently understands that SMMPs are generally knowledgeable about the registration status of a dealer and how to file a complaint if warranted and can access the information on a dealer's website as needed.

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

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³ The MSRB has considered the economic impact associated with the proposed rule change, including a comparison to reasonable alternative regulatory approaches, relative to the baseline.¹⁴ The MSRB does not believe that the proposed rule change would

¹¹ 15 U.S.C. 78o-4(b)(2).

¹² 15 U.S.C. 78o-4(b)(2)(C).

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ [See Policy on the Use of Economic Analysis in MSRB Rulemaking](http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx), 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

impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of amending Rule G-10 is to better refine the requirement for dealers to provide the required notifications to specified customers. Rule G-10 was originally designed to protect investors by providing them with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority. As discussed above, prior to the 2017 rule amendments, Rule G-10 only required dealers to send a paper copy of the brochure outlining protections under MSRB rules to investors who had already complained to a dealer. The 2017 amendments replaced the post-complaint delivery requirement with an annual written notification requirement to all customers of a dealer regardless of whether a customer ever effects a municipal securities transaction or owns municipal securities in the account.¹⁵ To reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the notifications, the MSRB proposes to amend Rule G-10(a) to narrow the obligation of dealers to provide the required notifications to only customers who traded municipal securities or held a municipal securities position at the dealer during each calendar year. For all other customers, dealers would be permitted to make such notifications available on their websites in accordance with the rule. Similarly, the MSRB is proposing related amendments to Rule G-48, so that all SMMPs would be exempt as long as dealers make such notifications available on their websites.

The MSRB assessed other regulatory alternatives and determined that the proposed amendments to Rule G-10 and Rule G-48 are superior to these alternatives. One alternative would be to revert the rule back to the pre-2017 version that contained a post-complaint delivery requirement and adding the electronic delivery option. By rolling back the 2017 changes, a dealer would no longer have to provide the notifications to *all* customers, regardless of whether they transacted in municipal securities or own municipal securities. This alternative would alleviate the burden to dealers of sending out thousands of notifications to investors but would still not solve the problem of providing investors with more timely access to information about how to file a complaint and the protections provided under MSRB rules. Another alternative would be to amend Rule G-10 to eliminate the annual notifications delivery requirement. The MSRB already requires dealers to communicate certain information to investors under Rule G-15, on customer confirmations.¹⁶ By amending Rule G-10 to require dealers to also provide a hyperlink to MSRB.org and a statement that the dealer is registered with the SEC and the MSRB, dealers would be able to minimize their direct outreach to investors by utilizing an existing required form of communication (i.e., customer confirmations). However, with this alternative, only customers who have recently transacted in a municipal security would be notified of the information, but not customers who hold municipal securities in their accounts.

required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

¹⁵ See supra note 4.

¹⁶ Under Rule G-15(a)(i)(D)(4), the dealer is required to provide a hyperlink to EMMA[®] for publicly available information on a specific security.

Benefits and Costs

The MSRB believes by amending the rule to limit the scope of the delivery obligation to customers who either held or transacted in municipal securities during a 12-month period, compliance burdens to dealers would be lessened. The volume of notifications sent by dealers to customers, many of those who do not own or transact in municipal securities, and therefore receive no utility from such notifications, would be reduced. Additionally, other customers of dealers who do not own or transact in municipal securities would not be subjected to receipt of additional unnecessary communications, which could create noise and confusion for these customers. Furthermore, in striving to focus communications that are appropriate to the customer, the resulting effect may be that customers pay more attention to communications from dealers. Finally, dealers may incur savings from sending out less correspondence to customers due to the narrowed scope of the dealers' obligations; and due to the flexibility provided pursuant to the rule and related proposed amendments to Rule G-48 that exempt other customers and SMMPs.

To evaluate the potential costs to customers, the MSRB divided all dealer customers into four segments to separately compare the future expected state to the current baseline state of each group.

- Customers who currently hold municipal securities and plan to transact again in the future. These customers would not be impacted by the proposed amendments to Rule G-10 since they are expected to receive the required notifications the same way as they receive the notifications now;
- Customers who have never held municipal securities and do not plan to transact in them in the foreseeable future. These customers are currently receiving the notifications even though they do not hold any municipal securities nor effect any municipal securities transactions. The proposed amendments to Rule G-10 would not impact these customers since the notifications are, likely, not relevant to these customers;
- New customers of a dealer. These customers are currently receiving the notifications by the end of each calendar year irrespective of their holding of municipal securities or effecting a transaction in municipal securities. The proposed amendments to Rule G-10 would impact these customers, as they would not receive a notification unless they effected a transaction in municipal securities or held municipal securities at the time the dealer remitted the notifications that calendar year. However, these customers would receive the notification the next calendar year and in no event more than 12 months from the time such customers effected a transaction in municipal securities or held municipal securities;
- Existing customers who have never transacted in municipal securities before but may do so in the future. These customers currently receive notifications even though they have not transacted or held a position in municipal securities. Under the proposed amendments to Rule G-10, these customers would not receive the notifications, required to be delivered once every calendar year, until such time as they have a municipal securities transaction or hold a position in municipal securities. The MSRB has been careful to balance the stated objective of utility of information to customers

against the slight risk that could be born out of not providing such required notifications to all customers, once every calendar year. The MSRB notes that such customers would be able to avail themselves of the information provided in the notifications by reviewing a dealer’s website. The MSRB also notes that the anecdotal evidence provided by a commenter shows less than one percent of all existing customers who had previously not transacted or owned any municipal security would effect a transaction in municipal securities;¹⁷ and lastly,

- SMMPs who have traded municipal securities or hold a municipal securities position. All SMMPs currently receive annual notifications, but under the proposed amendments to Rule G-48, these customers would not receive the notifications; instead, SMMPs would still be able to avail themselves of the information provided in the notifications by reviewing a dealer’s website. Since SMMPs affirm to having a level of sophistication, knowledge and familiarity with the municipal securities market, these notifications add little benefit for SMMPs, if any. By exempting the requirement to send notifications to SMMPs, the proposed amendments would reduce the time and cost burdens for dealers with minimal reduction in benefits for SMMPs.

In addition to any costs to customers, dealers would likely incur some minor costs, relative to the baseline state, to meet the standards of conduct and duties contained in the proposed rule change. These changes may include a one-time upfront cost related to revising policies and procedures, as well as ongoing costs such as compliance costs associated with limiting the receipt to only the relevant municipal securities customers for targeted communication outreach. However, the MSRB believes these costs would be minimal, as firms would be able to leverage their existing customer database to swiftly identify the relevant pool of customers eligible for the required notifications under the proposed rule change.

As to the overall scale of cost reduction to dealers, as well as potential costs to some customers who may no longer receive the notifications unless they initiate a transaction in municipal securities, the MSRB is currently unable to quantify these economic effects precisely because not all the information necessary to provide a reasonable estimate is available. For example, the MSRB is interested in the percentage of dealers’ customers who trade or hold municipal securities for a given calendar year, which would be helpful for the MSRB to assess the impact of the draft rule amendments. The MSRB sought the data during the Request for Comment process but was unable to obtain it. Therefore, the MSRB has considered these benefits and costs in qualitative terms.

Effect on Competition, Efficiency, and Capital Formation

¹⁷ Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association (“SIFMA Letter” or “SIFMA”) dated June 28, 2021: “SIFMA members state that their estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities is anecdotally reported to be less than 1%.”

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change would reduce burdens on dealers of remitting the notifications to all customers by narrowing the scope of the application of the rule. The MSRB believes that the proposed rule change would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants.

The MSRB does not expect that the proposed rule change would change the competitive landscape of the municipal securities dealer community, as the proposed amendments to Rule G-10 and Rule G-48 would be applicable to all dealers; therefore, the expected benefits and minor costs would be proportionate to the size and business activities of each dealer.

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

As previously noted, on May 14, 2021, the MSRB published a Request for Comment, which sought comment on the matters included in the proposed rule change for a period of 45 days. The MSRB received four comment letters.¹⁸ These comments, along with the MSRB's responses, are discussed below.

Narrowing the Scope of Customers Receiving the Dealer Notifications

The MSRB sought comment on whether to narrow the scope of customers who receive the required notifications once every calendar year to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year or who hold a municipal securities position. All four commenters noted that the MSRB's draft amendments would ensure that the customers who would most benefit from receiving the required information would receive the notifications. Commenters also noted that no longer requiring dealers to provide such notifications unnecessarily to other customers would mitigate the compliance burden on dealers.

One commenter, BDA, recommended that the MSRB exempt dealers from providing issuers the required notifications, stating that "issuers are financial professionals who understand the municipal market well enough to know about the MSRB and do not require additional annual reminders." As a threshold matter, the MSRB does not agree with the premise that all issuers have the same level of market sophistication and should have a wholesale exclusion. Pursuant to Rule D-9, an issuer is a "customer" except in the case of a sale by the issuer of a new issue of its securities. Therefore, in these instances, dealers would not be required to provide the required

¹⁸ See Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association ("ASA Letter" or "ASA"), dated June 28, 2021; Letter from Michael Decker, Senior Vice President, Bond Dealers of America ("BDA Letter" or "BDA"), dated June 28, 2021; SIFMA Letter; and Letter from Jennifer Szaro ("Szaro Letter" or "Szaro"), dated May 17, 2021.

notifications to an issuer.¹⁹ If an issuer is otherwise a customer, a dealer would continue to be obligated to provide the notifications pursuant to Rule G-10(a) unless the issuer customer is an SMMP, which would be determined based on the nature of the issuer, a determination of sophistication by the dealer and an affirmation by the issuer.²⁰ As noted above, with respect to an SMMP, the proposed amendment to Rule G-48 would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to Rule G-10(a).

BDA also requested that the MSRB eliminate the annual requirement to provide notifications to customers who do not hold a municipal securities position at the dealer at calendar year-end. BDA stressed that modifying the proposed rule language in such a way would diminish the burden on dealers of looking through stock records to identify municipal securities customers for whom dealers no longer hold positions because they were either transferred, sold or matured entirely prior to the stock record review. The MSRB believes that the proposed rule change requiring the notifications to those customers who effected transactions in municipal securities or who hold a municipal securities position, coupled with the supplementary material on the sequencing of such notifications, strikes the right balance in providing investor protections and reducing regulatory burdens. The MSRB does not believe the rule should be narrowed further as BDA suggests.

