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**Comment Deadline**

May 16, 2014

**Category**

Professional  
Qualification

**Affected Rules**

[Rule G-1](#); [Rule G-2](#);  
[Rule G-3](#); [Rule D-13](#)

## Request for Comment on Establishing Professional Qualification Requirements for Municipal Advisors

### Overview

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to its professional qualification rules to establish requirements for municipal advisors and their associated persons. The draft amendments would set professional qualification standards for municipal advisor professionals and require municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance with MSRB rules.

Currently, MSRB Rule G-3 establishes the classifications and qualification requirements for associated persons of dealers. The draft amendments would add new registration classifications for municipal advisors under Rule G-3: (a) municipal advisor representatives – for those who engage in municipal advisory activities; and (b) municipal advisor principals – for those who engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. The draft amendments would require each prospective municipal advisor representative to take and pass the municipal advisor representative qualification examination prior to being qualified as a municipal advisor representative. The MSRB will consider at a later date a qualification examination for municipal advisor principals. If such an examination is proposed, it is expected that each municipal advisor principal would, as a prerequisite, be required to take and pass the municipal advisor representative qualification examination before taking the municipal advisor principal qualification examination.

To provide for an orderly implementation of the proposed changes to MSRB Rule G-3, the MSRB proposes a one-year grace period for individuals currently engaged in municipal advisory activities to take and pass the municipal advisor representative qualification exam. The proposed qualification standards do not include any apprenticeship requirements.

Moreover, the MSRB proposes to eliminate the apprenticeship requirement for municipal securities representatives.

Finally, MSRB Rules G-1 and G-3 would be amended to remove the reference to “financial advisory or consultative services for issuers in connection with the issuance of municipal securities,” as these activities generally, consistent with the Securities and Exchange Act of 1934 (Act) and rules and regulations thereunder, may not be performed by a broker, dealer or municipal securities dealer (dealer) without registering as a municipal advisor.

Comments on the MSRB’s proposed implementation of professional qualification requirements for municipal advisors should be submitted no later than May 16, 2014, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking [here](#). Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB’s website.<sup>1</sup>

Questions about this notice should be directed to Lawrence P. Sandor, Deputy General Counsel, or Michael Cowart, Assistant General Counsel, Professional Qualifications, at 703-797-6600.

## Background

The MSRB is charged with setting professional standards and continuing education requirements for municipal advisors.<sup>2</sup> Specifically, the Act requires associated persons of dealers and municipal advisors to pass examinations as the MSRB may establish to demonstrate that such individuals meet the standards of competence as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.<sup>3</sup> The examinations are intended to determine whether an individual meets the MSRB’s basic qualification standards for a particular registration category. The examinations measure a candidate’s knowledge of the business activities, as well as the regulatory requirements, including

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<sup>1</sup> Comments are posted on the MSRB 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.

<sup>2</sup> The MSRB expects to propose continuing education requirements for municipal advisors at a later date.

<sup>3</sup> Section 15B(b)(2)(A) of the Act.

MSRB rules, rule interpretations and federal laws applicable to a particular registration category.

The MSRB is establishing a new professional qualification examination for municipal advisor representatives, which it expects to make available in 2015 for individuals engaged in municipal advisory activities. Under the draft amendments to Rule G-3, each individual engaged in municipal advisory activities would be required to take and pass the examination to demonstrate a minimum level of competency as a municipal advisor professional.

## Summary of the Draft Amendments

### **Application of MSRB Qualification Requirements to Municipal Advisors**

MSRB Rule G-2 establishes the standards of professional qualification for municipal securities dealers and currently provides that no dealer shall engage in municipal securities activities unless such dealer and every natural person associated with such dealer is qualified in accordance with MSRB rules. The MSRB proposes to amend Rule G-2 to add that no municipal advisor shall engage in municipal advisory activities unless such municipal advisor and every natural person associated with such municipal advisor is qualified in accordance with MSRB rules.

### **New Registration Classifications**

The draft amendments to Rule G-3 would create two new registration classifications: (a) municipal advisor representative and (b) municipal advisor principal. The classification of associated persons as representatives and principals is consistent with other regulatory schemes, including those for broker-dealers.<sup>4</sup>

The additional classifications would distinguish between municipal advisor representatives who would be qualified to engage in municipal advisory activities and municipal advisor principals who would be further qualified to supervise the municipal advisory activities of the municipal advisor and its associated persons. The draft amendments to Rule G-3 would define a municipal advisor representative as a natural person who is an associated person of a municipal advisor, other than a person whose functions are solely

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<sup>4</sup> Examples of these other schemes include the following classifications: Series 7 (General Securities Representative) and Series 24 (General Securities Principal); Series 42 (Registered Options Representative) and Series 4 (Registered Options Principal); Series 22 (Direct Participation Programs Limited Representative) and Series 39 (Direct Participation Programs Limited Principal).

clerical or ministerial, who engages in municipal advisory activities as defined in Rule D-13.<sup>5</sup>

The draft amendments would define a municipal advisor principal as a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities, as defined in MSRB Rule D-13, of the municipal advisor. In addition, draft Rule G-3 would require each municipal advisor to designate at least one municipal advisor principal to be responsible for the municipal advisory activities of the municipal advisor.<sup>6</sup>

Furthermore, the draft rule would require each municipal advisor representative to take and pass the municipal advisor representative qualification examination prior to being qualified as a municipal advisor representative.<sup>7</sup>

#### **Grace Period**

To provide for an orderly transition to the new qualifications regime by individuals engaged in municipal advisory activities, the MSRB would give municipal advisor representatives a one-year time period from the effective date to pass the examination.<sup>8</sup> This one-year grace period is intended to provide municipal advisor representatives with sufficient time to study and take (and, if necessary retake) the examination without causing undue disruption to business of the municipal advisor. As is the case for all MSRB

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<sup>5</sup> Rule D-13 defines municipal advisory activities as the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act, which includes advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues, or solicitation of a municipal entity. Rule D-13 would be amended to reflect the SEC's interpretation of the statutory definition of municipal advisor. Hence, "municipal advisory activities" would mean the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder.

<sup>6</sup> Proposed MSRB Rule G-44 sets forth the obligation of municipal advisors to supervise the municipal advisory activities of the municipal advisor and its associated persons to ensure compliance with applicable MSRB and SEC rules.

<sup>7</sup> The definition of municipal advisor representative would be substantially identical to the definition in SEC Form MA-I pertaining to the individuals who must be listed on the form - meaning natural persons associated with the municipal advisor engaged in municipal advisory activities on behalf of the firm.

<sup>8</sup> The MSRB will announce the effective date of the municipal advisor representative qualification examination at a later date.

qualification examinations, individuals who do not pass the examination would be permitted to retake the examination after 30 days. However, any person who fails the examination three or more times in succession would be prohibited from taking the examination for six months.

### **Uniform Requirement – Grandfathering**

The MSRB proposes, as part of the amendments, to require that all persons considered municipal advisor representatives as defined by MSRB Rule G-3 pass the qualification examination, regardless of whether such persons have passed other MSRB or MSRB-recognized examinations (such as the Series 52 or 7 examinations), or previously have been engaged in municipal advisory business. The MSRB believes that the significant changes that accompany the new regulatory regime for municipal advisors dictate that each individual planning to conduct business as a municipal advisor representative demonstrate a minimum level of knowledge of business and regulatory requirements by passing a general qualification examination. The practice of “grandfathering,” or allowing persons to qualify by virtue of having passed another qualification examination or by industry experience, may not effectively ensure a minimum level of competency by those individuals acting as municipal advisor representatives.

Corresponding changes to MSRB Rule G-3(a)(i)(A)(2) have been proposed to remove from the permissible activities of a municipal securities representative “financial advisory or consultative services for issuers in connection with the issuance of municipal securities,” as these activities generally require registration as a municipal advisor.

### **Apprenticeship**

MSRB Rule G-3 currently requires a municipal securities representative to serve an apprenticeship period of 90 days before transacting business with any member of the public or receiving compensation for such activities. The intent of the provision, which was added in 1976, was to ensure that persons with no prior experience in the securities industry would learn from an experienced professional before conducting business with the public. Since that time, other regulators have eliminated the apprenticeship requirement, and instead rely on each firm to identify the necessary training and supervision standards for new employees rather than imposing a rigid apprenticeship requirement with no defined training requirements.<sup>9</sup> In light

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<sup>9</sup> In 2008, FINRA eliminated the apprenticeship requirements established under prior NYSE Rule 345 for certain categories of representatives. See FINRA Regulatory Notice 08-64 (October 2008).

of these developments, the MSRB proposes to eliminate the apprenticeship requirement for municipal securities representatives and proposes no such requirement for municipal advisor representatives.

## Request for Comment

The MSRB is requesting comment from the industry and other interested parties on the draft amendments to Rules G-1, G-2, G-3 and D-13 set forth below. In addition to the substance of the proposed changes, the MSRB invites commenters to address the following questions:

Should all individuals engaged in municipal advisory activities demonstrate a minimum level of competence by taking and passing a general qualification examination?