Additionally, BDA suggested that municipal advisors should not be obligated to provide municipal advisory clients with the required notifications promptly after the establishment of a municipal advisory relationship or entering into an agreement to undertake a solicitation and annually thereafter during the course of the agreement. BDA asserts that municipal advisors are already providing such notifications as part of the municipal advisor engagement letter. While this comment is outside the scope of the current proposal, MSRB notes the MSRB's municipal advisory client brochure summarizes key principles of the MSRB rules designed to protect municipal advisory clients as well as information on how on how to file a complaint against a municipal advisor with the appropriate federal regulatory authority – information that is not customarily provided as part of the municipal advisor engagement letter. The MSRB continues to believe that requiring municipal advisors to provide the Rule G-10 notifications to municipal advisory clients creates an awareness of the protections afforded by the regulatory framework governing municipal advisory activities.

Exclusion of SMMPs

¹⁹ The MSRB did solicit feedback in the RFC on whether Rule G-10 should require dealers to provide notifications to issuer clients at the earliest stage of the underwriter's relationship with such issuer client when an issuer client has not otherwise engaged a municipal advisor. A summary of the comments received in response to this question is discussed in Section C. below.

²⁰ See Rule D-15 on the definition of the term "Sophisticated Municipal Market Professional." In order to deem a customer an SMMP, a dealer is required to determine the nature of the customer and the customer's sophistication level, and also requires the customer's affirmation, as specified in Rule D-15. In addition, this determination must be reasonable, including an analysis of the amount or type of securities owned or under management by the customer. See Rule D-15, Supplementary Material .01.

The MSRB sought comment on whether to exclude SMMPs from receiving the required notifications, so long as dealers provide such notifications on their websites (“website-only notifications”). Both ASA and SIFMA specifically expressed support for the draft amendments, indicating that the placement of the notifications on dealers’ websites is also in keeping with the modern approach to seek and find electronic resources on dealers’ websites, and provides adequate notice to SMMPs. SIFMA remarked that SMMPs are, by definition, sophisticated investors that should not require “hand-holding” in order to find information on the investor brochure on the dealer’s website, or elsewhere, or to otherwise require guidance as to how to file a complaint with the appropriate regulatory authority. SIFMA also noted that placement of the customer notifications on dealers’ websites provides adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position.

The MSRB has had the opportunity to evaluate the implementation of the requirement to provide notifications once every calendar year, which was adopted in 2017,²¹ has considered these comments as well as recent stakeholder comments,²² and has determined that allowing dealers to make the required notifications available on their websites is appropriate for SMMP customers.

Dealer Notifications to Issuer Clients Who are not Represented by Municipal Advisors

The MSRB sought comment on whether an issuer in transactions involving the sale by the issuer of a new issue of its securities who are not otherwise represented by a municipal advisor should receive the required notifications from dealers. BDA and SIFMA commented, arguing strongly against providing such notifications to such issuers, noting that dealer disclosures to issuers in transactions involving the sale by the issuer of a new issue of its securities are made in the Bond Purchase Agreement and engagement letters and that requiring the annual notifications will add to the complexity of dealer compliance without greater benefit to such issuer. SIFMA further opined that any such required notifications should be made in the context of underwriter disclosures, under Rule G-17. After review of the comments, the MSRB has determined not to place the additional requirement on dealers to provide the required notifications to such issuers who are not otherwise represented by municipal advisors.

529 Plan Customers

The MSRB sought comment on whether to provide an exception to the notifications requirement that excludes investors in 529 savings plans from receipt of ongoing notifications after their initial purchase of units in a 529 savings plan. SIFMA indicated support for the draft amendments to exclude ongoing notifications to investors of 529 savings plan. The Szaro letter noted that providing the required notifications to such customers entails dealer work and expenses that are not balanced proportionately to the benefit to a customer in receiving the information. SIFMA and Szaro both favored website-only notifications as a sensible and

²¹ See supra note 4.

²² See supra note 7.

reasonable option for dealers who have websites. Given that 529 savings plans (and other municipal fund securities) are offered and serviced as a benefit to customers that typically hold other securities in their brokerage accounts, unintended operational challenges may be introduced by establishing a different requirement for the delivery of the required notifications for municipal fund securities. In reviewing the comments received, the MSRB does not believe there is compelling information to warrant a change from the current requirements under Rule G-10.

Website-Only Notifications for All Customers

The proposed amendments to Rule G-10 exclude the required notifications to customers that have not, and may never, engage in municipal securities transactions, so long as the dealer has the notifications available to such customers on its website. Szaro and ASA suggested removing the requirement for the notifications to be remitted to customers of the dealer who effected a transaction in municipal securities or who held a municipal securities position in favor of making such notifications available to all customers by having the notifications available only on the dealer's website. Szaro and ASA stated that customers today prefer to review information about dealers from dealers' websites and that individualized annual notifications could be eliminated without threatening investor protections.

The MSRB believes that the proposed rule change strikes the correct balance by requiring the notifications only to those customers who would most benefit by their receipt (i.e., customers of the dealer who effected a transaction in municipal securities or who hold a municipal securities position) and permitting the notifications to be available to all customers on a dealer's website. Moreover, the MSRB believes that receipt of such push notifications is in furtherance of investor protection, and that such information would not be as easily ascertained by a customer having to undergo a search for the information on a dealer's website.²³

Clarify Timeframe for Delivery of Notifications

SIFMA and BDA stated that the MSRB should clarify the timeframe for delivery of the annual notifications by modifying the draft proposed rule language from "once every calendar year" to prescribe that delivery of such notifications should be made "at least annually" or "at least once a year." BDA noted that the change in the delivery timeframe would reduce dealer printing burdens as they may couple these notifications with other required disclosures.

The MSRB acknowledges that it has previously indicated in the form of FAQs²⁴ that the obligation to provide the required notifications "once every calendar year" has meant by the end

²³ SIFMA suggested extending website-only notifications delivery to municipal advisory clients. As previously mentioned, the MSRB limited the scope of the RFC to dealer obligations to their customers and is not modifying municipal advisor's obligations under the Rule G-10.

²⁴ See FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection (September 2017).

of each calendar year. The MSRB does not propose to move away from the current rule text that states the required notifications must be made “once every calendar year,” because this language is consistent with the language governing the obligations of municipal advisors to provide the same required notifications to municipal advisory clients. The MSRB believes that proposed amendments will provide clarification and flexibility on the sequencing of the required notifications. Specifically, proposed Supplementary Material .01 allows a dealer to provide the notifications to the applicable customers at any given point in each calendar year, but also recognizes that there may be additional customer(s) that effect a purchase or sale of a municipal security or hold a municipal security after the notifications have been delivered that calendar year. Accordingly, Supplementary Material .01 allows such customers to receive the notifications within the following rolling 12-month period. The MSRB would revise existing compliance resources, including the FAQs, as necessary to be aligned with the proposed rule change.

Permitting Notifications by Clearing Firms Per Agreement

The MSRB sought comment on draft amendments that proposed to exclude a dealer that is a party to a carrying agreement, where the carrying dealer provides such required notifications, from the requirements under Rule G-10. Both SIFMA and BDA generally supported this provision but suggested clarifying language to reflect the agreement to undertake the obligation to provide the required notifications. The MSRB is clarifying the proposed rule language to reflect firms’ agreement about which party will undertake the Rule G-10 notifications obligation.

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.²⁵

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.

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

²⁵ 15.U.S.C. 78s(b)(2).

Not applicable.

11. Exhibits

- Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register
- Exhibit 2a MSRB Notice 2021-08 (May 14, 2021)
- Exhibit 2b List of Comment Letters Received in Response to MSRB Notice 2021-08
- Exhibit 2c Comments Received in Response to MSRB Notice 2021-08
- Exhibit 5 Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____ ; File No. SR-MSRB-2021-04)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to Rule G-10, on Investor and Municipal Advisory Client Education and Protection, and Rule G-48, on Transactions with Sophisticated Municipal Market Professionals, to Amend Certain Dealer Obligations

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 consisting of amendments to MSRB Rule G-10, on investor and municipal advisory client education and protection, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals (“SMMPs”) (collectively, the “proposed rule change”). The proposed rule change would clarify the scope of the requirements for brokers, dealers and municipal securities dealers (collectively, “dealers”) to provide the required notifications under Rule G-10 to those customers who would

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

best be served by the receipt of the information and make accompanying amendments to Rule G-48 to exclude SMMPs from certain requirements under Rule G-10.³

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change no later than 10 days following Commission approval. The effective date will be no later than 30 days following Commission approval.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

Background

³ Under MSRB Rule D-9, a "customer" means "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

In 2017, the MSRB amended Rule G-10 with the goal of, among other things, modernizing the rule and extend the rule's application to municipal advisors.⁴ Prior to that time, the rule only applied to dealers and required dealers to provide a customer with a paper copy of the MSRB's investor brochure after a customer had made a complaint to the dealer.⁵ Recognizing this requirement did not afford customers the best use of the information in a timely manner, the 2017 amendments replaced the post-complaint delivery requirement with more timely delivery requirements.

Rule G-10, as designed, serves to educate and protect investors and municipal advisory clients by providing them with information about the MSRB rules designed to protect them and the process for filing a complaint with the appropriate regulatory authority. The rule currently requires dealers and municipal advisors (collectively, "regulated entities") to provide certain notifications to customers and municipal advisory clients, respectively, once every calendar year.

⁴ See Exchange Act Release No. 79801 (January 13, 2017), 82 FR 7898 (January 23, 2017) (File No. SR-MSRB-2016-15). The 2017 amendments created similar obligations for municipal advisors to provide their municipal advisory clients with certain notifications. The text of the amendments addressed the scope of Rule G-10 obligations for municipal advisors by specifically defining "municipal advisory client" for purposes of Rule G-10 to include "either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act."

⁵ See Exchange Act Release No. 24764 (July 31, 1987), 52 FR 29459 (August 7, 1987) (File No. SR-MSRB-87-6).

More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information (“required notifications”):

- (i) A statement that the regulated entity is registered with the SEC and the MSRB;
- (ii) The website address for the MSRB; and
- (iii) A statement as to the availability to the customer or municipal advisory client of a brochure that is available on the MSRB’s website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.⁶

Given there has been a reasonable implementation period to allow the MSRB time to obtain meaningful insight on the operation of the rule, the MSRB conducted a retrospective review of the obligations under Rule G-10. The MSRB identified an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule to better align the scope of the rule’s application. The proposed rule change is specific to the dealer obligations under Rule G-10 and the MSRB is not proposing to modify municipal advisors’ obligations under the rule because the obligation municipal advisors have under Rule G-10 is already limited in scope in that a municipal advisor must provide the required notifications promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during

⁶ See MSRB’s “Information for Municipal Securities Investors,” available at <https://www.msrb.org/~media/Files/Resources/MSRB-Investor-Brochure.ashx?la=en> and “Information for Municipal Advisory Clients,” available at <https://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=>.

the course of that agreement. The obligation dealers currently have under Rule G-10 is broader in that each dealer must provide the required notifications to all customers, including SMMPs, even if those customers have not effected any transaction in municipal securities and may never effect a transaction in municipal securities.⁷ Recognizing that MSRB Rule G-48 underscores the differences between dealer obligations to non-SMMP customers and SMMP customers, the MSRB also assessed whether a modification to Rule G-48 was warranted.

Proposed Amendments to Rules G-10 and G-48: Dealer Obligation to Make Required Notifications

I. Customer Receipt of Required Notifications

The proposed amendment to Rule G-10(a), would require dealers to provide the notifications to those customers for whom a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position. Narrowing the scope to those customers that engage in municipal securities transactions would reduce the burden of remitting the notifications unnecessarily to all customers, while ensuring that dealers remit the notifications to customers who would most benefit from receiving them. Customers who do not receive the notifications directly pursuant to Rule G-10(a) will still have access to them as section (b) of Rule G-10 would require each dealer to have the required notifications available on

⁷ On December 7, 2020, the MSRB issued MSRB Request for Input on Strategic Goals and Priorities, available at <https://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2020-19.ashx??n=1>, with a comment period deadline of January 11, 2021. Two commenters recommended changes to certain dealer obligations under Rule G-10. See Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (BDA), dated January 11, 2021. See also Letter from Leslie Norwood, Managing Director and Associate General Counsel and Bernard Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated January 11, 2021.

its website for the benefit of such customers. As a result, the MSRB does not believe there is a detrimental impact to such customers and believes that not receiving the notifications may avoid confusion for customers who currently receive such notifications even though they have not effected a municipal securities transaction or hold municipal securities.

The proposed rule change would also amend Rule G-48 to modify a dealer's obligation under Rule G-10. Specifically, the proposed amendment to add section (f) to Rule G-48 would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to Rule G-10(a).⁸ The MSRB believes that customers who meet the definition of SMMPs under Rule D-15 are sophisticated in their understanding of the municipal market. In the event that an SMMP is seeking the information found in the required notifications, including the MSRB's website address, dealer registration status and how to file a complaint with the appropriate regulatory agency, a sophisticated customer is likely to know the information, or seek access to it from the dealer's or MSRB's website. The proposed amendment to Rule G-48 balances the burden on dealers to remit the required notifications to SMMPs against the usefulness of SMMPs receiving such notifications when the information is otherwise readily available. This modified obligation dealers have with respect to SMMPs is proposed section (f) of Rule G-48, in keeping with the placement of other modified obligations for transactions with SMMPs under Rule G-48.

II. Exception for Dealers Subject to Carrying Agreements

⁸ In order for a customer to be deemed an SMMP, MSRB Rule D-15 requires dealers to determine the nature of the customer, the customer's sophistication level, and also requires a customer affirmation, as specified in the rule.

The proposed amendments to Rule G-10 would apply to all dealers, with two general exceptions: (i) a dealer that does not have customers, or (ii) a dealer that is a party to a carrying agreement in which the carrying dealer has agreed to comply with the requirement to provide notifications under the rule. The proposed amendment to section (c) of Rule G-10 would provide that any dealer that does not have customers, or who is a party to a carrying agreement in which the carrying dealer has agreed to comply with the required notification requirements, would be exempt from the Rule G-10(a) requirements. The MSRB recognizes that customer accounts may be held at other dealers, subject to a carrying agreement, and that the carrying dealers are responsible for providing account statements and trade confirmations. Therefore, the proposed amendment to Rule G-10(c) is meant to acknowledge common business practices and facilitate carrying dealers' compliance with the requirement to provide notifications under the rule, on behalf of other dealers.⁹ Additionally, the proposed amendments would expressly clarify that the dealer would not be subject to the notifications requirement, under Rule G-10(a), in cases where dealers conduct a limited business and are not considered to have customers.

III. Supplementary Material to Rule G-10

The proposed rule change would include supplementary material under Rule G-10 that would provide clarity on the timeframe for delivery of the required notifications. Supplementary Material .01 of Rule G-10 would make clear that the obligation to provide the required notifications once each calendar year to applicable customers would be deemed satisfied if dealers deliver the required notifications at a given point in each calendar year so long as any

⁹ The proposed rule change promotes regulatory consistency with section (b)(2) of FINRA Rule 2267, on Investor Education and Protection, which provides that any member that does not have customers or is a party to a carrying agreement where the carrying firm member complies with the rule is exempt from the requirements of the rule.

customers that effected a transaction in municipal securities or held municipal securities after that given date in each calendar year receive the notifications within the following rolling 12-month period. More explicitly, after a dealer provides the required notifications to the applicable customers, the ensuing notifications must be provided within 12 months from the date of the preceding notifications, but may be provided within a shorter time period.¹⁰ The MSRB believes that the proposed amendments would foster greater flexibility with respect to the timing of the required notifications, and would also ensure that each applicable customer receives the required notification within a rolling 12-month period; and thereby, ease operational concerns.

For example, assume a dealer opts to remit the required notifications on June 30, 2022, and in September 2022 a non-SMMP customer who has never held municipal securities effects a transaction in municipal securities for the first time. The dealer would not be required to remit the notifications to that customer in calendar year 2022, but the dealer would be obligated to remit the notification to that customer, and all other applicable customers, on or before June 30, 2023. In no event may a dealer exceed 12 months without remitting the notifications to a non-SMMP customer who has effected a transaction in municipal securities or who holds municipal securities.

The proposed rule change makes technical amendments to streamline the required notifications by deleting the current provision (a)(ii) of Rule G-10 and placing the reference to the website address for the Municipal Securities Rulemaking Board within the proposed amended provision that re-numbers provision (a)(iii) of Rule G-10 to provision (a)(ii). The proposed amendments also re-numbers the remainder of Rule G-10, accordingly.

¹⁰ A dealer may, of course, elect to provide the required notification more frequently than a rolling 12-month basis.

2. Statutory Basis

Section 15B(b)(2)(C) of the Exchange Act³⁰ provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2)¹¹ and 15B(b)(2)(C)¹² of the Exchange Act. Rule G-10 would continue to be designed to prevent fraudulent and manipulative acts and the proposed rule change does not diminish such protections. The proposed rule change would help promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest by ensuring that customers who have effected a transaction in municipal securities or hold a municipal securities position, during the requisite period, receive information that would be useful to them in understanding the regulatory framework. The proposed rule change may also avoid confusion because dealers would not have to provide notifications to customers who have not effected any municipal securities transactions. More specifically, the proposed rule change is designed to ensure that applicable customers receive beneficial information, through the MSRB's investor brochure, on how to file a complaint about dealers with the appropriate regulatory authority and an overview of the investor protections provided by MSRB rules. The required notifications,

¹¹ 15 U.S.C. 78o-4(b)(2).

¹² 15 U.S.C. 78o-4(b)(2)(C).

which would be provided once each calendar year, are in support of curbing potential fraudulent and manipulative practices, by creating an awareness amongst customers of the SEC and MSRB.

Additionally, for all other customers, including SMMPs, while dealers will not have to provide the required notifications pursuant to Rule G-10(a), such dealers would have to make the required notifications available on their websites in accordance with the rule, and other applicable MSRB rules and federal securities laws, which is in furtherance of the public interest. The MSRB believes that the proposed amendments to Rule G-48 to effectuate the exemption for remitting notifications to SMMPs, so long as the SMMPs have access to such notifications on a dealer's website, will facilitate transactions in municipal securities and help perfect the mechanism of a free and open market in municipal securities by avoiding the imposition of regulatory burdens upon dealers where they appear to be unnecessary. The MSRB currently understands that SMMPs are generally knowledgeable about the registration status of a dealer and how to file a complaint if warranted and can access the information on a dealer's website as needed.

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

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³ The MSRB has considered the economic impact associated with the proposed rule change, including a comparison to reasonable alternative regulatory approaches, relative to the baseline.¹⁴ The MSRB does not believe that the proposed rule change would

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ See Policy on the Use of Economic Analysis in MSRB Rulemaking, 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

impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of amending Rule G-10 is to better refine the requirement for dealers to provide the required notifications to specified customers. Rule G-10 was originally designed to protect investors by providing them with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority. As discussed above, prior to the 2017 rule amendments, Rule G-10 only required dealers to send a paper copy of the brochure outlining protections under MSRB rules to investors who had already complained to a dealer. The 2017 amendments replaced the post-complaint delivery requirement with an annual written notification requirement to all customers of a dealer regardless of whether a customer ever effects a municipal securities transaction or owns municipal securities in the account.¹⁵ To reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the notifications, the MSRB proposes to amend Rule G-10(a) to narrow the obligation of dealers to provide the required notifications to only customers who traded municipal securities or held a municipal securities position at the dealer during each calendar year. For all other customers, dealers would be permitted to make such notifications available on their websites in accordance with the rule. Similarly, the MSRB is proposing related amendments to Rule G-48, so that all SMMPs would be exempt as long as dealers make such notifications available on their websites.

required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

¹⁵ See supra note 4.

The MSRB assessed other regulatory alternatives and determined that the proposed amendments to Rule G-10 and Rule G-48 are superior to these alternatives. One alternative would be to revert the rule back to the pre-2017 version that contained a post-complaint delivery requirement and adding the electronic delivery option. By rolling back the 2017 changes, a dealer would no longer have to provide the notifications to *all* customers, regardless of whether they transacted in municipal securities or own municipal securities. This alternative would alleviate the burden to dealers of sending out thousands of notifications to investors but would still not solve the problem of providing investors with more timely access to information about how to file a complaint and the protections provided under MSRB rules. Another alternative would be to amend Rule G-10 to eliminate the annual notifications delivery requirement. The MSRB already requires dealers to communicate certain information to investors under Rule G-15, on customer confirmations.¹⁶ By amending Rule G-10 to require dealers to also provide a hyperlink to MSRB.org and a statement that the dealer is registered with the SEC and the MSRB, dealers would be able to minimize their direct outreach to investors by utilizing an existing required form of communication (i.e., customer confirmations). However, with this alternative, only customers who have recently transacted in a municipal security would be notified of the information, but not customers who hold municipal securities in their accounts.

Benefits and Costs

The MSRB believes by amending the rule to limit the scope of the delivery obligation to customers who either held or transacted in municipal securities during a 12-month period,

¹⁶ Under Rule G-15(a)(i)(D)(4), the dealer is required to provide a hyperlink to EMMA[®] for publicly available information on a specific security.

compliance burdens to dealers would be lessened. The volume of notifications sent by dealers to customers, many of those who do not own or transact in municipal securities, and therefore receive no utility from such notifications, would be reduced. Additionally, other customers of dealers who do not own or transact in municipal securities would not be subjected to receipt of additional unnecessary communications, which could create noise and confusion for these customers. Furthermore, in striving to focus communications that are appropriate to the customer, the resulting effect may be that customers pay more attention to communications from dealers. Finally, dealers may incur savings from sending out less correspondence to customers due to the narrowed scope of the dealers' obligations; and due to the flexibility provided pursuant to the rule and related proposed amendments to Rule G-48 that exempt other customers and SMMPs.

To evaluate the potential costs to customers, the MSRB divided all dealer customers into four segments to separately compare the future expected state to the current baseline state of each group.

- Customers who currently hold municipal securities and plan to transact again in the future. These customers would not be impacted by the proposed amendments to Rule G-10 since they are expected to receive the required notifications the same way as they receive the notifications now;
- Customers who have never held municipal securities and do not plan to transact in them in the foreseeable future. These customers are currently receiving the notifications even though they do not hold any municipal securities nor effect any municipal securities transactions. The proposed amendments to Rule G-10 would not

impact these customers since the notifications are, likely, not relevant to these customers;

- New customers of a dealer. These customers are currently receiving the notifications by the end of each calendar year irrespective of their holding of municipal securities or effecting a transaction in municipal securities. The proposed amendments to Rule G-10 would impact these customers, as they would not receive a notification unless they effected a transaction in municipal securities or held municipal securities at the time the dealer remitted the notifications that calendar year. However, these customers would receive the notification the next calendar year and in no event more than 12 months from the time such customers effected a transaction in municipal securities or held municipal securities;
- Existing customers who have never transacted in municipal securities before but may do so in the future. These customers currently receive notifications even though they have not transacted or held a position in municipal securities. Under the proposed amendments to Rule G-10, these customers would not receive the notifications, required to be delivered once every calendar year, until such time as they have a municipal securities transaction or hold a position in municipal securities. The MSRB has been careful to balance the stated objective of utility of information to customers against the slight risk that could be born out of not providing such required notifications to all customers, once every calendar year. The MSRB notes that such customers would be able to avail themselves of the information provided in the notifications by reviewing a dealer's website. The MSRB also notes that the anecdotal evidence provided by a commenter shows less than one percent of all existing

customers who had previously not transacted or owned any municipal security would effect a transaction in municipal securities;¹⁷ and lastly,

- SMMPs who have traded municipal securities or hold a municipal securities position.

All SMMPs currently receive annual notifications, but under the proposed amendments to Rule G-48, these customers would not receive the notifications; instead, SMMPs would still be able to avail themselves of the information provided in the notifications by reviewing a dealer's website. Since SMMPs affirm to having a level of sophistication, knowledge and familiarity with the municipal securities market, these notifications add little benefit for SMMPs, if any. By exempting the requirement to send notifications to SMMPs, the proposed amendments would reduce the time and cost burdens for dealers with minimal reduction in benefits for SMMPs.

In addition to any costs to customers, dealers would likely incur some minor costs, relative to the baseline state, to meet the standards of conduct and duties contained in the proposed rule change. These changes may include a one-time upfront cost related to revising policies and procedures, as well as ongoing costs such as compliance costs associated with limiting the receipt to only the relevant municipal securities customers for targeted communication outreach. However, the MSRB believes these costs would be minimal, as firms would be able to leverage their existing customer database to swiftly identify the relevant pool of customers eligible for the required notifications under the proposed rule change.

¹⁷ Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association ("SIFMA Letter" or "SIFMA") dated June 28, 2021: "SIFMA members state that their estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities is anecdotally reported to be less than 1%."

As to the overall scale of cost reduction to dealers, as well as potential costs to some customers who may no longer receive the notifications unless they initiate a transaction in municipal securities, the MSRB is currently unable to quantify these economic effects precisely because not all the information necessary to provide a reasonable estimate is available. For example, the MSRB is interested in the percentage of dealers' customers who trade or hold municipal securities for a given calendar year, which would be helpful for the MSRB to assess the impact of the draft rule amendments. The MSRB sought the data during the Request for Comment process but was unable to obtain it. Therefore, the MSRB has considered these benefits and costs in qualitative terms.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change would reduce burdens to dealers of remitting the notifications to all customers by narrowing the scope of the application of the rule. The MSRB believes that the proposed rule change would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants.

The MSRB does not expect that the proposed rule change would change the competitive landscape of the municipal securities dealer community, as the proposed amendments to Rule G-10 and Rule G-48 would be applicable to all dealers; therefore, the expected benefits and minor costs would be proportionate to the size and business activities of each dealer.

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

As previously noted, on May 14, 2021, the MSRB published a Request for Comment, which sought comment on the matters included in the proposed rule change for a period of 45

days. The MSRB received four comment letters.¹⁸ These comments, along with the MSRB's responses, are discussed below.

Narrowing the Scope of Customers Receiving the Dealer Notifications

The MSRB sought comment on whether to narrow the scope of customers who receive the required notifications once every calendar year to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year or who hold a municipal securities position. All four commenters noted that the MSRB's draft amendments would ensure that the customers who would most benefit from receiving the required information would receive the notifications. Commenters also noted that no longer requiring dealers to provide such notifications unnecessarily to other customers would mitigate the compliance burden on dealers.

One commenter, BDA, recommended that the MSRB exempt dealers from providing issuers the required notifications, stating that "issuers are financial professionals who understand the municipal market well enough to know about the MSRB and do not require additional annual reminders." As a threshold matter, the MSRB does not agree with the premise that all issuers have the same level of market sophistication and should have a wholesale exclusion. Pursuant to Rule D-9, an issuer is a "customer" except in the case of a sale by the issuer of a new issue of its securities. Therefore, in these instances, dealers would not be required to provide the required

¹⁸ See Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association ("ASA Letter" or "ASA"), dated June 28, 2021; Letter from Michael Decker, Senior Vice President, Bond Dealers of America ("BDA Letter" or "BDA"), dated June 28, 2021; SIFMA Letter; and Letter from Jennifer Szaro ("Szaro Letter" or "Szaro"), dated May 17, 2021.

notifications to an issuer.¹⁹ If an issuer is otherwise a customer, a dealer would continue to be obligated to provide the notifications pursuant to Rule G-10(a) unless the issuer customer is an SMMP, which would be determined based on the nature of the issuer, a determination of sophistication by the dealer and an affirmation by the issuer.²⁰ As noted above, with respect to an SMMP, the proposed amendment to Rule G-48 would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to Rule G-10(a).

BDA also requested that the MSRB eliminate the annual requirement to provide notifications to customers who do not hold a municipal securities position at the dealer at calendar year-end. BDA stressed that modifying the proposed rule language in such a way would diminish the burden on dealers of looking through stock records to identify municipal securities customers for whom dealers no longer hold positions because they were either transferred, sold or matured entirely prior to the stock record review. The MSRB believes that the proposed rule change requiring the notifications to those customers who effected transactions in municipal securities or who hold a municipal securities position, coupled with the supplementary material on the sequencing of such notifications, strikes the right balance in providing investor protections

¹⁹ The MSRB did solicit feedback in the RFC on whether Rule G-10 should require dealers to provide notifications to issuer clients at the earliest stage of the underwriter's relationship with such issuer client when an issuer client has not otherwise engaged a municipal advisor. A summary of the comments received in response to this question is discussed in Section C. below.

²⁰ See Rule D-15 on the definition of the term "Sophisticated Municipal Market Professional." In order to deem a customer an SMMP, a dealer is required to determine the nature of the customer and the customer's sophistication level, and also requires the customer's affirmation, as specified in Rule D-15. In addition, this determination must be reasonable, including an analysis of the amount or type of securities owned or under management by the customer. See Rule D-15, Supplementary Material .01.

and reducing regulatory burdens. The MSRB does not believe the rule should be narrowed further as BDA suggests.

Additionally, BDA suggested that municipal advisors should not be obligated to provide municipal advisory clients with the required notifications promptly after the establishment of a municipal advisory relationship or entering into an agreement to undertake a solicitation and annually thereafter during the course of the agreement. BDA asserts that municipal advisors are already providing such notifications as part of the municipal advisor engagement letter. While this comment is outside the scope of the current proposal, MSRB notes the MSRB's municipal advisory client brochure summarizes key principles of the MSRB rules designed to protect municipal advisory clients as well as information on how on how to file a complaint against a municipal advisor with the appropriate federal regulatory authority – information that is not customarily provided as part of the municipal advisor engagement letter. The MSRB continues to believe that requiring municipal advisors to provide the Rule G-10 notifications to municipal advisory clients creates an awareness of the protections afforded by the regulatory framework governing municipal advisory activities.

Exclusion of SMMPs

The MSRB sought comment on whether to exclude SMMPs from receiving the required notifications, so long as dealers provide such notifications on their websites (“website-only notifications”). Both ASA and SIFMA specifically expressed support for the draft amendments, indicating that the placement of the notifications on dealers’ websites is also in keeping with the modern approach to seek and find electronic resources on dealers’ websites, and provides adequate notice to SMMPs. SIFMA remarked that SMMPs are, by definition, sophisticated investors that should not require “hand-holding” in order to find information on the investor

brochure on the dealer's website, or elsewhere, or to otherwise require guidance as to how to file a complaint with the appropriate regulatory authority. SIFMA also noted that placement of the customer notifications on dealers' websites provides adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position.

The MSRB has had the opportunity to evaluate the implementation of the requirement to provide notifications once every calendar year, which was adopted in 2017,²¹ has considered these comments as well as recent stakeholder comments,²² and has determined that allowing dealers to make the required notifications available on their websites is appropriate for SMMP customers.

Dealer Notifications to Issuer Clients Who are not Represented by Municipal Advisors

The MSRB sought comment on whether an issuer in transactions involving the sale by the issuer of a new issue of its securities who are not otherwise represented by a municipal advisor should receive the required notifications from dealers. BDA and SIFMA commented, arguing strongly against providing such notifications to such issuers, noting that dealer disclosures to issuers in transactions involving the sale by the issuer of a new issue of its securities are made in the Bond Purchase Agreement and engagement letters and that requiring the annual notifications will add to the complexity of dealer compliance without greater benefit to such issuer. SIFMA further opined that any such required notifications should be made in the context of underwriter disclosures, under Rule G-17. After review of the comments, the MSRB has determined not to place the additional requirement on dealers to provide the required notifications to such issuers who are not otherwise represented by municipal advisors.

²¹ See supra note 4.

²² See supra note 7.

529 Plan Customers

The MSRB sought comment on whether to provide an exception to the notifications requirement that excludes investors in 529 savings plans from receipt of ongoing notifications after their initial purchase of units in a 529 savings plan. SIFMA indicated support for the draft amendments to exclude ongoing notifications to investors of 529 savings plan. The Szaro letter noted that providing the required notifications to such customers entails dealer work and expenses that are not balanced proportionately to the benefit to a customer in receiving the information. SIFMA and Szaro both favored website-only notifications as a sensible and reasonable option for dealers who have websites. Given that 529 savings plans (and other municipal fund securities) are offered and serviced as a benefit to customers that typically hold other securities in their brokerage accounts, unintended operational challenges may be introduced by establishing a different requirement for the delivery of the required notifications for municipal fund securities. In reviewing the comments received, the MSRB does not believe there is compelling information to warrant a change from the current requirements under Rule G-10.

Website-Only Notifications for All Customers

The proposed amendments to Rule G-10 exclude the required notifications to customers that have not, and may never, engage in municipal securities transactions, so long as the dealer has the notifications available to such customers on its website. Szaro and ASA suggested removing the requirement for the notifications to be remitted to customers of the dealer who effected a transaction in municipal securities or who held a municipal securities position in favor of making such notifications available to all customers by having the notifications available only on the dealer's website. Szaro and ASA stated that customers today prefer to review information

about dealers from dealers' websites and that individualized annual notifications could be eliminated without threatening investor protections.

The MSRB believes that the proposed rule change strikes the correct balance by requiring the notifications only to those customers who would most benefit by their receipt (i.e., customers of the dealer who effected a transaction in municipal securities or who hold a municipal securities position) and permitting the notifications to be available to all customers on a dealer's website. Moreover, the MSRB believes that receipt of such push notifications is in furtherance of investor protection, and that such information would not be as easily ascertained by a customer having to undergo a search for the information on a dealer's website.²³

Clarify Timeframe for Delivery of Notifications

SIFMA and BDA stated that the MSRB should clarify the timeframe for delivery of the annual notifications by modifying the draft proposed rule language from "once every calendar year" to prescribe that delivery of such notifications should be made "at least annually" or "at least once a year." BDA noted that the change in the delivery timeframe would reduce dealer printing burdens as they may couple these notifications with other required disclosures.

The MSRB acknowledges that it has previously indicated in the form of FAQs²⁴ that the obligation to provide the required notifications "once every calendar year" has meant by the end of each calendar year. The MSRB does not propose to move away from the current rule text that states the required notifications must be made "once every calendar year," because this language

²³ SIFMA suggested extending website-only notifications delivery to municipal advisory clients. As previously mentioned, the MSRB limited the scope of the RFC to dealer obligations to their customers and is not modifying municipal advisor's obligations under the Rule G-10.

²⁴ See FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection (September 2017).

is consistent with the language governing the obligations of municipal advisors to provide the same required notifications to municipal advisory clients. The MSRB believes that proposed amendments will provide clarification and flexibility on the sequencing of the required notifications. Specifically, proposed Supplementary Material .01 allows a dealer to provide the notifications to the applicable customers at any given point in each calendar year, but also recognizes that there may be additional customer(s) that effect a purchase or sale of a municipal security or hold a municipal security after the notifications have been delivered that calendar year. Accordingly, Supplementary Material .01 allows such customers to receive the notifications within the following rolling 12-month period. The MSRB would revise existing compliance resources, including the FAQs, as necessary to be aligned with the proposed rule change.

Permitting Notifications by Clearing Firms Per Agreement

The MSRB sought comment on draft amendments that proposed to exclude a dealer that is a party to a carrying agreement, where the carrying dealer provides such required notifications, from the requirements under Rule G-10. Both SIFMA and BDA generally supported this provision but suggested clarifying language to reflect the agreement to undertake the obligation to provide the required notifications. The MSRB is clarifying the proposed rule language to reflect firms' agreement about which party will undertake the Rule G-10 notifications obligation.

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-2021-04 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-2021-04. 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2021-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.²⁵

Secretary

²⁵ 17 CFR 200.30-3(a)(12).

MSRB Notice

2021-08

Publication Date

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Stakeholders

Brokers, Dealers,
Municipal Securities
Dealers, Investors
General Public

Notice Type

Request for Comment

Comment

Deadline

June 28, 2021

Category

Fair Practice

Affected Rules

[Rule G-10](#)

[Rule G-48](#)

[Rule D-9](#)

[Rule D-15](#)

Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers

Overview

The Municipal Securities Rulemaking Board (“MSRB” or “Board”) seeks comment on a draft amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify and better align the requirements for brokers, dealers, and municipal securities dealers (collectively, “dealers”) to provide the annual notifications to those customers who would be best served by receipt of the annual notifications. The MSRB also seeks comments on an associated draft amendment to MSRB Rule G-48, on transactions with sophisticated municipal market professionals (SMMPs), to exclude transactions with SMMPs from the application of draft Rule G-10.

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 June 28, 2021 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, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB’s website.¹

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

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.



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Background

In 2017, the MSRB amended Rule G-10 with the goal to, among other things, modernize the rule and extend the rule's application to municipal advisors.² Prior to that time, the rule only applied to dealers and required dealers to provide a customer with a paper copy of the MSRB's investor brochure after a customer had made a complaint to the dealer.³ Recognizing this requirement did not afford customers the best use of the information in a timely manner, the 2017 amendments modified Rule G-10 and replaced the post-complaint delivery requirement.

Rule G-10 currently requires dealers and municipal advisors to provide certain notifications to customers and municipal advisory clients, respectively, at least annually by December 31st each year.⁴ More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information ("annual notifications"):

- (i) A statement that the regulated entity is registered with the SEC and the MSRB;
- (ii) The website address for the MSRB; and
- (iii) A statement as to the availability to the MSRB's customer or municipal advisory client of a brochure that is available on the MSRB's

² See Exchange Act Release No. 79801 (January 13, 2017), 82 FR 7898 (January 23, 2017), (File No. SR-MSRB-2016-15). The 2017 amendments created similar obligations for municipal advisors to provide their municipal advisory clients with certain notifications. The text of the amendments addressed the scope of Rule G-10 notification obligations for municipal advisors by specifically defining "municipal advisory client" to include "either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom to municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act."

³ See [Exchange Act Release No. 24764](#) (July 31, 1987), 52 FR 29459 (August 7, 1987), (File No. SR-MSRB-87-6).

⁴ Municipal advisors provide the requisite notifications promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement.

website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.⁵

The draft amendment being proposed is specific to dealer obligations' under Rule G-10 and the MSRB is not proposing to modify municipal advisors' obligations under the rule. Unlike municipal advisors who provide the annual notifications to clients that have engaged the municipal advisor to conduct municipal advisory services, dealers are currently obligated to provide the annual notifications to all customers, including customers who have not effected, and may never effect, a municipal securities transaction.⁶ In addition, during the rulemaking process to adopt the 2017 amendments, the MSRB made clear that the term "customers," consistent with MSRB Rule D-9, includes institutional customers as well as customers who invest in municipal fund securities.⁷

Since 2017, feedback from market participants has indicated that this rule would benefit from more clarity as to which customers should receive the annual notifications.⁸ Additionally, market participants are still raising the question of the utility of such annual notifications to institutional investors, contending that such notifications are unwarranted.⁹ Given there has been a reasonable implementation period to allow the MSRB time to gain experience with the rule and to obtain meaningful insight, the MSRB believes that this retrospective review presents an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule.

⁵ See MSRB's [Information for Municipal Securities Investors](#) and [Information for Municipal Advisory Clients](#).

⁶ Under MSRB Rule D-9, a "customer" means "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

⁷ See *supra* note 2. See also MSRB "[FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection](#)" (FAQs) (September 2017) at FAQs 6 and 7.

⁸ On December 7, 2020, the MSRB issued [MSRB Request for Input on Strategic Goals and Priorities](#) with a comment period deadline of January 11, 2021. See [Letter from Mike Nicholas, Chief Executive Officer, BDA, dated January 11, 2021](#); See also [Letter from Leslie Norwood, Managing Director and Associate General Counsel and Bernard Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association \(SIFMA\), dated January 11, 2021](#) response letters.

⁹ See *supra* note 8.

Summary of Draft Amendment

The MSRB would like to hear from stakeholders about whether the MSRB should amend Rule G-10(a) to narrow the type of customers to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year period or who hold a municipal securities position. Thus, the draft amendment would no longer require a dealer to make the annual notifications to customers that have not, and may never, engage in municipal securities transactions, so long as the dealer has the notifications available to such customers on its website. Additionally, the MSRB is proposing a related draft amendment to Rule G-48 so that SMMPs that would otherwise receive the annual notification as a result of a municipal securities transaction or having a municipal securities position, would be excepted, so long as the dealer has the notifications available on its website. In order to deem a customer to be an SMMP, MSRB Rule D-15 requires dealers to determine the nature of the customer, the customer's sophistication level, and also requires a customer affirmation, as specified in the rule.

Economic Analysis

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Board has historically carefully considered the costs and benefits of new and amended rules. Accordingly, the Board's policy states, prior to proceeding with a rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted will, in its judgement, meet that need.¹⁰ The MSRB seeks comment on the economic effects of amending MSRB Rule G-10.

The purpose of amending Rule G-10 would be to better define the requirement for dealers to provide the required annual notifications to specified customers. Rule G-10 was originally designed to protect investors by providing them with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority.

A. The Need for Amended Rule G-10

¹⁰ 15 U.S.C. 78o-4(b)(2)(C). See also an explanation of the MSRB's [Policy on the Use of Economic Analysis in MSRB Rulemaking](#)

As discussed above, prior to the rule amendments in 2017, Rule G-10 only required dealers to send a paper copy of the brochure outlining protections under MSRB rules to investors who had already complained to a dealer. The 2017 amendments replaced the post-complaint delivery requirement with an annual written notifications requirement to all customers of a dealer regardless of whether a customer ever effects a municipal bond transaction or owns municipal securities in the account. More specifically, the 2017 amendments permitted such written notifications to be made electronically in accordance with the electronic delivery and receipt guidance adopted by the SEC in 1996¹¹ and the MSRB in 1998.¹² To reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the annual notifications, the MSRB proposes to amend Rule G-10(a) to narrow the obligation of dealers to provide the required annual notifications to only customers who traded municipal securities or held a municipal securities position at the dealer during the calendar year. Thus, for all other customers, dealers would be permitted to make such notifications available on their websites in accordance with the rule.

Similarly, the MSRB is proposing a related draft amendment to Rule G-48, so that SMMPs that would otherwise receive the annual notifications, as a result of having traded municipal securities or because of having held a municipal securities position, would be excepted, as long as dealers make such notifications available on their websites.

B. Relevant Baselines Against Which the Likely Economic Impact of the Proposed Changes Can be Considered

To evaluate the potential impact of amended Rule G-10, a baseline or baselines must be established as a point of reference for comparison purposes. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.

For this Request for Comment, the current iteration of Rule G-10 is used as the baseline. Under the baseline, MSRB's dealers are sending the annual notifications to all customers regardless of whether a customer holds a

¹¹ See Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7-13-96).

¹² See Exchange Act Release No. 40848 (November 20, 1998); 64 FR 544 (January 5, 1999).

municipal securities position or has effected a municipal securities transaction.

C. Identifying and Evaluating Reasonable Alternative Regulatory Approaches

The MSRB policy on economic analysis in rulemaking addresses the need to consider alternative regulatory approaches, when applicable. Under this policy, only reasonable regulatory alternatives should be considered and evaluated.

One alternative would be to revert the rule back to the pre-2017 version that contained a post-complaint delivery requirement; however, adding the electronic delivery option. By rolling back the 2017 changes, a dealer would no longer have to provide the notifications to *all* customers, regardless of whether they transacted in municipal securities or own municipal securities. This alternative would alleviate the burden to dealers of sending out thousands of notifications to investors but would still not solve the problem of providing investors with more timely access to information about how to file a complaint and the protections provided under MSRB rules.

Another alternative would be to amend Rule G-10 to eliminate the annual notifications delivery requirement. The MSRB already requires dealers to communicate certain information to investors under Rule G-15 on customer confirmations. Under Rule G-15 (a)(i)(D)(4), the dealer is required to provide a hyperlink to the EMMA[®] for publicly available information on a specific security. By amending Rule G-10 to require dealers to also provide a hyperlink to MSRB.org and a statement that the dealer is registered with the SEC and the MSRB, dealers would be able to minimize their direct outreach to investors by utilizing an existing required form of communication (*i.e.*, customer confirmations). However, with this alternative, only customers who have recently transacted in a municipal security would be notified of the information, but not customers who hold municipal securities in their accounts.

D. Assessing the Benefits and Costs of the Proposed Changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change when the rule change proposal is fully implemented against the context of the economic baselines.¹³ The MSRB believes the proposed draft amendment would

¹³ See *supra* note 10.

benefit dealers by lessening their compliance burdens through the narrowing of the scope of the delivery obligation to those that would most directly benefit; and thereby, also reducing the volume of annual notifications sent by dealers to customers, many of those who do not own or transact in municipal securities.

As to the scale of cost reduction to dealers, as well as potential costs to some customers who may no longer receive the notifications unless they initiate a transaction in municipal securities, the MSRB is currently unable to quantify these economic effects precisely because not all the information necessary to provide a reasonable estimate is available. The MSRB has considered these costs and benefits primarily in qualitative terms.

Regardless, the MSRB is seeking, as part of this Request for Comment, additional data, or studies relevant to the costs and benefits of amending Rule G-10. For example, data such as the percentage of dealers' customers who trade or hold municipal securities for a given calendar year, would be helpful for the MSRB in assessing the impact of this rule amendment.

Benefits

The main benefit of amending Rule G-10 would be to reduce the burden and confusion that has been expressed by stakeholders about the utility of such annual notifications to all customers. By amending the rule to limit the scope to customers who either held or transacted in municipal securities during the prior one-year period, burdens to dealers would be reduced. Amending the Rule to expressly clarify and narrow the scope of dealers' obligations would remove the existing ambiguity cited by dealers as to the scope of the term customer under the Rule. Also, other customers of dealers who do not transact in municipal securities would not be subjected to receipt of additional unnecessary communications. In addition, in striving to focus communications that are appropriate to the customer, the resulting effect may be that customers pay more attention to communications from dealers. Finally, dealers may incur savings from sending out less correspondence to customers due to the narrowed scope of the dealers' obligations; and due to the flexibility provided pursuant to the rule and related draft amendment to Rule G-48 that except other customers and SMMPs.

Costs

To evaluate the potential costs to customers, the MSRB divided all dealer customers into four segments to separately compare the future expected state to the current baseline state of each group.

1. Customers who currently hold municipal securities and plan to transact again in the future. These customers would not be impacted by the proposed draft amendment to Rule G-10 since they are expected to receive the annual notifications the same way as they receive the notifications now;
2. Customers who have never held municipal securities and do not plan to transact in them in the foreseeable future. These customers are currently receiving the annual notifications even though they do not hold any municipal securities nor effect any municipal securities transactions. The draft amendment to Rule G-10 would not impact these customers since the notifications are, likely, not relevant to these customers.
3. New customers to a dealer. These customers are currently receiving the annual notifications by the end of the calendar year irrespective of their holding of municipal securities or effecting a transaction in municipal securities. The draft amendment to Rule G-10 would not impact these customers, with respect to the timing in which such annual notifications are received, based upon the customer subsequently holding municipal securities or effecting a transaction in municipal securities; and lastly,
4. Customers who have never transacted in municipal securities before but may do so in the future. These customers currently receive annual notifications even though they have not transacted or held a position in municipal securities. Under the draft amendment to Rule G-10, these customers would not receive the annual notifications, required to be delivered by calendar year end, until such time as they transact in or hold a position in municipal securities. The MSRB has been careful to balance the stated objective of utility of information to customers against the slight risk that could be born out of not providing such annual notifications to all customers. The MSRB notes that notwithstanding, such customers would be able to avail themselves of the information provided in the notifications by reviewing a dealer's website. The MSRB notes that it does not have any data on the percentage of customers who belong this category.

In addition to costs to customers, dealers would likely incur some minor costs, relative to the baseline state, to meet the standards of conduct and duties contained in amended Rule G-10. These changes may include a one-time upfront cost related to revising policies and procedures, as well as ongoing costs such as compliance costs associated with identifying only relevant municipal securities investors for targeted outreach. Dealers may incur compliance costs as related to maintaining an active list of municipal securities investors, including costs pertaining to creating and maintaining books and records. However, the MSRB believes these costs would be minimal, as firms would be able to leverage their existing customer database to swiftly identify the relevant pool of customers eligible for the annual notifications under the proposed draft amendment to Rule G-10.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the draft amendment to Rule G-10 would neither impose a burden on competition nor hinder capital formation, as the proposed rule changes would reduce burden to dealers by narrowing the scope of the application of the rule. The MSRB believes that the amended rule would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses but believes the overall benefits would outweigh the costs to market participants.

The MSRB does not expect that amended Rule G-10 would change the competitive landscape of the municipal securities dealer community, as the draft amendment to Rule G-10 would be applicable to all dealers; therefore, the expected benefits and minor costs would be proportionate to the size and business activities of each dealer.

Request for Comments:

The MSRB seeks public comment on the following questions, as well as on any other topic relevant to this request for comment. The MSRB encourages statistical, empirical, and other data from commenters that may support their views and/or may otherwise support or refute the views, assumptions, or issues raised in this request for comment.

1. Is it appropriate to tailor a dealer's obligations to provide the annual notifications only to those customers for which a purchase or sale of a

municipal security was affected that calendar year and to those customers for which a municipal securities position is held during that calendar year? What are the potential benefits balanced against any foreseeable operational challenges?

2. Is it appropriate to provide an exception to the annual notifications requirement to exclude SMMPs, as defined in Rule D-15, from receipt of such notifications?
3. Should the MSRB provide an exception to the annual notifications requirement to exclude investors in 529 savings plans from receipt of such ongoing annual notifications after their initial purchase of units in a 529 savings plan?
4. Are there any other types of activities undertaken by dealers that warrant consideration as a carve-out from the annual notifications requirement (*e.g.* “check and app” business; settlement on a DVP/RVP basis)?
5. Does permitting dealers to place the notifications on their websites, in lieu of providing such notifications to customers that have not engaged in a municipal securities transaction that calendar year or that maintain a municipal securities position, reduce the burden on dealers while still providing adequate notice to such customers? Similarly, does placement of the notifications on dealers’ websites provide adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position?
6. Rule D-9 excludes an issuer in transactions involving the sale by the issuer of a new issue of its securities from the definition of customer. Should Rule G-10 require dealers to provide notifications to clients at the earliest stage of the underwriter’s relationship with such issuer client when an issuer client has not otherwise engaged a municipal advisor?
7. On an annual basis, what is the estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities?
8. Each year, what percentage of complaints are made by a customer who did not own municipal securities or did not affect a trade in the prior year at the time of a complaint inquiry?
9. On an annual basis, what would be the estimated cost savings from amending Rule G-10 to no longer send communications to customers

who have not effected a municipal securities transaction in that calendar year or that do not hold a municipal securities position?

May 14, 2021

* * * * *

Text of the Proposed Draft Amendments*

Rule G-10: Investor and Municipal Advisory Client Education and Protection

- (a) Each broker, dealer and municipal securities dealer (collectively, a “dealer”) shall, once every calendar year, provide in writing (which may be electronic) to each customer for which a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position during that calendar year, the following items of information:
- (i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board; and
 - ~~(ii) the website address for the Municipal Securities Rulemaking Board; and~~
 - ~~(iii)~~ (ii) a statement as to the availability to the customer of an investor brochure that is posted on the website of the Municipal Securities Rulemaking Board at www.msrb.org that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.
- (b) Notwithstanding the requirement in paragraph (a) of this Rule, any dealer that does not have customers or is a party to a carrying agreement where the carrying firm member complies with paragraph (a) of this Rule is exempt from the requirements of this Rule.
- (c) With respect to all other customers, each dealer shall make available on its website the information described in paragraph (a)(i) and (ii).
- ~~(d)~~ No change.

* Underlining indicates new language; strikethrough denotes deletions.

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

(a) – (e) No change.

(f) *Required Annual Notifications.* The broker, dealer, or municipal securities dealer shall not have an obligation under Rule G-10(a) to provide the annual written (which includes electronic) items of information, so long as such information required under paragraph (a)(i) and (ii) of Rule G-10 is made available on the broker's, dealer's, or municipal securities dealer's website.

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2021-08 (JUNE 28, 2021)

1. American Securities Association: Letter from Christopher A. Iacovella, Chief Executive Officer, dated June 28, 2021
2. Bond Dealers of America: Letter from Michael Decker, Senior Vice President, dated June 28, 2021
3. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 28, 2021
4. Szaro, Jennifer: Email dated May 17, 2021

**american securities association***America's Voice for Main Street's Investors*

June 28, 2021

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

Re: Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers

Dear Mr. Smith:

The American Securities Association (ASA)¹ appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposed amendment to MSRB Rule G-10 and associated draft amendment to Rule G-48 that deal with notifications dealers are required to provide customers regarding the application of MSRB and Securities and Exchange Commission (SEC) rules to municipal security transactions. (Proposal)

The ASA largely supports the Proposal and is pleased the MSRB has conducted a review of the 2017 amendments to Rule G-10. Rule G-10 currently requires dealers to provide customers in writing: (1) A statement that the dealer is registered with the SEC and MSRB; (2) the website address for the MSRB; and (3) notifying the customer of the availability of an MSRB brochure that outlines the protections provided by MSRB rules and how a customer can file a complaint with a regulatory authority.

The 2017 amendments mandated dealers provide these annual notifications to *all* customers, regardless of whether a customer transacted in municipal securities or had any intention at all to transact in municipal securities. This effectively required dealers to provide disclosures to many customers that were irrelevant given their trading history.

The ASA believes a much more thoughtful and targeted approach is appropriate, and we are pleased the Proposal properly balances the need to provide certain customers with municipal-related disclosures with the costs that are imposed on dealers for complying with these requirements. The Proposal would require dealers to provide disclosures only to customers that have transacted in municipal securities within the last year or who currently hold a municipal securities position. This will ensure that actual municipal customers receive the necessary

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.



American Securities Association
1455 Pennsylvania Ave. NW, Suite 400
Washington, D.C. 20004



AmericanSecurities.org
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202.621.1784

**american securities association***America's Voice for Main Street's Investors*

disclosure, save other customers from receiving irrelevant information, and mitigate the compliance burdens upon dealers.

ASA also supports the proposed changes to Rule G-48 that would provide an exception to Rule G-10 for disclosures provided to sophisticated municipal market professionals (SMMPs), so long as a dealer maintains these notifications on its website. However, we believe the MSRB should eventually adopt this approach for all municipal customers under Rule G-10 given the way that investors today seek out and process information and disclosures related to their financial professional. While many investors will seek out such information from a dealer's website, this could be implemented with an "opt-out" provision for those customers that wish to receive paper or electronic copies of disclosures.

The ASA commends this effort by the MSRB to modernize its rules in order to keep up with technology and reduce compliance burdens for dealers while maintaining sufficient disclosures for investors. We look forward to working with the MSRB on this initiative as it moves forward.

Sincerely,

A handwritten signature in black ink that reads "Christopher A. Iacovella". The signature is written in a cursive, flowing style.

Christopher A. Iacovella
Chief Executive Officer
American Securities Association



American Securities Association
1455 Pennsylvania Ave. NW, Suite 400
Washington, D.C. 20004



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1909 K Street NW, Ste 510
Washington, DC 20006
202.204.7900
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June 28, 2021

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I St NW Ste 1000
Washington DC 20005

Transmitted electronically

In regard to MSRB Notice 2021-08

Dear Mr. Smith,

The Bond Dealers of America (BDA) is pleased provide comments on MSRB Notice 2021-08, "Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers" (The "Notice"). BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks active in the US fixed income markets. Our members serve as both underwriters and Municipal Advisers ("MAs") on municipal securities transactions.

BDA generally welcomes and supports the changes proposed in the Notice. We raised issues about the application of MSRB Rule G-10 (the "Rule") in our January letter to the Board on MSRB Notice 2020-19, "MSRB Requests Input on Strategic Goals and Priorities." In our letter we stated that the Rule "results in superfluous disclosures to customers who do not own or trade municipal securities." We also asked the Board to amend the Rule to "specify that it applies to customers who own municipal securities or who have traded municipal securities since the dealer's last annual disclosure." In the Notice the MSRB proposes to eliminate the G-10 disclosure requirement for retail customers who have not owned or traded municipal securities within the most recent 12-month period and would exempt Sophisticated Municipal Market Professionals ("SMMPs") from the Rule altogether if the dealer makes the relevant information available on its Web site.

BDA fully supports the Board's proposal. The Rule as currently written requires disclosures specific to the MSRB and the municipal market to customers who have never and may never own or trade a municipal security. It has resulted in unnecessary and costly disclosures to customers who do not need the information. The Board's proposed changes would make the dealer disclosure process more efficient without threatening any investor protections. We urge the Board to move forward.

As the MSRB continues its review of Rule G-10, we recommend additional amendments to the Rule which would also lower the cost of transmitting disclosures for broker-dealers while ensuring that retail customers have the information they need. We urge consideration of the following three specific changes:

Exempt issuers from annual customer disclosures. The Rule specifies that dealers must provide the relevant disclosures "to each customer." MSRB Rule D-9 defines customer as "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions

involving the sale by the issuer of a new issue of its securities.” We do not believe the broad definition of customer, which includes issuers, makes sense in the context of G-10. The types of disclosures that must be made under the Rule—information about the firm’s registration status and a reference to a MSRB investor protection brochure—generally do not apply to issuers. Like SMMPs, issuers are financial professionals who understand the municipal market well enough to know about the MSRB as a resource and do not require additional annual reminders. Eliminating the requirement for dealers to make G-10 disclosures to issuers would further enhance the efficiency of the Rule without threatening any regulatory protections.

The same reasoning applies to issuers that are MA clients. The Rule specifies that MAs must make G-10 disclosures to clients with whom they have a MA relationship “no less than once each calendar year...during the course of that municipal advisory relationship.” For many dealer MAs, making these disclosures is a cumbersome, manual process, and MAs already provide information required to be disclosed under Rule G-10 in MA engagement letters directed at issuer clients. Issuers, as municipal financial professionals, do not need annual reminders of the role of the MSRB. We ask that the Board eliminate the requirement for MAs to make annual disclosures to their advisory clients.

Permit clearing firms to make G-10 customer disclosures on behalf of the dealer with the customer relationship. Many broker-dealers employ the services of clearing firms as opposed to clearing all trades themselves. Clearing firms are broker-dealers with a specialty business of serving as other dealers’ “back office” by clearing and settling trades for other dealers, serving as custodian for customer securities and cash, and providing other services such as generating and transmitting customer account statements. In some cases it may be more efficient for the clearing firm to transmit the appropriate G-10 disclosures to customers rather than the firm with the customer relationship, or the “introducing dealer.” Rule G-10 should explicitly permit this.

FINRA Rule 2666, “Investor Education and Protection,” is a customer disclosure rule analogous in some ways to Rule G-10, although it focuses on disclosures related to the Securities Investors Protection Corporation, not the MSRB. Rule 2666 states explicitly “In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.” We ask that the MSRB provide similar flexibility under Rule G-10.

Eliminate the disclosure requirement for customers who do not own municipal securities. The proposal in the Notice would require dealers to send G-10 disclosures once every calendar year to each customer (a) for which a purchase or sale of a municipal security was effected during that calendar year, or (b) who holds a municipal securities position during that calendar year. The second requirement mandates sending G-10 disclosures to any customer that held a municipal securities position at any time during the calendar year, even if such customer does not hold a municipal securities position at the time that the annual mailing list is generated or the disclosure is sent. There is no justification for sending municipal-specific disclosures to customers who do not own and have not traded municipal securities. We urge the MSRB to revise the Rule so that G-10 disclosures would be made to customers who have traded municipal securities in the last year or who own municipal securities at the time the disclosure transmission is prepared.

We applaud the MSRB for the changes proposed in the Notice. The proposed amendments to Rule G-10 would lower costs for dealers without sacrificing investor protection or transparency. In keeping with the same theme, we urge the Board to consider additional changes to the Rule to exempt issuers from these disclosures, permit clearing firms to transmit the relevant disclosures on behalf of their introducing firms' customers, and require disclosures for customers who own municipal securities or have traded them since the last annual disclosure. Please call or write if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Decker". The signature is fluid and cursive, with the first name "Michael" and last name "Decker" clearly distinguishable.

Michael Decker
Senior Vice President



June 28, 2021

VIA ELECTRONIC SUBMISSION

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

Re: MSRB Notice 2021-08 – Amendments to Rule G-10 Notification Requirement for Dealers

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Notice 2021-08 (the “Notice”),² which proposes an amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify the requirements for brokers, dealers, and municipal securities dealers (“dealers”) to provide the annual notifications to those customers who would be best served by receipt of the annual notifications. SIFMA appreciates the MSRB reviewing Rule G-10 and proposing these amendments which SIFMA generally supports as a way to reduce the compliance burden on the dealer community without reducing investor protections. SIFMA members do have some suggested clarifications and further changes, as set forth below.

I. Scope of Customers To Be Notified

SIFMA members feel the most critical issue is to modify the scope of customers that are required to receive the annual notifications pursuant to Rule G-10. SIFMA proposes that the added language “to each customer for which a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position during that calendar

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 2021-08 (May 14, 2021).

year” be narrowed to “to each customer that held municipal securities in an account with the broker as of a date within a reasonable period of time prior to the date the notices are made.” Dealers can readily reference their stock records at any point in time to identify those customers for whom municipal securities are being held, but it is much more burdensome to “look back” at the prior 12 months—or, as currently required, current calendar year—of transactional records and daily stock record positions, to identify customers who either transacted through, or otherwise held with, a dealer municipal security positions during that time period but for whom their positions are no longer held with that same dealer. To the extent such positions were transferred to another dealer in that same calendar year, the application of the rule would require the dealer currently holding the position to provide the notice. Admittedly, by reducing the scope of the required notifications to being based on positions held at the time of the notification, the mailing would not include any customers whose entire holdings were called or matured prior to the stock record review date. These conditions, however, would seem to impact only a small number of customers and, as discussed below, many of those customers may still be able to locate the notifications on the websites of those prior custodial or executing dealers that choose to provide the notifications on the internet, further reducing the total number of customers potentially impacted.

II. Relevant Time Period

SIFMA members suggest that the language “once every calendar year” be restated as “at least annually” or alternatively “at least once each year.” The current language leads some firms to believe the customer notification needs to occur at the end of the calendar year in December. These firms have stated that since the G-10 disclosure is required to be sent to any customer for whom a municipal security was held by the dealer during the calendar year, if the “annual disclosure” is sent out in September but certain customers did not have positions carried by the dealer until November, the rule could be interpreted to read that those customers would not have received the annual disclosure in that calendar year.³ Therefore, SIFMA members would appreciate clarification that they may send the customer notices at any time during the year. Some SIFMA members send other annual notices to customers at different times during the calendar year due to other regulatory requirements, including those set by FINRA and the SEC. Sending all possible notices to customers at once reduces the burdens on the dealer and the environmental impact of printing and mailing such customer notifications. In addition, the requested clarification, coupled with the change we propose above with respect to the scope of customers to be notified, would allow dealers to more readily identify the customers to whom the annual notice would need to be sent.

³ See MSRB Notice 2020-17 (Nov. 20, 2020) fn 6: “In instances where a dealer provides notice to customers at a point in time earlier than the end of the calendar year, e.g., during March, the dealer needs to ensure that any new customers receive the required notifications by the end of the calendar year. See “FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection,” (“FAQs”) Question #3 (September 2017).”

III. Issuer Notifications

SIFMA members feel strongly that Rule G-10 should not require dealers to provide notification to clients at the earliest stage of the underwriter's relationship with the issuer client when an issuer client has not otherwise engaged a municipal advisor. Any such disclosures due by the dealers to the issuer client are detailed in the bond purchase agreement or in Rule G-17. Adding additional disclosures in Rule G-10 will add to the complexity of dealer compliance without added benefit. If the MSRB feels that additional disclosures should be made to municipal securities issuers, those regulatory requirements should be added to the disclosures due to issuers under Rule G-17.

IV. Notification by Municipal Advisors

SIFMA members believe that current Rule G-10(b), amended Rule G-10(d), should not require annual disclosure by municipal advisors to their municipal advisory clients. Such disclosure is already required to be made promptly after the establishment of a municipal advisory relationship and is included in municipal advisor agreements. This is both a manual and unnecessary process to determine which relationships are subject to the annual disclosure whereas website disclosure of the related information should be sufficient. There is no other municipal advisor disclosure that is required to be made on an annual basis and if any changes in disclosure by municipal advisors are thought necessary, then those changes should be made in Rule G-42. Rule G-42 details the disclosures required by non-solicitor advisors. Again, in this instance SIFMA members feel the information required to be disclosed by Rule G-10 can adequately be communicated by municipal advisors to their municipal advisory clients through website disclosure.

V. SMMPs

SIFMA appreciates the MSRB's amendments to proposed Rule G-48(f). Requiring dealers to send customer notifications pursuant to Rule G-10 to sophisticated municipal market participants ("SMMPs") is costly for dealers, without any related benefits. SMMPs are by definition sophisticated investors that should not require "hand-holding" in order to find the investor brochure on the dealer's website, or elsewhere, or to otherwise require guidance as to how to file a complaint with the appropriate regulatory authority. It has been the experience of dealers that SMMPs do not need or want such basic customer disclosures, and many object to the unnecessary mailings as merely a waste of resources, especially as many SMMPs deal with multiple dealers and are therefore receiving similar and duplicative notifications from each dealer with which they deal. Placement of the customer notifications on dealers' websites provides adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position.

VI. 529 Plan Investors

SIFMA also feels that the MSRB should provide an exception to the annual customer notifications requirement to exclude investors in 529 savings plans from receipt of such ongoing annual notifications after their initial purchase of units in a 529 savings plan. Such notifications are redundant and unnecessary. Website disclosure of such information should be sufficient for investor protection without imposing unnecessary burdens on the dealers.

VII. Certain Other Exclusions

SIFMA members appreciate the inclusion of new Rule G-10(b). However, we propose to clarify this exception as follows, “Notwithstanding the requirement in paragraph (a) of this Rule, any dealer that does not have customers or ~~is a party to a carrying agreement where the carrying firm member complies~~ that has agreed with a clearing firm servicing its customer accounts that the clearing firm will comply with paragraph (a) of this Rule is exempt from the requirements of this Rule.” We feel this new language clarifies that the exclusion should only apply if a clearing firm has agreed to comply with Rule G-10(a).

VIII. Cost Savings and Impact

Although the potential cost savings from the proposed amendments are difficult to quantify, it is likely dependent upon the size of the dealer. Members agree that the savings is likely more significant for larger firms, although the change would reduce the compliance costs for all dealers. Any physical notifications that can be avoided, without impacting customer protection, reduces costs as well as the environmental impact of printing and mailing each customer notification. The COVID-19 pandemic also added an additional risk for dealer staff that need to produce and mail these physical customer notifications. Likewise, the recent societal changes mean that many customers may not be receiving mail at their offices and may be less willing to touch any mail they do receive.

SIFMA members state that their estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities is anecdotally reported to be less than 1%. Similarly, each year the percentage of complaints that are made by a customer that did not own municipal securities or did not effect a trade in the prior year at the time of a complaint was anecdotally reported to be zero.

* * *

Thank you for considering SIFMA's comments. Overall, SIFMA appreciates the MSRB's proposed amendments, and the opportunity to set forth our additional suggestions and clarifications above. 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 over a faint, light-colored signature line.

Leslie M. Norwood
Managing Director
and Associate General Counsel

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

Bri Joiner, Director, Regulatory Compliance

Lisa Wilhelmy, Assistant Director, Market Regulation

Comment on Notice 2021-08

from Jennifer Szaro,

on Monday, May 17, 2021

Comment:

I am thankful for this opportunity to comment on the proposed changes to Rule G-10. For perspective, we are a retail, small firm broker-dealer with an annual average of less than 100 municipal bond transactions and offer 529 plans. When we needed to provide this annual notification it was a significant expenditure and caused a complete change in our annual and disclosure deliveries. Annually we provide our privacy statement to all clients. However to incorporate the G-10 paragraph changed the entire mailing structure. We needed to revise our system and changed how we delivered disclosures. Our contact management system is not set up to identify muni only clients - most clients utilize multiple lines of business. For the amount of work and expense that it took to provide clients with a few sentences, there was a disproportional benefit to clients. We also post this message on our website along with other disclosures, which are all important. I wholehearted am in favor of revising this rule in particular to include "(f) Required Annual Notifications -regarding posting on the BD website. Investors are used to going to a company's website for details and accessing their materials. The greater the consistency with how we, as an industry, provide investors with reference materials and disclosures perhaps the more effective the delivery. My impression is that investors want to review materials at their pace, on their time, when it suits them. For broker-dealers who have a website, this is a very reasonable and sensible option.

Rule G-10: Investor and Municipal Advisory Client Education and Protection

(a) Each broker, dealer and municipal securities dealer (collectively, a “dealer”) shall, once every calendar year, provide in writing (which may be electronic) to each customer for whom a purchase or sale of a municipal security was effected or who holds a municipal securities position, the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board; and

[(ii) the website address for the Municipal Securities Rulemaking Board; and]

[(iii)] (ii) a statement as to the availability to the customer of an investor brochure that is posted on the website of the Municipal Securities Rulemaking Board at www.msrb.org that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.

(b) With respect to customers not described in section (a) of this rule, each dealer shall make available on its website the information described in sections (a)(i) and (ii).

(c) Notwithstanding the requirement in section (a) of this rule, any dealer that does not have customers, or who is a party to a carrying agreement in which the carrying dealer has agreed to comply with section (a) of this rule, is exempt from the requirements of this rule.

[(b)d] No change.

[(c)e] No change.

Supplementary Material**.01 Sequencing of Dealer Notifications.**

A dealer shall be deemed to have satisfied the obligation under section (a) if a dealer provides the notifications to the applicable customers at a given point in the calendar year and any additional customer(s) that calendar year who subsequently effect a purchase or sale of a municipal security or hold a municipal securities position receive the notifications within the following rolling 12-month period. In accordance with this section, a dealer may provide the notifications within a shorter time period from the preceding notifications, but in no event may a dealer exceed 12 months without remitting the notifications to a customer.

* * * *

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

(a) – (e) No change.

(f) Required Annual Notifications. The broker, dealer, or municipal securities dealer shall not have an obligation under Rule G-10(a) to provide SMMPs the required written (which includes

electronic) items of information, so long as such information required under sections (a)(i) and (ii) of Rule G-10 is made available on the broker's, dealer's or municipal securities dealer's websites.