- Is the one-year grace period sufficient time for municipal advisor representatives to study and take (and, if necessary retake) the municipal advisor representative qualification examination?
- Do dealers believe the current 90-day apprenticeship requirement for municipal securities representatives is beneficial?
- Would there be any negative consequences if the current municipal securities representative apprenticeship requirement were eliminated?
- Would dealers realize any cost savings if the current municipal securities representative apprenticeship requirement were eliminated?
- Is there a benefit to having an apprenticeship period for municipal advisor representatives?
- How should economic analysis apply to proposed new registration classifications and the establishment of a basic qualification examination?

March 17, 2014

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## Text of Draft Amendments<sup>10</sup>

### Rule G-1: Separately Identifiable Department or Division of a Bank

- (a) No change.
- (b) For purposes of this rule, the activities of the bank which shall constitute municipal securities dealer activities are as follows:
- (1) underwriting, trading and sales of municipal securities;
  - ~~(2) financial advisory and consultant services for issuers in connection with the issuance of municipal securities;~~
  - (2) ~~(3)~~ processing and clearance activities with respect to municipal securities;
  - (3) ~~(4)~~ research and investment advice with respect to municipal securities;
  - (4) ~~(5)~~ any activities other than those specifically enumerated above which involve communication, directly or indirectly, with public investors in municipal securities; and
  - (5) ~~(6)~~ maintenance of records pertaining to the activities described in paragraphs (1) through (4) ~~(5)~~ above;
- provided, however, that the activities enumerated in paragraphs (3) ~~(4)~~ and (4) ~~(5)~~ above shall be limited to such activities as they relate to the activities enumerated in paragraphs (1) and ~~(2)~~ above.*
- (c) – (d) No change.

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### Rule G-2: Standards of Professional Qualification

No broker, dealer, or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no municipal advisor shall engage in municipal advisory activities, unless such broker, dealer, municipal securities dealer or municipal advisor ~~or municipal securities dealer~~ and every natural person associated with such broker, dealer, municipal securities dealer or municipal advisor ~~or municipal securities dealer~~ is qualified in accordance with the rules of the Board.

\* \* \* \* \*

<sup>10</sup> Underlining indicates new language; strikethrough denotes deletions.

### Rule G-3: Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements<sup>11</sup>

No broker, dealer, ~~municipal securities dealer or municipal advisor~~ or ~~municipal securities dealer~~ or person who is a municipal securities representative, municipal securities principal, municipal securities sales principal, ~~municipal advisor representative or municipal advisor principal~~ or financial and operations principal (as hereafter defined) shall be qualified for purposes of Rule G-2 unless such broker, dealer, ~~municipal securities dealer or municipal advisor~~ or ~~municipal securities dealer~~ or person meets the requirements of this rule.

(a) *Municipal Securities Representative and Municipal Securities Sales Limited Representative.*

(i) Definitions.

(A) The term "municipal securities representative" means a natural person associated with a broker, dealer or municipal securities dealer, other than a person whose functions are solely clerical or ministerial, whose activities include one or more of the following:

(1) underwriting, trading or sales of municipal securities;

~~(2) financial advisory or consultant services for issuers in connection with the issuance of municipal securities;~~

~~(2)-(3)~~ research or investment advice with respect to municipal securities; or

~~(3)~~ (4) any other activities which involve communication, directly or indirectly, with public investors in municipal securities;

*provided, however,* that the activities enumerated in subparagraphs ~~(2)~~ (3) and ~~(3)~~ (4) above shall be limited to such activities as they relate to the activities enumerated in subparagraphs (1) and ~~(2)~~ above.

(B) No change.

(ii) No change.

~~(iii) Apprenticeship.~~

~~(A) Any person who first becomes associated with a broker, dealer or municipal securities dealer in a representative capacity (whether as a municipal securities representative, general securities representative or limited representative investment company and variable contracts products) without having previously qualified as a municipal securities representative,~~

<sup>11</sup> The MSRB has proposed the elimination of the requirement for a Financial and Operations Principal (FinOp). See MSRB Notice 2013-22 (Dec. 13, 2013). The MSRB expects to file a proposed rule change in this regard shortly.



~~general securities representative or limited representative—investment company and variable contracts products shall be permitted to function in a representative capacity without qualifying pursuant to subparagraph (a)(ii)(A), (B) or (C) for a period of at least 90 days following the date such person becomes associated with a broker, dealer or municipal securities dealer, *provided, however,* that such person shall not transact business with any member of the public with respect to, or be compensated for transactions in, municipal securities during such 90 day period, regardless of such person's having qualified in accordance with the examination requirements of this rule. A person subject to the requirements of this paragraph (a)(iii) shall in no event continue to perform any of the functions of a municipal securities representative after 180 days following the commencement of such person's association with such broker, dealer or municipal securities dealer, unless such person qualifies as a municipal securities representative pursuant to subparagraph (a)(ii)(A), (B) or (C).~~

~~(B) Prior experience, of at least 90 days, as a general securities representative, limited representative investment company and variable contracts products or limited representative government securities, will meet the requirements of this paragraph (a)(iii).~~

(b) *Municipal Securities Principal; Municipal Fund Securities Limited Principal.*

(i) Definition. The term "municipal securities principal" means a natural person (other than a municipal securities sales principal), associated with a broker, dealer or municipal securities dealer ~~that has filed with the Board in compliance with rule A-12,~~ who is directly engaged in the management, direction or supervision of one or more of the following activities:

(A) underwriting, trading or sales of municipal securities;

~~(B) financial advisory or consultant services for issuers in connection with the issuance of municipal securities;~~

~~(B) (C)~~ processing, clearance, and, in the case of brokers, dealers and municipal securities dealers other than bank dealers, safekeeping of municipal securities;

~~(C) (D)~~ research or investment advice with respect to municipal securities;

~~(D) (E)~~ any other activities which involve communication, directly or indirectly, with public investors in municipal securities;

~~(E) (F)~~ maintenance of records with respect to the activities described in subparagraphs (A) through ~~(D) (E)~~; or

~~(E) (G)~~ training of municipal securities principals or municipal securities representatives.

*provided, however,* that the activities enumerated in subparagraphs ~~(C) (D)~~ and ~~(D) (E)~~ above shall be limited to such activities as they relate to the activities enumerated in subparagraphs (A) ~~or (B)~~ above.

(ii) – (iv) No change.

(c) No change.

(d) *Financial and Operations Principal.*

(i) – (iii) No change.

(e) *Municipal Advisor Representative*

(i) Definition.

(A) The term "municipal advisor representative" means a natural person who is an associated person of a municipal advisor who engages in municipal advisory activities on the firm's behalf, other than a person whose functions are solely clerical or ministerial.

(ii) Qualification Requirements.

(A) Every municipal advisor representative shall take and pass the Municipal Securities Advisor Qualification Examination prior to being qualified as a municipal advisor representative. The passing grade shall be determined by the Board.

(B) Any person who ceases to be associated with a municipal advisor for two or more years at any time after having qualified as such in accordance with subparagraph (d)(ii)(A) shall qualify in such capacity prior to being qualified as a municipal advisor representative.

(f) *Municipal Advisor Principal*

(i) Definition. The term "municipal advisor principal" means a natural person who is an associated person of a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor.

(ii) Numerical Requirements. Every municipal advisor shall have at least one municipal advisor principal.

(g) ~~(e)~~ Confidentiality of Qualification Examinations. No associated person of a broker, dealer, ~~municipal securities dealer or municipal advisor~~ or ~~municipal securities dealer~~ shall:

(i) – (iv) No change.

(h) ~~(f)~~ Retaking of Qualification Examinations. Any associated person of a broker, dealer, ~~or~~ ~~municipal securities dealer~~ or ~~municipal advisor~~ who fails to pass a qualification examination prescribed by the Board shall be permitted to take the examination again after a period of 30 days has elapsed from the date of the prior examination, except that any person who fails to pass an examination three or more times in

succession shall be prohibited from again taking the examination until a period of six months has elapsed from the date of such person's last attempt to pass the examination.

(i) ~~(g)~~ Waiver of Qualification Requirements.

(i) No change.

(ii) The requirements of paragraph ~~(d)(ii)~~ (e)(ii)(A) may be waived ~~for any associated person of a broker, dealer or municipal securities dealer in circumstances sufficient to justify the granting of a waiver if such person were seeking to register and qualify with a member of a registered securities association as a financial and operations principal. Such waiver may be granted by a registered securities association with respect to a person associated with a member of such association.~~ in extraordinary cases for any municipal advisor representative who demonstrates extensive experience in a field closely related to the municipal advisory activities of a municipal advisor. Such waiver may be granted by

(A) a registered securities association with respect to a person associated with a member of such association, or

(B) the Commission with respect to a person associated with a municipal advisor registered with the Commission and that is not a member of a registered securities association.

(j) ~~(h)~~ Continuing Education Requirements

This section (j) ~~(h)~~ prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with a registered securities association with respect to a person associated with a member of such association, or the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to a person associated with any other broker, dealer or municipal securities dealer ("the appropriate enforcement authority"). The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(i) – (ii) No change.

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**Rule D-13: “Municipal Advisory Activities”**

Except as otherwise specifically provided by rule of the Board, “~~M~~-municipal advisory activities” means the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder.