Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 03
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) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

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

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

Proposed Rule Change to Amend MSRB Rule G-47, on Time of Trade Disclosure, to Codify and Retire Certain Existing Interpretive Guidance and Add New Time of Trade Disclosure Scenarios

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 * Frank Last Name * Mazzarelli

Title * Director, Market Regulation

E-mail * fmazzrelli@msrb.org

Telephone * (202) 838-1500 Fax

Signature

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

Date 04/09/2024

By Ronald W. Smith
(Name *)

(Title *)
Corporate Secretary

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

rsmith@msrb.org
Digitally signed by rsmith@msrb.org
Date: 2024.04.09 11:00:04 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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MSRB-2024-03 Exhibit 1.docx

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

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

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

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

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MSRB-2024-03 Exhibit 2a.pdf
MSRB-2024-03 Exhibit 2b.pdf
MSRB-2024-03 Exhibit 2c.pdf

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

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

☐ Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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MSRB-2024-03 Exhibit 5.pdf

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, as amended (the "Exchange Act"),[1] and Rule 19b-4 thereunder,[2] the Municipal Securities Rulemaking Board (the "MSRB") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change consisting of amendments to MSRB Rule G-47, on time of trade disclosure (the "proposed rule change"). The proposed rule change would codify certain existing interpretive guidance and retire certain other existing interpretive guidance, add new time of trade disclosure scenarios, and make technical clarifications.

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published on the MSRB website no later than 30 days following Commission approval. The effective date will be no later than nine months following Commission approval.

(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 of directors of the MSRB approved the proposed rule change at its meeting on October 25-26, 2023. Questions concerning this filing may be directed to Frank Mazzarelli, Director, Market Regulation, or Justin Kramer, Assistant Director, Market Regulation, at 202-838-1500.

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

(a) Purpose

MSRB Rule G-47 requires brokers, dealers, or municipal securities dealers ("dealers") to disclose to customers, at or prior to the time of trade, all material information known or available publicly through established industry sources. More specifically, MSRB Rule G-47 requires dealers selling a municipal security to a customer, or purchasing a municipal security from a customer, to disclose to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as information about the municipal

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

security that is reasonably accessible to the market. This obligation exists for both unsolicited and recommended transactions as well as primary and secondary market transactions.[3]

MSRB Rule G-47 Supplementary Material .03 contains examples of information that may be material in specific scenarios and therefore requires time of trade disclosures to a customer. The list of specific scenarios is non-exhaustive and other information not listed in MSRB Rule G-47 Supplementary Material .03 may be material to customers depending upon the specific scenario. In addition to the specific disclosure scenarios listed in MSRB Rule G-47 Supplementary Material .03, various items of MSRB interpretive guidance list other scenarios that could require a time of trade disclosure obligation to a dealer transacting with a customer.

In summary, the proposed rule change would amend MSRB Rule G-47 to:

- Clarify in section (a) of MSRB Rule G-47 that a dealer is not obligated to disclose material information in violation of insider trading rules or procedures;
- Amend and simplify the definition of material information in subsection (b)(ii) of MSRB Rule G-47 and make a conforming amendment to Supplementary Material .01(a);
- Codify into Supplementary Material .03 existing interpretive guidance pertaining to market discount and to zero coupon or stepped coupon securities;
- Add a clarifying example of factor bonds as bonds that prepay principal in Supplementary Material .03(i); and
- Add three new disclosure scenarios to Supplementary Material .03.

The proposed rule change would also retire interpretive guidance on conversion costs and secondary market insurance and consolidate existing inter-dealer time of trade disclosure guidance into a single piece of interpretive guidance.

I. Disclosure of Material Information

The proposed rule change would redesignate the existing language of MSRB Rule G-47(a) as subsection (i) and add a new subsection (ii) to MSRB Rule G-47(a) clarifying that information that may be material to the transaction would not be required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from customers. It would be beneficial to the market to clarify this point in the text of MSRB Rule G-47 given that it is not the MSRB's intent for dealers to violate securities regulations.

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[3] Dealers are also subject to Commission Rule 15l-1 under the Exchange Act ("Regulation Best Interest") that requires broker-dealers to make certain prescribed disclosures to their retail customer, before or at the time of the recommendation, about the recommended transaction and the relationship between the retail customer and the broker-dealer. See 17 CFR 240.15l-1(a)(2)(i).

II. Definition of Material Information

MSRB Rule G-47(b)(ii) defines the term "material information" and explains that information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The proposed rule change would delete the language "or significant" in order to streamline and simplify the definition. The MSRB does not believe that this would materially alter the definition of material information or impose any additional burdens on dealers. The proposed rule change would make a conforming amendment in Supplementary Material .01(a) to change the word "significant" to "important."

III. Codify Existing Interpretive Guidance on Market Discount and Zero Coupon or Stepped Coupon Securities

The proposed rule change would codify and retire November 2016 interpretive guidance on market discount (the "Market Discount Guidance").[4] The Market Discount Guidance states that, absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of such investor's investment return represented by accretion of the market discount is taxable as ordinary income. The Market Discount Guidance goes on to state that the fact that a security has market discount is material information that is required to be disclosed to a customer under MSRB Rule G-47 at or prior to the time of trade. The proposed rule change would codify this information into MSRB Rule G-47 Supplementary Material .03(p). Furthermore, the proposed rule change would retire the Market Discount Guidance upon codification as the MSRB believes that it would not retain any standalone value. The MSRB believes that codifying this information into the text of MSRB Rule G-47 would facilitate compliance and consolidate the rulebook by removing redundant interpretive guidance. The MSRB notes, however, that proposed MSRB Rule G-47 Supplementary Material .03(p) would not require dealers to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice, with respect to market discount.

The proposed rule change would also codify and retain April 1982 interpretive guidance pertaining to municipal securities with zero coupons or stepped coupons (the "Zero or Stepped Coupon Guidance").[5] The Zero or Stepped Coupon Guidance states in the context of discussing zero coupon bonds and stepped coupon bonds that the MSRB is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities in order to comply with the MSRB's fair practice rules. The proposed rule change would incorporate this guidance into MSRB Rule G-47 Supplementary Material .03(q)

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4 See MSRB Interpretive Guidance, Time of Trade Disclosure – Disclosure of Market Discount (November 22, 2016), available at https://www.msrb.org/Time-Trade-Disclosure-Disclosure-Market-Discount.

5 See MSRB Interpretive Guidance, Notice Concerning "Zero Coupon" and "Stepped Coupon" Securities (April 27, 1982), available at https://www.msrb.org/Notice-Concerning-Zero-Coupon-and-Stepped-Coupon-Securities.

but retain the Zero or Stepped Coupon Guidance as it contains additional standalone value pertaining to MSRB Rule G-12 and MSRB Rule G-15.

IV. Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

The proposed rule change would retire two pieces of interpretive guidance that the MSRB believes have become outdated. The first interpretive guidance to be retired is interpretive guidance from August 1988 (the "Conversion Cost Guidance") stating that transfer agents for some interchangeable securities charge fees for the conversion of registered certificates to bearer form, which can be substantial and, in some cases, prohibitively expensive.[6] The Conversion Cost Guidance goes on to state that dealers therefore should ascertain the amount of the fee prior to agreeing to deliver bearer certificates and that, if a dealer passes on the costs of converting registered securities to bearer form to its customer, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade and the customer must agree to pay the conversion fee. The MSRB believes that interchangeable securities are a rare occurrence in the marketplace, and as such, the MSRB believes that there is limited utility in retaining this guidance and proposes its retirement.

The second piece of interpretive guidance to be retired is guidance from March 1984 on secondary market insurance (the "Secondary Market Insurance Guidance").[7] The Secondary Market Insurance Guidance, in part, reminds the industry that if a security has been insured or if arrangements for insurance have been initiated, the market price of the security would be affected and this information is material and must be disclosed to a customer at or before the execution of a transaction in the security. MSRB Rule G-47 Supplementary Material .03(e) currently includes a disclosure obligation scenario detailing when a security has been insured or arrangements for insurance have been initiated, the credit rating of the insurance company, and information about potential rating actions with respect to the bond insurance company, effectively making the comparable portion of the Secondary Market Insurance Guidance superfluous. In addition, the MSRB explained in the Secondary Market Insurance Guidance that it believes that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. However, the MSRB believes that it is no longer common practice to require such evidence of insurance for effective transference, and as a result, proposes to retire the Secondary Market Insurance Guidance.

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6 See MSRB Interpretive Guidance, Confirmation, Delivery and Reclamation of Interchangeable Securities (August 10, 1988), available at https://www.msrb.org/Confirmation-Delivery-and-Reclamation-Interchangeable-Securities.

7 See MSRB Interpretive Guidance, Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features (March 6, 1984), available at https://www.msrb.org/Application-Board-Rules-Transactions-Municipal-Securities-Subject-Secondary-Market-Insurance-or.

V. Add an Example of a Bond that Prepays Principal

MSRB Rule G-47 Supplementary Material .03(i) lists bonds that prepay principal as a specific scenario which may be material and require disclosure at or prior to the time of trade. More specifically, the scenario lists the fact that the security prepays principal and the amount of unpaid principal that will be delivered on the transaction as a scenario that may be material and require a time of trade disclosure. The proposed rule change would add factor bonds to Rule G-47 Supplementary Material .03(i) as an example of a bond that prepays principal. Factor bonds are bonds for which partial distributions are processed by a proportional return of principal to each bondholder. After the partial distribution, the factor must be applied to the face value to determine interest payments as well as the principal amount for each future transaction. Factor bonds, by their terms, are already subject to this scenario and therefore this addition does not add or remove any disclosure burdens but instead simply provides an example of a potential disclosure obligation currently contained in MSRB Rule G-47 that serves to remind dealers of the applicability of this provision to factor bonds.

VI. Add Three New Disclosure Scenarios

The proposed rule change would add three new disclosure scenarios to MSRB Rule G-47 Supplementary Material .03's non-exhaustive list of specific scenarios that could be material and require a time of trade disclosure. Specifically, these three new scenarios are yield to worst, the unavailability of the official statement, and the fact that continuing disclosures are not available.

Yield to Worst. The proposed rule change would add yield to worst as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (r) thereof. MSRB Rule G-15(a)(i)(A)(5) requires the yield at which a transaction is effected for transactions that are computed on the basis of yield to maturity, yield to a call date, or yield to a put date to be disclosed on a customer's confirmation.[8] Furthermore, if the computed yield required by MSRB Rule G-15 is different than the yield at which the transaction was effected, the computed yield must also be disclosed on the confirmation.[9] This information is typically referred to as yield to worst. The MSRB believes that this information may be material to a customer's investment decision, as it could impact a decision to purchase a municipal security at the current price or yield, and therefore may be required to be disclosed at or prior to the time of trade in addition to being disclosed on a customer's confirmation.

Unavailability of Official Statement for New Issue Customers. The proposed rule change would add, in the case of sales to customers of new issue municipal securities, the fact that an official statement is unavailable or only available from the underwriter as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (s) thereof. For purposes of this scenario, new issue municipal securities consist of offered municipal securities

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8 Pursuant to MSRB Rule G-15(a)(i)(A)(5)(c)(v), yield is to be calculated in accordance with MSRB Rule G-33, on calculations.

9 See MSRB Rule G-15(a)(i)(A)(5)(c)(vii).

within the meaning of MSRB Rule G-32, which in general are municipal securities sold in a primary offering until 25 days after the closing of the new issue.[10] In contrast, the potential for the lack of an official statement to be material to a customer in a transaction outside of the primary offering disclosure period is considerably lower and therefore normally would not trigger an obligation under MSRB Rule G-47.

Exchange Act Rule 15c2-12[11] requires underwriters to obtain and review an official statement for most primary offerings of municipal securities. MSRB Rule G-32(b)(i)(B) generally requires that the underwriter submit such official statement (as well as any official statement produced for a primary offering exempt from Exchange Act Rule 15c2-12[12]) for posting on the Electronic Municipal Market Access ("EMMA®")[13] website. If no official statement is posted by an underwriter to EMMA for a primary offering by the closing date, the underwriter is generally required under MSRB Rule G-32 to post to EMMA, as applicable, either: (i) notification that no official statement exists pursuant to MSRB Rule G-32(b)(i)(C) or (ii) in the case of a primary offering not subject to Exchange Act Rule 15c2-12[14] by virtue of paragraph (d)(1)(i) thereof (sometimes referred to as a limited offering) and the underwriter has withheld posting the official statement to EMMA pursuant to MSRB Rule G-32(b)(i)(E), contact information for investors to request a copy of the official statement.[15]

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10 MSRB Rule G-32(c)(vi) defines offered municipal securities as municipal securities that are sold by a dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. Primary offering disclosure period is defined in MSRB Rule G-32(c)(ix) as the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter. Pursuant to MSRB Rule G-32(c)(viii), primary offering means an offering defined in Exchange Act Rule 15c2-12(f)(7) (17 CFR 240.15c2-12(f)(7)), including but not limited to any remarketing of municipal securities that constitutes a primary offering as such subsection (f)(7) may be interpreted from time to time by the Commission.

11 17 CFR 240.15c2-12.

12 Id.

13 EMMA® is a registered trademark of the MSRB.

14 17 CFR 240.15c2-12.

15 MSRB Rule G-32(b)(i)(F) also provides an exemption for certain commercial paper offerings or remarketings from the official statement submission requirement assuming applicable conditions are met.

Under certain circumstances, dealers currently have obligations to inform new issue customers by trade settlement regarding the availability or unavailability of the official statement under MSRB Rule G-32(a)(i) or (a)(iii)(A). The MSRB believes that the fact that an official statement is not available could be material to a new issue investor in making an investment decision and therefore should be included in MSRB Rule G-47's list of scenarios that could trigger a time of trade disclosure. As a result, new clause (s) of MSRB Rule G-47 Supplementary Material .03 would accelerate the timing for this disclosure to a point in time where this information would be available to the customer while making such investment decision, rather than merely by settlement of the transaction and thus after such decision has been made.

Dealers generally would be able to rely, for purposes of proposed clause (s), on information posted on EMMA as of the time of trade of a new issue municipal security with regard to whether an official statement is unavailable or available only from the underwriter. In the case of a customer trade by a dealer (other than the underwriter of the municipal security) occurring prior to the posting on EMMA of the official statement or any statement about the official statement's availability,[16] such dealer may presume that an official statement will become available unless the dealer has knowledge that the official statement will not in fact be posted or will only be made available through the underwriter.[17] Dealers that serve as underwriters for a primary offering would, in contrast, be deemed to know whether or not an official statement will be posted for such offering or will be made available only from such underwriters.

Unavailability of Continuing Disclosure. The proposed rule change would add, as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (t) thereof, the fact that no issuer of, or other obligated person with respect to, a customer's municipal security has agreed to make continuing disclosures as contemplated under Exchange Act Rule 15c2-12[18] available on EMMA. Exchange Act Rule 15c2-12(b)(5)[19] prohibits an underwriter from purchasing or selling municipal securities in most new issue offerings unless the underwriter has reasonably determined that an issuer or obligated person has undertaken in a written agreement or contract to provide specified continuing disclosures to the MSRB. Exchange Act Rule 15c2-12(d)(2)(ii),[20] while providing an exemption from Exchange Act Rule

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16 It is common for new issue municipal securities to be traded beginning immediately after the time of first execution within the meaning of MSRB Rule G-34(a)(ii)(C)(1)(b) but before the underwriter timely posts the official statement to EMMA under MSRB Rule G-32(b)(i)(B). This gap typically is a result of the time needed to finalize and produce the official statement that incorporates the final terms of a new issue offering.

17 This is somewhat analogous to the ability of dealers other than the underwriter of a new issue to effectively presume that the underwriter has made the required submissions to EMMA under MSRB Rule G-32(a)(ii)(B).

18 17 CFR 240.15c2-12.

19 17 CFR 240.15c2-12(b)(5).

20 17 CFR 240.15c2-12(d)(2)(ii).

15c2-12(b)(5),[21] requires a modified version of such continuing disclosure agreement or contract. In addition, Exchange Act Rule 15c2-12(d)(3)[22] provides a partial exemption from Exchange Act Rule 15c2-12(b)(5)[23] but still requires a modified version of such continuing disclosure agreement or contract limited to specified event notices. This new disclosure scenario in proposed clause (t) would apply to any municipal securities of the foregoing offerings. However, certain new issue offerings are wholly exempt from or otherwise not subject to Exchange Act Rule 15c2-12(b)(5)[24] by virtue of paragraph (a) or subparagraph (d)(1) of Exchange Act Rule 15c2-12,[25] and therefore this new disclosure scenario would not apply to any municipal securities of these specific types of exempt offerings.

Continuing disclosure documents and related information submitted by issuers and obligated persons to EMMA's continuing disclosure service are made available on the EMMA website.[26] Such continuing disclosures currently are accessible by users of the EMMA website through a variety of means, including on the Disclosure Documents tab of the EMMA Security Details page for each specific municipal security. The disclosures provided on such page are generally accompanied by certain information, as applicable, provided to EMMA by the underwriter of the applicable municipal security at the time of its initial issuance regarding any agreement by the issuer or other obligated persons to undertake to provide continuing disclosures.[27]

Dealers generally would be able to rely on such information posted on EMMA by the underwriter regarding an issuer's or other obligated person's continuing disclosure undertaking for purposes of MSRB Rule G-47 Supplementary Material .03(t) unless the dealer has knowledge to the contrary.[28] In addition, particularly for municipal securities for which no such

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21 17 CFR 240.15c2-12(b)(5).

22 17 CFR 240.15c2-12(d)(3).

23 17 CFR 240.15c2-12(b)(5).

24 Id.

25 17 CFR 240.15c2-12(a) and (d)(1). In addition, Exchange Act Rule 15c2-12(d)(5) provides an exemption from Exchange Act Rule 15c2-12(b)(5) for certain municipal securities outstanding on November 30, 2010 so long as they have continuously met the conditions specified therein. 17 CFR 240.15c2-12(d)(5).

26 See MSRB Information Facility IF-3, on Electronic Municipal Market Access System – EMMA, available at https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Informational/IF-3.

27 See MSRB Rule G-32(b)(i)(A) and (b)(vi)(C)(1)(a).

28 The ability of a dealer to rely on this posted information for purposes of MSRB Rule G-47 Supplementary Material .03(t) would not conclusively foreclose any other potential

underwriter-provided information concerning any continuing disclosure agreement may be displayed on EMMA, a review of the official statement or other information available on EMMA typically would indicate whether the issuer or obligated person has undertaken to provide continuing disclosures on the municipal securities.

The MSRB believes that the fact that continuing disclosures are not required to be made available to a customer on EMMA, which is where a customer would typically go to review such information prior to trading a municipal security, will generally be material and therefore should be included in time of trade disclosures provided to a customer. On occasion, an issuer or obligated person may undertake to provide continuing disclosures not contemplated by Exchange Act Rule 15c2-12[29] (sometimes referred to as voluntary continuing disclosures). This proposed scenario is not intended to require disclosures with regard to the existence of an agreement solely in respect of such voluntary continuing disclosures.

VII. Consolidate Existing Inter-dealer Time of Trade Disclosure Guidance

The proposed rule change would consolidate three pieces of existing interpretive guidance relating to inter-dealer time of trade disclosure into one standalone interpretive guidance in order to better streamline time of trade disclosure guidance.[30] While MSRB Rule G-47 applies to customer transactions and not transactions between dealers,[31] the MSRB has previously discussed a dealer's fair dealing disclosure obligations in connection with inter-dealer transactions in these three pieces of inter-dealer guidance. The MSRB believes that consolidating this existing guidance into a single interpretive guidance would be beneficial to the market and result in a more organized rulebook. The MSRB does not believe that the three existing pieces of

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disclosure or other obligation of a dealer, under MSRB Rule G-47(a), Exchange Act Rule 15c2-12 (17 CFR 240.15c2-12) or otherwise, that might arise relating to the existence of or the performance or non-performance under any continuing disclosure agreement by an issuer or obligated person, or with regard to the content of such continuing disclosure, depending on the specific facts and circumstances.

29 17 CFR 240.15c2-12.

30 See MSRB Interpretive Guidance, Notice Concerning Securities that Prepay Principal (March 19, 1991), available at https://www.msrb.org/Notice-Concerning-Securities-Prepay-Principal; MSRB Interpretive Guidance, Disclosure of Pricing: Calculating the Dollar Price of Partially Prerefunded Bonds (May 15, 1986), available at https://www.msrb.org/Disclosure-Pricing-Calculating-Dollar-Price-Partially-Prerefunded-Bonds; and MSRB Interpretive Guidance, Description Provided at or Prior to the Time of Trade (April 30, 1986), available at https://www.msrb.org/Description-Provided-or-Prior-Time-Trade. Any portions of such interpretive pieces relating to customer disclosure standards are already incorporated into MSRB Rule G-47.

31 See MSRB Rule G-47(a).

inter-dealer guidance would otherwise retain any standalone value upon consolidation into the new guidance and, therefore, these three pieces of guidance would be retired.

(b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act,[32] which provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to, among other matters, transactions in municipal securities effected by dealers. Section 15B(b)(2)(C) of the Exchange Act[33] 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 the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act[34] because the proposed rule change would protect investors and the public interest by ensuring that retail and other customers receive material information at or prior to the time of trade that would allow them to make an informed investment decision. Adding new requirements for dealers to disclose when an official statement is unavailable, when continuing disclosures are not available, and the yield to worst of a transaction would provide investors with material information when deciding to transact in municipal securities. Consolidating existing interpretive guidance into the text of MSRB Rule G-47 and clarifying existing rule language would promote compliance by dealers with existing requirements under MSRB Rule G-47 and thereby promote the protection of investors and the public interest. The MSRB believes that providing this material information to investors, particularly retail customers who may or may not know how or where to access this information, will assist investors by providing them with material information that could influence their investment decision.

Furthermore, the MSRB believes that consolidating its rulebook by removing interpretive guidance that is outdated or has already been incorporated into the rulebook will facilitate transactions in municipal securities, as well as facilitate compliance with MSRB rules, by reducing the need for industry participants to cross reference multiple sources.

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32 15.U.S.C. 78o-4(b)(2).

33 15 U.S.C. 78o-4(b)(2)(C).

34 Id.

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

Section 15B(b)(2)(C) of the Exchange Act[35] requires that MSRB rules not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory certainty by streamlining requirements and providing dealers with a clearer understanding of regulatory obligations incorporated into rule text from the current interpretive guidance. In addition, the proposed rule change would apply equally to all dealers. Therefore, the MSRB believes the proposed rule change would not impose any burden on competition and, consequently, does not impose a burden that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In reaching this conclusion, the MSRB was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.[36] In accordance with this policy, the MSRB evaluated the potential impacts on competition of the proposed rule change. For the purposes of this filing, the MSRB used the current iteration of MSRB Rule G-47 as the baseline to evaluate the costs and benefits for the proposed rule change, as well as other reasonable regulatory alternatives.

Benefits, Costs and Effect on Competition

The proposed rule change is intended to benefit investors by requiring disclosure of additional information that is easily and readily accessible to dealers. The proposed rule change is also intended to benefit dealers by reducing their burden through clarification of the existing rule requirements and eliminating unnecessary compliance time and paperwork.

Benefits

The proposed rule change would provide several benefits for dealers and investors. First, the MSRB believes that the proposed rule change would streamline the process for dealers and clarify the existing rule so that dealers would better understand what disclosures must be disclosed to an investor at the time of trade, and thus would eliminate unnecessary compliance time and paperwork and reduce the burden on regulated entities. These include a clarification that the time of trade disclosure obligation in MSRB Rule G-47 does not require dealers to disclose material information to their customers that is intentionally withheld, based on a dealer's policies and procedures regarding insider trading. Furthermore, consolidating certain interpretive guidance and retiring six pieces of interpretive guidance would streamline the rulebook by consolidating existing guidance into the text of the rulebook and facilitate

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35 Id.

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

compliance by reducing the number of sources a dealer must review when complying with MSRB Rule G-47. Finally, the MSRB believes the proposed disclosure codification with three newly specified supplementary material paragraphs (continuing disclosures by an issuer, unavailability of an official statement in a new issue and the yield to worst) would benefit investors by helping to ensure that such information, which is easily and readily accessible to dealers, is disclosed to investors.

Costs

The MSRB believes that dealers would incur some costs because of the proposed rule change. These costs include the one-time upfront costs related to revising related policies and procedures as well as ongoing costs such as compliance costs associated with maintaining and updating relevant disclosures. This would be especially true for the three new time of trade disclosure obligations to be codified in MSRB Rule G-47 where dealers have a new responsibility to disclose readily accessible information to customers.[37] However, as current MSRB Rule G-47 already requires dealers to disclose material information to investors without specifying certain information and circumstances that could be material, it is possible that dealers may already have these specific disclosures built into their existing time-of-trade disclosure process. Regardless, the MSRB believes that this information is potentially material and therefore should be included in the time of trade disclosure obligation scenarios in MSRB Rule G-47.

The MSRB believes that dealers would not incur any, or only negligible, costs from proposed changes such as codifying existing interpretive guidance into MSRB Rule G-47, since dealers are presumably already in compliance with the existing interpretive guidance and relevant MSRB rules. The MSRB believes that dealers may also have additional costs associated with recordkeeping in relation to the disclosure requirements. Overall, the MSRB believes the aggregate upfront and ongoing costs relative to the baseline would be minor, and the expected aggregate benefits to investors and dealers accumulated over time should exceed the total costs.

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 be applicable to all dealers and is not expected to erode protection for investors and issuers. The proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing dealers with a clearer understanding of regulatory obligations that are incorporated into the rule text. Although the benefits to investors discussed above would require dealers to incur some additional costs, at present, the MSRB is unable to quantitatively

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37 In a comment letter responding to the MSRB's request for comment described below, one commenter expressed concern about the costs of implementing the three proposed new specified time of trade disclosure obligations. Specifically, smaller dealers "tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue." See Letter from Michael Decker, Senior Vice President, Bond Dealers of America, dated April 17, 2023, at 2.

evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for all market participants would outweigh the upfront costs of revising policies and procedures as well as the ongoing compliance costs borne by dealers. The MSRB does not expect that the proposed rule change would impose a burden on competition for dealers, as the upfront costs are expected to be relatively minor for all dealers while the ongoing costs are expected to be proportionate to the size and trading activities of each dealer. In addition, the proposed rule change would apply equally across all dealers.

Reasonable Regulatory Alternatives

The MSRB considered and assessed two reasonable regulatory alternatives but determined the proposed rule change is superior to these alternatives. One alternative the MSRB considered was for MSRB Rule G-47 to pivot to an entirely principles-based approach when determining what information is considered material and therefore must be disclosed to investors at or before the time of trade. An entirely principles-based approach would provide an overarching objective for dealers to consider when determining whether specific information should be provided at the time of trade but would not provide specific examples of situations where, depending on the facts and circumstances, information could be material. By comparison, dealers currently are provided with a list of fifteen specific scenarios contained in MSRB Rule G-47 Supplementary Material .03 that could be material, depending on the facts and circumstances, to assist them in their compliance efforts, and the proposed rule change would add three additional disclosure scenarios. The MSRB determined the alternative to adopt an entirely principles-based approach to be inferior to the proposed rule change, which would provide dealers with the latitude to make a judgement on what is material while also offering specific examples. This alternative would also defeat the original purpose of creating MSRB Rule G-47 in 2013 to consolidate the previously issued guidance into rule language without substantively changing the existing obligations.

Another alternative the MSRB considered was to restructure MSRB Rule G-47 to provide a detailed and prescriptive listing of required time of trade disclosures without the primary principles-based requirement set forth in MSRB Rule G-47(a). This alternative would eliminate any gray area that may currently exist because compliance personnel currently must weigh the general principle set forth in MSRB Rule G-47(a) with the Supplementary Material and any applicable interpretative guidance.[38] While the proposed rule change would maintain the existing obligation of dealers to make a judgement on what is material, the alternative would increase the risk of information material to investors not being disclosed if such information does not fall within the listed items of disclosure, thereby reducing investor protection. As a result, the MSRB deemed these alternatives as inferior to the proposed rule change.

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[38] In response to the original request for comment in 2013 to create MSRB Rule G-47, which included both a principles-based requirement for material disclosures as well as a list of potential scenarios, one commenter stated that the structure of the proposed rule text was "unnecessarily ambiguous," See Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 12, 2013, at 2, available at https://www.msrb.org/sites/default/files/RFC/2013-04/BDA.pdf.

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

The MSRB sought comment on draft amendments to MSRB Rule G-47 in a request for comment that was published on February 16, 2023 (the "Request for Comment").[39] The MSRB received seven comment letters in response to the Request for Comment.[40]

In addition to items related to MSRB Rule G-47 on time of trade disclosure, the Request for Comment solicited comment on time of trade disclosure obligations with respect to 529 savings plans as well as on draft amendments to MSRB Rule D-15, defining the term sophisticated municipal market professional. Comments received in response to time of trade disclosure obligations with respect to 529 savings plans as well as those received in response to the draft amendments to MSRB Rule D-15 will be addressed through separate initiatives. The BDA Letter and SIFMA Letter were directly responsive to the proposed rule change and the two letters are summarized below by topic, with MSRB responses provided.

Material Information

The Request for Comment solicited comments on draft rule text that would clarify that MSRB Rule G-47(a) does not require dealers to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

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39 See MSRB Notice 2023-02, Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (February 16, 2023) available at https://www.msrb.org/sites/default/files/2023-02/2023-02.pdf.

40 Comment letters were received from: AKF Consulting: Letter from Andrea Feirstein, Managing Director, and Mark Chapleau, Senior Consultant, dated April 20, 2023; Bond Dealers of America ("BDA"): Letter from Michael Decker, Senior Vice President, dated April 17, 2023 (the "BDA Letter"); College Savings Plan Network: Letter from Rachel Biar, Nebraska Assistant State Treasurer, NEST 529 College Savings Program Director, Chairman, College Savings Plans Network, dated April 17, 2023; Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated July 21, 2023; Curtis McLane, dated April 19, 2023; my529: Letter from Richard K. Ellis, Executive Director, dated April 17, 2023; and Securities Industry and Financial Markets Association ("SIFMA"): Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, dated April 17, 2023 (the "SIFMA Letter"). Comment letters are available at https://www.msrb.org/sites/default/files/2023-04/All-Comments-to-Notice-2023-02.pdf.

SIFMA specifically states that it appreciates the MSRB clarifying that it is not the MSRB's intent to require dealers to violate dealer processes that have been established to facilitate compliance with another obligation in order to comply with MSRB Rule G-47.[41] SIFMA also states that the technical clarification described in the proposed rule change is largely helpful and alleviates potential sources of confusion.[42]

The MSRB agrees with SIFMA that the intent of MSRB Rule G-47 is not to require dealers to violate their policies and procedures designed to address insider trading and related securities laws in order to comply with MSRB Rule G-47, and the proposed rule change will make this clear on its face.

Codify Existing Interpretive Guidance on Market Discount, Zero Coupon and Stepped Coupon Securities

The Request for Comment solicited comments on draft rule text that would codify existing interpretive guidance on market discount, zero coupon, and stepped coupon securities into MSRB Rule G-47 Supplementary Material .03 as features of a security that may be material in specific scenarios and therefore trigger a time of trade disclosure.

The BDA Letter states that BDA is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47 as many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.[43] SIFMA, however, states that it is concerned about the increase in scope of time of trade disclosure and requiring disclosure about zero coupon and stepped coupon bonds could obfuscate material information.[44] SIFMA also expresses concern that the provision of more detailed information about market discount beyond notification of the existence of a discount could constitute the provision of tax advice.[45]

The time of trade disclosures relating to market discount, zero coupon or stepped coupon securities are currently contained within interpretive guidance. Therefore, dealers should be on notice as to the potential materiality of these security features. The MSRB believes that consolidating material time of trade disclosure scenarios into MSRB Rule G-47 would be a benefit to the market. Furthermore, while information on market discount, zero coupon or stepped coupon securities may be obvious to market professionals, it is less likely to be obvious to retail investors toward which MSRB Rule G-47 is primarily oriented. However, in connection with disclosure related to market discount, dealers would not be required pursuant to the

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41 See SIFMA Letter at 4.

42 See SIFMA Letter at 7.

43 See BDA Letter at 1.

44 See SIFMA Letter at 3-4.

45 Id.

provisions of the proposed rule change to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice.

Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

The Request for Comment solicited comments on retiring existing interpretive guidance relating to conversion costs and secondary market insurance. The Request for Comment noted that the substance of the Conversion Cost Guidance relating to interchangeable securities is not a common occurrence in the marketplace anymore and therefore should be retired. The Request for Comment noted that this guidance is currently reflected in MSRB Rule G-47 Supplementary Material .03(e). The Request for Comment also noted that the Secondary Market Insurance Guidance states that the fact that a security has been insured or arrangements for insurance have been initiated will affect the market price of the security and is material and must be disclosed to a customer at or before execution of a transaction in the security. Additionally, the Secondary Market Insurance Guidance explained that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. The Request for Comment noted that the MSRB believes that it is not common practice to require such evidence of insurance for effective transference.

SIFMA states that it agrees that evidence of insurance generally is not required to be attached to a security for effective transfer and that there are no aspects of the guidance that the MSRB proposes to retire that should be retained in any way.[46] BDA states that it is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47 as many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.[47]

The MSRB agrees with SIFMA and BDA that the guidance to be retired in the proposed rule change would not impose significant burdens and that the guidance no longer retains utility due to its current codification within MSRB Rule G-47 or the fact that it has become outdated.

Add Factor Bonds as an Example of a Bond that Prepays Principal

The Request for Comment solicited comments on a technical amendment to add factor bonds as an example of a type of bond that prepays principal under MSRB Rule G-47 Supplementary Material .03(i). The Request for Comment noted that MSRB Rule G-47 Supplementary Material .03(i) already covers bonds that prepay principal as a feature that could trigger the time of trade disclosure obligation.

The SIFMA Letter states that SIFMA is concerned about the proposed increase in scope of time of trade disclosures and that requiring time of trade disclosure about items such as factor

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46 See SIFMA Letter at 7.

47 See BDA Letter at 1.

bonds would add compliance risks and burdens.[48] BDA states that it is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.[49]

MSRB Rule G-47 Supplementary Material .03(i) already lists bonds that prepay principal as a disclosure scenario. Adding factors bonds as an example of a bond that prepays principal does not add any new burden or disclosure scenario, as factor bonds are bonds that prepay principal and therefore are already within the scope of this provision. Furthermore, while this information may be obvious to market professionals, it is less likely to be obvious to retail investors toward which MSRB Rule G-47 is primarily oriented.

Three New Disclosure Scenarios

The Request for Comment solicited comments on the addition of three new disclosure scenarios to MSRB Rule G-47 Supplementary Material .03. Specifically, the three new disclosure scenarios discussed in the Request for Comment were the unavailability of the official statement, whether the issuer is required to make continuing disclosures, and yield to worst.

SIFMA states that it is concerned that the proposed increase in scope of time of trade disclosures and requiring time of trade disclosure about the availability of an official statement and yield to worst calculations would add compliance risks and burdens, and that time of trade disclosure of obvious information, on the contrary, obfuscates material information.[50] Furthermore, SIFMA states that the list of time of trade disclosures has become overbroad and unnecessarily increases risks to dealers without providing material benefit to issuers and investors and urged the MSRB to reconsider the changes that add these additional time of trade disclosures."[51] BDA states that the addition of three new disclosure scenarios would impose costs on dealers to update written supervisory procedures and obtain additional sources for this information.[52] BDA goes on to state that while the marginal compliance costs associated with the proposed rule change may be relatively small, it would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule which cumulatively would impose significant costs to dealers.[53]

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48 See SIFMA Letter at 3-4.

49 See BDA Letter at 1.

50 See SIFMA Letter at 3-4.

51 See SIFMA Letter at 4.

52 See BDA Letter at 1-2.

53 See BDA Letter at 2.

The MSRB appreciates the concerns raised by SIFMA and BDA. However, the MSRB believes that unavailability of the official statement, the fact that continuing disclosures are not available and yield to worst are all material information that would impact an investor's decision to transact in specific municipal securities, and therefore should be included in the time of trade disclosures. Furthermore, while there could be additional costs for dealers to comply with the new disclosure scenarios, the MSRB believes that the costs would be minimal and not outweigh the need to disclose material information to investors.

In response to the concerns raised by SIFMA and BDA, the MSRB narrowed the scope of the disclosure scenario relating to the unavailability of the official statement as it was described in the Request for Comment. The proposed rule change would limit this disclosure scenario to sales to customers of new issue municipal securities which would be consistent with current requirements under MSRB Rule G-32.

Obtaining Information about a Security from a Customer

The Request for Comment solicited comments on draft rule text that would have required a dealer purchasing a municipal security from a customer to obtain sufficient information about the securities that is not otherwise readily available to the market so that it can accurately describe the securities when the dealer reintroduces them into the market.

In response, SIFMA states that it believes this guidance to be outdated and that the information environment in the municipal securities market is fundamentally different today than when the original guidance was published, thanks in large measure to the work of the MSRB and its EMMA website.[54]

The MSRB acknowledges that the information environment is dramatically different today as compared to when the original guidance was published, including in particular the broad availability to the public of information through the EMMA website. Therefore, the MSRB did not include this language in the proposed rule change.

6. Extension of Time Period for Commission Action

The MSRB does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Exchange Act.[55]

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.

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54 See SIFMA Letter at 3.

55 15.U.S.C. 78s(b)(2).

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 Exchange Act

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1	Completed Notice of Proposed Rule Change for Publication in the Federal Register
Exhibit 2a	MSRB Notice 2023-02 (February 16, 2023)
Exhibit 2b	List of Comments Received in Response to MSRB Notice 2023-02
Exhibit 2c	Comments Received in Response to MSRB Notice 2023-02
Exhibit 5	Text of Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-MSRB-2024-03)
Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-47, on Time of Trade Disclosure, to Codify and Retire Certain Existing Interpretive Guidance and Add New Time of Trade Disclosure Scenarios

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-47, on time of trade disclosure (the "proposed rule change"). The proposed rule change would codify certain existing interpretive guidance and retire certain other existing interpretive guidance, add new time of trade disclosure scenarios, and make technical clarifications.

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published on the MSRB

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

website no later than 30 days following Commission approval. The effective date will be no later than nine months following Commission approval.

The text of the proposed rule change is available on the MSRB's website at https://msrb.org/2024-SEC-Filings, at the MSRB's principal office, and at the Commission's Public Reference Room.

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

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

MSRB Rule G-47 requires brokers, dealers, or municipal securities dealers ("dealers") to disclose to customers, at or prior to the time of trade, all material information known or available publicly through established industry sources. More specifically, MSRB Rule G-47 requires dealers selling a municipal security to a customer, or purchasing a municipal security from a customer, to disclose to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as information about the municipal

security that is reasonably accessible to the market. This obligation exists for both unsolicited and recommended transactions as well as primary and secondary market transactions.[3]

MSRB Rule G-47 Supplementary Material .03 contains examples of information that may be material in specific scenarios and therefore requires time of trade disclosures to a customer. The list of specific scenarios is non-exhaustive and other information not listed in MSRB Rule G-47 Supplementary Material .03 may be material to customers depending upon the specific scenario. In addition to the specific disclosure scenarios listed in MSRB Rule G-47 Supplementary Material .03, various items of MSRB interpretive guidance list other scenarios that could require a time of trade disclosure obligation to a dealer transacting with a customer.

In summary, the proposed rule change would amend MSRB Rule G-47 to:

- Clarify in section (a) of MSRB Rule G-47 that a dealer is not obligated to disclose material information in violation of insider trading rules or procedures;
- Amend and simplify the definition of material information in subsection (b)(ii) of MSRB Rule G-47 and make a conforming amendment to Supplementary Material .01(a);
- Codify into Supplementary Material .03 existing interpretive guidance pertaining to market discount and to zero coupon or stepped coupon securities;
- Add a clarifying example of factor bonds as bonds that prepay principal in Supplementary Material .03(i); and

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[3] Dealers are also subject to Commission Rule 15l-1 under the Exchange Act ("Regulation Best Interest") that requires broker-dealers to make certain prescribed disclosures to their retail customer, before or at the time of the recommendation, about the recommended transaction and the relationship between the retail customer and the broker-dealer. See 17 CFR 240.15l-1(a)(2)(i).

- Add three new disclosure scenarios to Supplementary Material .03.

The proposed rule change would also retire interpretive guidance on conversion costs and secondary market insurance and consolidate existing inter-dealer time of trade disclosure guidance into a single piece of interpretive guidance.

Disclosure of Material Information

The proposed rule change would redesignate the existing language of MSRB Rule G-47(a) as subsection (i) and add a new subsection (ii) to MSRB Rule G-47(a) clarifying that information that may be material to the transaction would not be required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from customers. It would be beneficial to the market to clarify this point in the text of MSRB Rule G-47 given that it is not the MSRB's intent for dealers to violate securities regulations.

Definition of Material Information

MSRB Rule G-47(b)(ii) defines the term "material information" and explains that information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The proposed rule change would delete the language "or significant" in order to streamline and simplify the definition. The MSRB does not believe that this would materially alter the definition of material information or impose any additional burdens on dealers. The proposed rule change would make a conforming amendment in Supplementary Material .01(a) to change the word "significant" to "important."

Codify Existing Interpretive Guidance on Market Discount and Zero Coupon or Stepped Coupon Securities

The proposed rule change would codify and retire November 2016 interpretive guidance on market discount (the "Market Discount Guidance").[4] The Market Discount Guidance states that, absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of such investor's investment return represented by accretion of the market discount is taxable as ordinary income. The Market Discount Guidance goes on to state that the fact that a security has market discount is material information that is required to be disclosed to a customer under MSRB Rule G-47 at or prior to the time of trade. The proposed rule change would codify this information into MSRB Rule G-47 Supplementary Material .03(p). Furthermore, the proposed rule change would retire the Market Discount Guidance upon codification as the MSRB believes that it would not retain any standalone value. The MSRB believes that codifying this information into the text of MSRB Rule G-47 would facilitate compliance and consolidate the rulebook by removing redundant interpretive guidance. The MSRB notes, however, that proposed MSRB Rule G-47 Supplementary Material .03(p) would not require dealers to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice, with respect to market discount.

The proposed rule change would also codify and retain April 1982 interpretive guidance pertaining to municipal securities with zero coupons or stepped coupons (the "Zero or Stepped

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4 See MSRB Interpretive Guidance, Time of Trade Disclosure – Disclosure of Market Discount (November 22, 2016), available at https://www.msrb.org/Time-Trade-Disclosure-Disclosure-Market-Discount.

Coupon Guidance").[5] The Zero or Stepped Coupon Guidance states in the context of discussing zero coupon bonds and stepped coupon bonds that the MSRB is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities in order to comply with the MSRB's fair practice rules. The proposed rule change would incorporate this guidance into MSRB Rule G-47 Supplementary Material .03(q) but retain the Zero or Stepped Coupon Guidance as it contains additional standalone value pertaining to MSRB Rule G-12 and MSRB Rule G-15.

Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

The proposed rule change would retire two pieces of interpretive guidance that the MSRB believes have become outdated. The first interpretive guidance to be retired is interpretive guidance from August 1988 (the "Conversion Cost Guidance") stating that transfer agents for some interchangeable securities charge fees for the conversion of registered certificates to bearer form, which can be substantial and, in some cases, prohibitively expensive.[6] The Conversion Cost Guidance goes on to state that dealers therefore should ascertain the amount of the fee prior to agreeing to deliver bearer certificates and that, if a dealer passes on the costs of converting registered securities to bearer form to its customer, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade and the customer must agree to pay the conversion fee. The MSRB believes that interchangeable securities are a rare occurrence in

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5 See MSRB Interpretive Guidance, Notice Concerning "Zero Coupon" and "Stepped Coupon" Securities (April 27, 1982), available at https://www.msrb.org/Notice-Concerning-Zero-Coupon-and-Stepped-Coupon-Securities.

6 See MSRB Interpretive Guidance, Confirmation, Delivery and Reclamation of Interchangeable Securities (August 10, 1988), available at https://www.msrb.org/Confirmation-Delivery-and-Reclamation-Interchangeable-Securities.

the marketplace, and as such, the MSRB believes that there is limited utility in retaining this guidance and proposes its retirement.

The second piece of interpretive guidance to be retired is guidance from March 1984 on secondary market insurance (the "Secondary Market Insurance Guidance").[7] The Secondary Market Insurance Guidance, in part, reminds the industry that if a security has been insured or if arrangements for insurance have been initiated, the market price of the security would be affected and this information is material and must be disclosed to a customer at or before the execution of a transaction in the security. MSRB Rule G-47 Supplementary Material .03(e) currently includes a disclosure obligation scenario detailing when a security has been insured or arrangements for insurance have been initiated, the credit rating of the insurance company, and information about potential rating actions with respect to the bond insurance company, effectively making the comparable portion of the Secondary Market Insurance Guidance superfluous. In addition, the MSRB explained in the Secondary Market Insurance Guidance that it believes that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. However, the MSRB believes that it is no longer common practice to require such evidence of insurance for effective transference, and as a result, proposes to retire the Secondary Market Insurance Guidance.

Add an Example of a Bond that Prepays Principal

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[7] See MSRB Interpretive Guidance, Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features (March 6, 1984), available at https://www.msrb.org/Application-Board-Rules-Transactions-Municipal-Securities-Subject-Secondary-Market-Insurance-or.

MSRB Rule G-47 Supplementary Material .03(i) lists bonds that prepay principal as a specific scenario which may be material and require disclosure at or prior to the time of trade. More specifically, the scenario lists the fact that the security prepays principal and the amount of unpaid principal that will be delivered on the transaction as a scenario that may be material and require a time of trade disclosure. The proposed rule change would add factor bonds to Rule G-47 Supplementary Material .03(i) as an example of a bond that prepays principal. Factor bonds are bonds for which partial distributions are processed by a proportional return of principal to each bondholder. After the partial distribution, the factor must be applied to the face value to determine interest payments as well as the principal amount for each future transaction. Factor bonds, by their terms, are already subject to this scenario and therefore this addition does not add or remove any disclosure burdens but instead simply provides an example of a potential disclosure obligation currently contained in MSRB Rule G-47 that serves to remind dealers of the applicability of this provision to factor bonds.

Add Three New Disclosure Scenarios

The proposed rule change would add three new disclosure scenarios to MSRB Rule G-47 Supplementary Material .03's non-exhaustive list of specific scenarios that could be material and require a time of trade disclosure. Specifically, these three new scenarios are yield to worst, the unavailability of the official statement, and the fact that continuing disclosures are not available.

Yield to Worst. The proposed rule change would add yield to worst as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (r) thereof. MSRB Rule G-15(a)(i)(A)(5) requires the yield at which a transaction is effected for transactions that are computed on the basis of yield to maturity, yield to a call date, or yield to a put date to be

disclosed on a customer's confirmation.[8] Furthermore, if the computed yield required by MSRB Rule G-15 is different than the yield at which the transaction was effected, the computed yield must also be disclosed on the confirmation.[9] This information is typically referred to as yield to worst. The MSRB believes that this information may be material to a customer's investment decision, as it could impact a decision to purchase a municipal security at the current price or yield, and therefore may be required to be disclosed at or prior to the time of trade in addition to being disclosed on a customer's confirmation.

Unavailability of Official Statement for New Issue Customers. The proposed rule change would add, in the case of sales to customers of new issue municipal securities, the fact that an official statement is unavailable or only available from the underwriter as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (s) thereof. For purposes of this scenario, new issue municipal securities consist of offered municipal securities within the meaning of MSRB Rule G-32, which in general are municipal securities sold in a primary offering until 25 days after the closing of the new issue.[10] In contrast, the potential for the lack of

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8 Pursuant to MSRB Rule G-15(a)(i)(A)(5)(c)(v), yield is to be calculated in accordance with MSRB Rule G-33, on calculations.

9 See MSRB Rule G-15(a)(i)(A)(5)(c)(vii).

10 MSRB Rule G-32(c)(vi) defines offered municipal securities as municipal securities that are sold by a dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. Primary offering disclosure period is defined in MSRB Rule G-32(c)(ix) as the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter. Pursuant to MSRB Rule G-32(c)(viii), primary offering means an offering defined in Exchange Act Rule 15c2-12(f)(7) (17 CFR 240.15c2-12(f)(7)), including but

an official statement to be material to a customer in a transaction outside of the primary offering disclosure period is considerably lower and therefore normally would not trigger an obligation under MSRB Rule G-47.

Exchange Act Rule 15c2-12[11] requires underwriters to obtain and review an official statement for most primary offerings of municipal securities. MSRB Rule G-32(b)(i)(B) generally requires that the underwriter submit such official statement (as well as any official statement produced for a primary offering exempt from Exchange Act Rule 15c2-12[12]) for posting on the Electronic Municipal Market Access ("EMMA®")[13] website. If no official statement is posted by an underwriter to EMMA for a primary offering by the closing date, the underwriter is generally required under MSRB Rule G-32 to post to EMMA, as applicable, either: (i) notification that no official statement exists pursuant to MSRB Rule G-32(b)(i)(C) or (ii) in the case of a primary offering not subject to Exchange Act Rule 15c2-12[14] by virtue of paragraph (d)(1)(i) thereof (sometimes referred to as a limited offering) and the underwriter has withheld posting the official statement to EMMA pursuant to MSRB Rule G-32(b)(i)(E), contact information for investors to request a copy of the official statement.[15]

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not limited to any remarketing of municipal securities that constitutes a primary offering as such subsection (f)(7) may be interpreted from time to time by the Commission.

11 17 CFR 240.15c2-12.

12 Id.

13 EMMA® is a registered trademark of the MSRB.

14 17 CFR 240.15c2-12.

15 MSRB Rule G-32(b)(i)(F) also provides an exemption for certain commercial paper offerings or remarketings from the official statement submission requirement assuming applicable conditions are met.

Under certain circumstances, dealers currently have obligations to inform new issue customers by trade settlement regarding the availability or unavailability of the official statement under MSRB Rule G-32(a)(i) or (a)(iii)(A). The MSRB believes that the fact that an official statement is not available could be material to a new issue investor in making an investment decision and therefore should be included in MSRB Rule G-47's list of scenarios that could trigger a time of trade disclosure. As a result, new clause (s) of MSRB Rule G-47 Supplementary Material .03 would accelerate the timing for this disclosure to a point in time where this information would be available to the customer while making such investment decision, rather than merely by settlement of the transaction and thus after such decision has been made.

Dealers generally would be able to rely, for purposes of proposed clause (s), on information posted on EMMA as of the time of trade of a new issue municipal security with regard to whether an official statement is unavailable or available only from the underwriter. In the case of a customer trade by a dealer (other than the underwriter of the municipal security) occurring prior to the posting on EMMA of the official statement or any statement about the official statement's availability,[16] such dealer may presume that an official statement will become available unless the dealer has knowledge that the official statement will not in fact be posted or will only be made available through the underwriter.[17] Dealers that serve as underwriters for a

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16 It is common for new issue municipal securities to be traded beginning immediately after the time of first execution within the meaning of MSRB Rule G-34(a)(ii)(C)(1)(b) but before the underwriter timely posts the official statement to EMMA under MSRB Rule G-32(b)(i)(B). This gap typically is a result of the time needed to finalize and produce the official statement that incorporates the final terms of a new issue offering.

17 This is somewhat analogous to the ability of dealers other than the underwriter of a new issue to effectively presume that the underwriter has made the required submissions to EMMA under MSRB Rule G-32(a)(ii)(B).

primary offering would, in contrast, be deemed to know whether or not an official statement will be posted for such offering or will be made available only from such underwriters.

Unavailability of Continuing Disclosure. The proposed rule change would add, as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (t) thereof, the fact that no issuer of, or other obligated person with respect to, a customer's municipal security has agreed to make continuing disclosures as contemplated under Exchange Act Rule 15c2-12[18] available on EMMA. Exchange Act Rule 15c2-12(b)(5)[19] prohibits an underwriter from purchasing or selling municipal securities in most new issue offerings unless the underwriter has reasonably determined that an issuer or obligated person has undertaken in a written agreement or contract to provide specified continuing disclosures to the MSRB. Exchange Act Rule 15c2-12(d)(2)(ii),[20] while providing an exemption from Exchange Act Rule 15c2-12(b)(5),[21] requires a modified version of such continuing disclosure agreement or contract. In addition, Exchange Act Rule 15c2-12(d)(3)[22] provides a partial exemption from Exchange Act Rule 15c2-12(b)(5)[23] but still requires a modified version of such continuing disclosure agreement or contract limited to specified event notices. This new disclosure scenario in proposed clause (t) would apply to any municipal securities of the foregoing offerings.

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18 17 CFR 240.15c2-12.

19 17 CFR 240.15c2-12(b)(5).

20 17 CFR 240.15c2-12(d)(2)(ii).

21 17 CFR 240.15c2-12(b)(5).

22 17 CFR 240.15c2-12(d)(3).

23 17 CFR 240.15c2-12(b)(5).

However, certain new issue offerings are wholly exempt from or otherwise not subject to Exchange Act Rule 15c2-12(b)(5)[24] by virtue of paragraph (a) or subparagraph (d)(1) of Exchange Act Rule 15c2-12,[25] and therefore this new disclosure scenario would not apply to any municipal securities of these specific types of exempt offerings.

Continuing disclosure documents and related information submitted by issuers and obligated persons to EMMA's continuing disclosure service are made available on the EMMA website.[26] Such continuing disclosures currently are accessible by users of the EMMA website through a variety of means, including on the Disclosure Documents tab of the EMMA Security Details page for each specific municipal security. The disclosures provided on such page are generally accompanied by certain information, as applicable, provided to EMMA by the underwriter of the applicable municipal security at the time of its initial issuance regarding any agreement by the issuer or other obligated persons to undertake to provide continuing disclosures.[27]

Dealers generally would be able to rely on such information posted on EMMA by the underwriter regarding an issuer's or other obligated person's continuing disclosure undertaking for purposes of MSRB Rule G-47 Supplementary Material .03(t) unless the dealer has

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24 Id.

25 17 CFR 240.15c2-12(a) and (d)(1). In addition, Exchange Act Rule 15c2-12(d)(5) provides an exemption from Exchange Act Rule 15c2-12(b)(5) for certain municipal securities outstanding on November 30, 2010 so long as they have continuously met the conditions specified therein. 17 CFR 240.15c2-12(d)(5).

26 See MSRB Information Facility IF-3, on Electronic Municipal Market Access System – EMMA, available at https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Informational/IF-3.

27 See MSRB Rule G-32(b)(i)(A) and (b)(vi)(C)(1)(a).

knowledge to the contrary.[28] In addition, particularly for municipal securities for which no such underwriter-provided information concerning any continuing disclosure agreement may be displayed on EMMA, a review of the official statement or other information available on EMMA typically would indicate whether the issuer or obligated person has undertaken to provide continuing disclosures on the municipal securities.

The MSRB believes that the fact that continuing disclosures are not required to be made available to a customer on EMMA, which is where a customer would typically go to review such information prior to trading a municipal security, will generally be material and therefore should be included in time of trade disclosures provided to a customer. On occasion, an issuer or obligated person may undertake to provide continuing disclosures not contemplated by Exchange Act Rule 15c2-12[29] (sometimes referred to as voluntary continuing disclosures). This proposed scenario is not intended to require disclosures with regard to the existence of an agreement solely in respect of such voluntary continuing disclosures.

Consolidate Existing Inter-dealer Time of Trade Disclosure Guidance

The proposed rule change would consolidate three pieces of existing interpretive guidance relating to inter-dealer time of trade disclosure into one standalone interpretive

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[28] The ability of a dealer to rely on this posted information for purposes of MSRB Rule G-47 Supplementary Material .03(t) would not conclusively foreclose any other potential disclosure or other obligation of a dealer, under MSRB Rule G-47(a), Exchange Act Rule 15c2-12 (17 CFR 240.15c2-12) or otherwise, that might arise relating to the existence of or the performance or non-performance under any continuing disclosure agreement by an issuer or obligated person, or with regard to the content of such continuing disclosure, depending on the specific facts and circumstances.

[29] 17 CFR 240.15c2-12.

guidance in order to better streamline time of trade disclosure guidance.[30] While MSRB Rule G-47 applies to customer transactions and not transactions between dealers,[31] the MSRB has previously discussed a dealer's fair dealing disclosure obligations in connection with inter-dealer transactions in these three pieces of inter-dealer guidance. The MSRB believes that consolidating this existing guidance into a single interpretive guidance would be beneficial to the market and result in a more organized rulebook. The MSRB does not believe that the three existing pieces of inter-dealer guidance would otherwise retain any standalone value upon consolidation into the new guidance and, therefore, these three pieces of guidance would be retired.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act,[32] which provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to, among other matters, transactions in municipal securities effected by dealers. Section 15B(b)(2)(C) of the Exchange Act[33] provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to

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30 See MSRB Interpretive Guidance, Notice Concerning Securities that Prepay Principal (March 19, 1991), available at https://www.msrb.org/Notice-Concerning-Securities-Prepay-Principal; MSRB Interpretive Guidance, Disclosure of Pricing: Calculating the Dollar Price of Partially Prerefunded Bonds (May 15, 1986), available at https://www.msrb.org/Disclosure-Pricing-Calculating-Dollar-Price-Partially-Prerefunded-Bonds; and MSRB Interpretive Guidance, Description Provided at or Prior to the Time of Trade (April 30, 1986), available at https://www.msrb.org/Description-Provided-or-Prior-Time-Trade. Any portions of such interpretive pieces relating to customer disclosure standards are already incorporated into MSRB Rule G-47.

31 See MSRB Rule G-47(a).

32 15.U.S.C. 78o-4(b)(2).

33 15 U.S.C. 78o-4(b)(2)(C).

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 the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act[34] because the proposed rule change would protect investors and the public interest by ensuring that retail and other customers receive material information at or prior to the time of trade that would allow them to make an informed investment decision. Adding new requirements for dealers to disclose when an official statement is unavailable, when continuing disclosures are not available, and the yield to worst of a transaction would provide investors with material information when deciding to transact in municipal securities. Consolidating existing interpretive guidance into the text of MSRB Rule G-47 and clarifying existing rule language would promote compliance by dealers with existing requirements under MSRB Rule G-47 and thereby promote the protection of investors and the public interest. The MSRB believes that providing this material information to investors, particularly retail customers who may or may not know how or where to access this information, will assist investors by providing them with material information that could influence their investment decision.

Furthermore, the MSRB believes that consolidating its rulebook by removing interpretive guidance that is outdated or has already been incorporated into the rulebook will facilitate

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34 Id.

transactions in municipal securities, as well as facilitate compliance with MSRB rules, by reducing the need for industry participants to cross reference multiple sources.

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

Section 15B(b)(2)(C) of the Exchange Act[35] requires that MSRB rules not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory certainty by streamlining requirements and providing dealers with a clearer understanding of regulatory obligations incorporated into rule text from the current interpretive guidance. In addition, the proposed rule change would apply equally to all dealers. Therefore, the MSRB believes the proposed rule change would not impose any burden on competition and, consequently, does not impose a burden that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In reaching this conclusion, the MSRB was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.[36] In accordance with this policy, the MSRB evaluated the potential impacts on competition of the proposed rule change. For the purposes of this filing, the MSRB used the current iteration of MSRB Rule G-47 as the baseline to evaluate the costs and benefits for the proposed rule change, as well as other reasonable regulatory alternatives.

Benefits, Costs and Effect on Competition

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35 Id.

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

The proposed rule change is intended to benefit investors by requiring disclosure of additional information that is easily and readily accessible to dealers. The proposed rule change is also intended to benefit dealers by reducing their burden through clarification of the existing rule requirements and eliminating unnecessary compliance time and paperwork.

Benefits

The proposed rule change would provide several benefits for dealers and investors. First, the MSRB believes that the proposed rule change would streamline the process for dealers and clarify the existing rule so that dealers would better understand what disclosures must be disclosed to an investor at the time of trade, and thus would eliminate unnecessary compliance time and paperwork and reduce the burden on regulated entities. These include a clarification that the time of trade disclosure obligation in MSRB Rule G-47 does not require dealers to disclose material information to their customers that is intentionally withheld, based on a dealer's policies and procedures regarding insider trading. Furthermore, consolidating certain interpretive guidance and retiring six pieces of interpretive guidance would streamline the rulebook by consolidating existing guidance into the text of the rulebook and facilitate compliance by reducing the number of sources a dealer must review when complying with MSRB Rule G-47. Finally, the MSRB believes the proposed disclosure codification with three newly specified supplementary material paragraphs (continuing disclosures by an issuer, unavailability of an official statement in a new issue and the yield to worst) would benefit investors by helping to ensure that such information, which is easily and readily accessible to dealers, is disclosed to investors.

Costs

The MSRB believes that dealers would incur some costs because of the proposed rule change. These costs include the one-time upfront costs related to revising related policies and procedures as well as ongoing costs such as compliance costs associated with maintaining and updating relevant disclosures. This would be especially true for the three new time of trade disclosure obligations to be codified in MSRB Rule G-47 where dealers have a new responsibility to disclose readily accessible information to customers.[37] However, as current MSRB Rule G-47 already requires dealers to disclose material information to investors without specifying certain information and circumstances that could be material, it is possible that dealers may already have these specific disclosures built into their existing time-of-trade disclosure process. Regardless, the MSRB believes that this information is potentially material and therefore should be included in the time of trade disclosure obligation scenarios in MSRB Rule G-47.

The MSRB believes that dealers would not incur any, or only negligible, costs from proposed changes such as codifying existing interpretive guidance into MSRB Rule G-47, since dealers are presumably already in compliance with the existing interpretive guidance and relevant MSRB rules. The MSRB believes that dealers may also have additional costs associated with recordkeeping in relation to the disclosure requirements. Overall, the MSRB believes the aggregate upfront and ongoing costs relative to the baseline would be minor, and the expected aggregate benefits to investors and dealers accumulated over time should exceed the total costs.

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37 In a comment letter responding to the MSRB's request for comment described below, one commenter expressed concern about the costs of implementing the three proposed new specified time of trade disclosure obligations. Specifically, smaller dealers "tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue." See Letter from Michael Decker, Senior Vice President, Bond Dealers of America, dated April 17, 2023, at 2.

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 be applicable to all dealers and is not expected to erode protection for investors and issuers. The proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing dealers with a clearer understanding of regulatory obligations that are incorporated into the rule text. Although the benefits to investors discussed above would require dealers to incur some additional costs, at present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for all market participants would outweigh the upfront costs of revising policies and procedures as well as the ongoing compliance costs borne by dealers. The MSRB does not expect that the proposed rule change would impose a burden on competition for dealers, as the upfront costs are expected to be relatively minor for all dealers while the ongoing costs are expected to be proportionate to the size and trading activities of each dealer. In addition, the proposed rule change would apply equally across all dealers.

Reasonable Regulatory Alternatives

The MSRB considered and assessed two reasonable regulatory alternatives but determined the proposed rule change is superior to these alternatives. One alternative the MSRB considered was for MSRB Rule G-47 to pivot to an entirely principles-based approach when determining what information is considered material and therefore must be disclosed to investors at or before the time of trade. An entirely principles-based approach would provide an overarching objective for dealers to consider when determining whether specific information should be provided at the time of trade but would not provide specific examples of situations

where, depending on the facts and circumstances, information could be material. By comparison, dealers currently are provided with a list of fifteen specific scenarios contained in MSRB Rule G-47 Supplementary Material .03 that could be material, depending on the facts and circumstances, to assist them in their compliance efforts, and the proposed rule change would add three additional disclosure scenarios. The MSRB determined the alternative to adopt an entirely principles-based approach to be inferior to the proposed rule change, which would provide dealers with the latitude to make a judgement on what is material while also offering specific examples. This alternative would also defeat the original purpose of creating MSRB Rule G-47 in 2013 to consolidate the previously issued guidance into rule language without substantively changing the existing obligations.

Another alternative the MSRB considered was to restructure MSRB Rule G-47 to provide a detailed and prescriptive listing of required time of trade disclosures without the primary principles-based requirement set forth in MSRB Rule G-47(a). This alternative would eliminate any gray area that may currently exist because compliance personnel currently must weigh the general principle set forth in MSRB Rule G-47(a) with the Supplementary Material and any applicable interpretative guidance.[38] While the proposed rule change would maintain the existing obligation of dealers to make a judgement on what is material, the alternative would increase the risk of information material to investors not being disclosed if such information does not fall

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[38] In response to the original request for comment in 2013 to create MSRB Rule G-47, which included both a principles-based requirement for material disclosures as well as a list of potential scenarios, one commenter stated that the structure of the proposed rule text was "unnecessarily ambiguous," See Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 12, 2013, at 2, available at https://www.msrb.org/sites/default/files/RFC/2013-04/BDA.pdf.

within the listed items of disclosure, thereby reducing investor protection. As a result, the MSRB deemed these alternatives as inferior to the proposed rule change.

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

The MSRB sought comment on draft amendments to MSRB Rule G-47 in a request for comment that was published on February 16, 2023 (the "Request for Comment").[39] The MSRB received seven comment letters in response to the Request for Comment.[40]

In addition to items related to MSRB Rule G-47 on time of trade disclosure, the Request for Comment solicited comment on time of trade disclosure obligations with respect to 529 savings plans as well as on draft amendments to MSRB Rule D-15, defining the term sophisticated municipal market professional. Comments received in response to time of trade disclosure obligations with respect to 529 savings plans as well as those received in response to the draft amendments to MSRB Rule D-15 will be addressed through separate initiatives. The

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39 See MSRB Notice 2023-02, Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (February 16, 2023) available at https://www.msrb.org/sites/default/files/2023-02/2023-02.pdf.

40 Comment letters were received from: AKF Consulting: Letter from Andrea Feirstein, Managing Director, and Mark Chapleau, Senior Consultant, dated April 20, 2023; Bond Dealers of America ("BDA"): Letter from Michael Decker, Senior Vice President, dated April 17, 2023 (the "BDA Letter"); College Savings Plan Network: Letter from Rachel Biar, Nebraska Assistant State Treasurer, NEST 529 College Savings Program Director, Chairman, College Savings Plans Network, dated April 17, 2023; Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated July 21, 2023; Curtis McLane, dated April 19, 2023; my529: Letter from Richard K. Ellis, Executive Director, dated April 17, 2023; and Securities Industry and Financial Markets Association ("SIFMA"): Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, dated April 17, 2023 (the "SIFMA Letter"). Comment letters are available at https://www.msrb.org/sites/default/files/2023-04/All-Comments-to-Notice-2023-02.pdf.

BDA Letter and SIFMA Letter were directly responsive to the proposed rule change and the two letters are summarized below by topic, with MSRB responses provided.

Material Information

The Request for Comment solicited comments on draft rule text that would clarify that MSRB Rule G-47(a) does not require dealers to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

SIFMA specifically states that it appreciates the MSRB clarifying that it is not the MSRB's intent to require dealers to violate dealer processes that have been established to facilitate compliance with another obligation in order to comply with MSRB Rule G-47.[41] SIFMA also states that the technical clarification described in the proposed rule change is largely helpful and alleviates potential sources of confusion.[42]

The MSRB agrees with SIFMA that the intent of MSRB Rule G-47 is not to require dealers to violate their policies and procedures designed to address insider trading and related securities laws in order to comply with MSRB Rule G-47, and the proposed rule change will make this clear on its face.

Codify Existing Interpretive Guidance on Market Discount, Zero Coupon and Stepped Coupon Securities

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41 See SIFMA Letter at 4.

42 See SIFMA Letter at 7.

The Request for Comment solicited comments on draft rule text that would codify existing interpretive guidance on market discount, zero coupon, and stepped coupon securities into MSRB Rule G-47 Supplementary Material .03 as features of a security that may be material in specific scenarios and therefore trigger a time of trade disclosure.

The BDA Letter states that BDA is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47 as many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.[43] SIFMA, however, states that it is concerned about the increase in scope of time of trade disclosure and requiring disclosure about zero coupon and stepped coupon bonds could obfuscate material information.[44] SIFMA also expresses concern that the provision of more detailed information about market discount beyond notification of the existence of a discount could constitute the provision of tax advice.[45]

The time of trade disclosures relating to market discount, zero coupon or stepped coupon securities are currently contained within interpretive guidance. Therefore, dealers should be on notice as to the potential materiality of these security features. The MSRB believes that consolidating material time of trade disclosure scenarios into MSRB Rule G-47 would be a benefit to the market. Furthermore, while information on market discount, zero coupon or stepped coupon securities may be obvious to market professionals, it is less likely to be obvious to retail investors toward which MSRB Rule G-47 is primarily oriented. However, in connection

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43 See BDA Letter at 1.

44 See SIFMA Letter at 3-4.

45 Id.

with disclosure related to market discount, dealers would not be required pursuant to the provisions of the proposed rule change to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice.

Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

The Request for Comment solicited comments on retiring existing interpretive guidance relating to conversion costs and secondary market insurance. The Request for Comment noted that the substance of the Conversion Cost Guidance relating to interchangeable securities is not a common occurrence in the marketplace anymore and therefore should be retired. The Request for Comment noted that this guidance is currently reflected in MSRB Rule G-47 Supplementary Material .03(e). The Request for Comment also noted that the Secondary Market Insurance Guidance states that the fact that a security has been insured or arrangements for insurance have been initiated will affect the market price of the security and is material and must be disclosed to a customer at or before execution of a transaction in the security. Additionally, the Secondary Market Insurance Guidance explained that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. The Request for Comment noted that the MSRB believes that it is not common practice to require such evidence of insurance for effective transference.

SIFMA states that it agrees that evidence of insurance generally is not required to be attached to a security for effective transfer and that there are no aspects of the guidance that the MSRB proposes to retire that should be retained in any way.[46] BDA states that it is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47 as many of the proposed

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46 See SIFMA Letter at 7.

changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.[47]

The MSRB agrees with SIFMA and BDA that the guidance to be retired in the proposed rule change would not impose significant burdens and that the guidance no longer retains utility due to its current codification within MSRB Rule G-47 or the fact that it has become outdated.

Add Factor Bonds as an Example of a Bond that Prepays Principal

The Request for Comment solicited comments on a technical amendment to add factor bonds as an example of a type of bond that prepays principal under MSRB Rule G-47 Supplementary Material .03(i). The Request for Comment noted that MSRB Rule G-47 Supplementary Material .03(i) already covers bonds that prepay principal as a feature that could trigger the time of trade disclosure obligation.

The SIFMA Letter states that SIFMA is concerned about the proposed increase in scope of time of trade disclosures and that requiring time of trade disclosure about items such as factor bonds would add compliance risks and burdens.[48] BDA states that it is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.[49]

MSRB Rule G-47 Supplementary Material .03(i) already lists bonds that prepay principal as a disclosure scenario. Adding factors bonds as an example of a bond that prepays principal

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47 See BDA Letter at 1.

48 See SIFMA Letter at 3-4.

49 See BDA Letter at 1.

does not add any new burden or disclosure scenario, as factor bonds are bonds that prepay principal and therefore are already within the scope of this provision. Furthermore, while this information may be obvious to market professionals, it is less likely to be obvious to retail investors toward which MSRB Rule G-47 is primarily oriented.

Three New Disclosure Scenarios

The Request for Comment solicited comments on the addition of three new disclosure scenarios to MSRB Rule G-47 Supplementary Material .03. Specifically, the three new disclosure scenarios discussed in the Request for Comment were the unavailability of the official statement, whether the issuer is required to make continuing disclosures, and yield to worst.

SIFMA states that it is concerned that the proposed increase in scope of time of trade disclosures and requiring time of trade disclosure about the availability of an official statement and yield to worst calculations would add compliance risks and burdens, and that time of trade disclosure of obvious information, on the contrary, obfuscates material information.[50] Furthermore, SIFMA states that the list of time of trade disclosures has become overbroad and unnecessarily increases risks to dealers without providing material benefit to issuers and investors and urged the MSRB to reconsider the changes that add these additional time of trade disclosures."[51] BDA states that the addition of three new disclosure scenarios would impose costs on dealers to update written supervisory procedures and obtain additional sources for this information.[52] BDA goes on to state that while the marginal compliance costs associated with the

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50 See SIFMA Letter at 3-4.

51 See SIFMA Letter at 4.

52 See BDA Letter at 1-2.

proposed rule change may be relatively small, it would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule which cumulatively would impose significant costs to dealers.[53]

The MSRB appreciates the concerns raised by SIFMA and BDA. However, the MSRB believes that unavailability of the official statement, the fact that continuing disclosures are not available and yield to worst are all material information that would impact an investor's decision to transact in specific municipal securities, and therefore should be included in the time of trade disclosures. Furthermore, while there could be additional costs for dealers to comply with the new disclosure scenarios, the MSRB believes that the costs would be minimal and not outweigh the need to disclose material information to investors.

In response to the concerns raised by SIFMA and BDA, the MSRB narrowed the scope of the disclosure scenario relating to the unavailability of the official statement as it was described in the Request for Comment. The proposed rule change would limit this disclosure scenario to sales to customers of new issue municipal securities which would be consistent with current requirements under MSRB Rule G-32.

Obtaining Information about a Security from a Customer

The Request for Comment solicited comments on draft rule text that would have required a dealer purchasing a municipal security from a customer to obtain sufficient information about the securities that is not otherwise readily available to the market so that it can accurately describe the securities when the dealer reintroduces them into the market.

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53 See BDA Letter at 2.

In response, SIFMA states that it believes this guidance to be outdated and that the information environment in the municipal securities market is fundamentally different today than when the original guidance was published, thanks in large measure to the work of the MSRB and its EMMA website.[54]

The MSRB acknowledges that the information environment is dramatically different today as compared to when the original guidance was published, including in particular the broad availability to the public of information through the EMMA website. Therefore, the MSRB did not include this language in the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

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54 See SIFMA Letter at 3.

- 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-2024-03 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-2024-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2024-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.[55]

Sherry R. Haywood
Assistant Secretary

[55] 17 CFR 200.30-3(a)(12).

EXHIBIT 2a

MSRB Municipal Securities Rulemaking Board

MSRB Notice

2023-02

Publication Date
February 16, 2023

Stakeholders
Municipal Securities Dealers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
April 17, 2023

Category
Fair Practice

Affected Rules
Rule G-47, Rule D-15

Receive emails about MSRB Notices.

Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Overview

The Municipal Securities Rulemaking Board ("MSRB" or "Board") seeks comment on draft amendments to MSRB Rules G-47, on time of trade disclosure, and D-15, on sophisticated municipal market professionals. The draft amendments to Rule G-47 would: codify certain existing guidance into the text of Rule G-47; add new supplementary material to specify certain disclosures that may be material in specific scenarios; and make certain technical and clarifying amendments to the rule text. Additionally, the MSRB proposes to retire six pieces of related guidance and consolidate certain existing guidance regarding a broker, dealer or securities dealer's (individually and collectively, "dealers") disclosure obligations in connection with an inter-dealer transaction into one piece of guidance. Draft amendments to Rule D-15 would exempt investment advisers registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission") from having to make certain affirmations in order to qualify for status as a sophisticated municipal market professional ("SMMP") under MSRB rules.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information that they believe would be useful to the MSRB. Comments should be submitted no later than April 17, 2023 and may be submitted by clicking here or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, MSRB 1300 I Street, NW, Washington, DC

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20005. All comments will be made available for public inspection on the MSRB's website.[1]

Background and Regulatory Justification

Consistent with the MSRB's strategic plan and as part of the constant care and keeping of the MSRB's rulebook, the MSRB strives to ensure that, among other things, the MSRB's rules and related guidance are effectively protecting investors, issuers and the public interest, reflective of current market practices, have not become overly burdensome, are harmonized with the rules of other regulators, as appropriate, and that there is no unconscious bias in the operation of the rule. To facilitate these goals, the MSRB engages in periodic retrospective reviews of particular rules. Additionally, the MSRB has initiated a long-term initiative to review the MSRB's catalogue of interpretive guidance and clarify, codify, amend and/or retire guidance that no longer achieves its intended purposes. The retrospective review of Rule G-47 and limited retrospective review of Rule D-15 stem from the MSRB's undertaking to review its body of interpretive guidance.

Rule G-47, which requires dealers to disclose to customers, at or prior to the time of trade, all material information known or available publicly through established industry sources, and Rule D-15, which defines the term SMMP, were approved by the SEC in March 2014.[2] The obligations now encompassed in Rule G-47 originally stemmed from guidance issued under Rule G-17, on fair dealing. While, at the time of the adoption of Rule G-47, the MSRB retired certain guidance that was codified into the Rule G-47 rule text, the MSRB believes that there may be additional related guidance that could benefit from being codified, consolidated or retired and that it would be prudent to conduct a retrospective review of the text of Rule G-47 at the same time. The MSRB is also seeking comment on draft amendments to Rule D-15 to address various stakeholder comments over the years. We believe that a retrospective rule review would allow for modernization of the rules, while simultaneously ensuring that they appropriately achieve their issuer and investor protection goals without placing undue compliance burdens on regulated entities.

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

[2] *See* Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014), (File No. SR-MSRB-2013-07).

Summary of Rule G-47 Draft Amendments

I. General Disclosure Duty

Rule G-47(a) sets forth the basic obligation for a dealer to disclose to customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market.[3] This basic obligation was drawn originally from a dealer's fair dealing obligation under Rule G-17 and importantly, encompasses two distinct disclosure obligations. First, it imposes on dealers an obligation to disclose all material information *known about the transaction*. Second, it imposes an obligation to disclose material information *about the security that is reasonably accessible to the market*. For example, in July 14, 2009 guidance, the MSRB reminded dealers that:

> [t]he scope of material information that dealers are obligated to disclose to their customers under Rule G-17 is not limited solely to the information made available through established industry sources. Dealers also must disclose material information they know about the securities even if such information is not then available from established industry sources. It is essential that dealers establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.[4]

Draft amendments to Rule G-47(a) would retain these standards but would clarify that the time of trade disclosure obligation does not require dealers to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding

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[3] Rule G-48(a), on transactions with sophisticated municipal market professionals, exempts dealers from time of trade disclosure obligations under Rule G-47 when the customer is a sophisticated municipal market professional.

[4] *See* Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009). For example, the MSRB has previously indicated that information that may be material to a transaction includes conversion costs for converting registered securities to bearer form. *See* Confirmation, Delivery and Reclamation of Interchangeable Securities (Aug. 10, 1988). *See* below discussion at Section III.c. regarding the MSRB's proposal to retire this 1988 guidance.

insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer. In the past, commenters have sought clarification regarding this point and the MSRB believes that it is reasonable to include such clarification in the rule text given that it is not the MSRB's intent to require dealers to violate dealer processes that may have been established to facilitate compliance with one obligation (*e.g.,* prohibitions on insider trading) in order to comply with Rule G-47.

Additionally, draft amendments to Supplementary Material .01(d) would codify certain language from existing interpretive guidance reminding dealers that, while customers do not have a Rule G-47 obligation to dealers, purchasing dealers should obtain from a selling customer sufficient information about the securities that is not otherwise readily available in the market so that the dealer can accurately describe the securities when the dealer reintroduces them into the market. Codification of this language would permit the MSRB to retire the source guidance, discussed below.[5]

II. Definitions

Rule G-47(b)(ii) defines the term "material information" and explains that information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. A minor edit to this definition would delete the language "or significant" in order to streamline the definition. The MSRB does not believe that deletion of this language would materially alter the definition.

III. Codification and/or Retirement of Select Existing Interpretive Guidance

The MSRB proposes to codify certain substantive principles found in interpretive guidance in the MSRB rule book and/or retire certain guidance. In section a below, the MSRB proposes to retire one piece of guidance related to market discount, after codifying its substance

[5] *See* Rule G-17 interpretive guidance, dated April 30, 1986, pertaining to the description provided at or prior to the time of trade, discussed below under the section titled Related Initiatives, Consolidated Fair Dealing Guidance on Time of Trade Disclosure Obligations in Connection with Inter-Dealer Transactions.

into Rule G-47. In section b below, the MSRB proposes to codify, but not retire at this time, guidance pertaining to zero coupon bonds and stepped coupon bonds. In section c below, the MSRB proposes to retire, without codification, guidance pertaining to conversion costs and secondary market insurance. Finally, in section d below, the MSRB proposes to make one technical addition to an existing time of trade disclosure obligation already embodied in current Rule G-47.

a. Guidance to be Codified and Retired

The MSRB proposes to codify into Rule G-47 the key time of trade disclosure principles set forth in the below interpretive guidance. The MSRB would then retire the guidance and move it to the MSRB "Archived Guidance" webpage where it can continue to be accessed for historical reference. However, such guidance would no longer appear in the MSRB rulebook. The MSRB invites comment as to the appropriateness of retiring this guidance and/or as to whether any other aspects of the below guidance offer substantive guidance to dealers that is not immediately apparent from the face of the discussed rules.

Market Discount

In November 2016 Rule G-47 guidance, the MSRB stated that the fact that a municipal security bears market discount is material information that must be disclosed to a customer under Rule G-47 because absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the market discount is taxable as ordinary income. The MSRB now proposes to codify this substantive principle into Rule G-47 as new Supplementary Material .03(q).

b. Guidance to be Codified and Retained

Zero Coupon Bonds and Stepped Coupon Bonds

The MSRB proposes to codify time of trade disclosure guidance from the below guidance while retaining the original guidance in its rulebook.

In August 1982 Rule G-15 guidance pertaining to municipal securities with zero coupons or stripped coupons, the MSRB noted in regard to stripped or zero coupon municipal securities that "the

Board is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities so as to comply with the Board's fair practice rules. For example, although the details of the increases to the interest rates on 'stepped coupon' securities need not be provided on confirmations, such information is, of course, material information regarding the securities, and municipal securities dealers would be obliged to inform customers about this feature of the securities at or before the time of trade." The MSRB proposes to add the substance of this guidance to Rule G-47 as new supplementary material .03(t). This new provision would provide that a dealer should disclose any special characteristics of the securities and, with respect to stepped coupon securities, the details of the increases to the interest rates. The MSRB would retain the source guidance at this time as it also pertains to Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers and Rule G-12, on uniform practice.[6]

c. Guidance to be Retired at this Time

The MSRB proposes to retire the below guidance and archive them on the msrb.org website.

Conversion Costs

In August 1988 Rule G-15 guidance, the MSRB noted that transfer agents for some interchangeable securities charge fees for conversion of registered certificates to bearer form, which can be substantial and, in some cases, prohibitively expensive. The MSRB went on to state that dealers therefore should ascertain the amount of the fee prior to agreeing to deliver bearer certificates and that, if a dealer passes on the costs of converting registered securities to bearer form to its customer, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade. Additionally, the customer must agree to pay such fee. The MSRB does not believe that interchangeable securities are a common occurrence in the marketplace anymore. As a result, we believe that there is limited utility to this guidance and propose to retire it.

[6] However, the MSRB may revisit this guidance in the future in connection with a separate retrospective rule review of section (c) of Rule G-12.

Secondary Market Insurance

In March 1984 Rule G-17 guidance related to secondary market insurance, the MSRB reminded the industry that the fact that a security has been insured or arrangements for insurance have been initiated will affect the market price of the security and is material and must be disclosed to a customer at or before execution of a transaction in the security. In addition, the Board explained that it believes that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. While the first component of this guidance is already reflected in current Rule G-47 Supplementary Material .03(e), the latter portion pertaining to evidence of insurance was not codified into that same supplementary material because the MSRB believes that it is not common practice to require such evidence of insurance for effective transference. As a result, the MSRB proposes to retire the March 1984 Rule G-17 guidance at this time. The MSRB notes that this piece of guidance also speaks to the application of Rule G-13, on quotations, and Rule G-30, on fair pricing, to securities that are insured or otherwise have a credit enhancement feature. However, those statements simply restate the self-evident fact that those rules apply to such securities. As a result, the MSRB believes that the entirety of such guidance should be retired at this time but seeks comment below as to whether stakeholders believe that any portion of this guidance should be retained and/or codified.

d. Technical Addition(s)

Rule G-47 Supplementary Material .03(i) currently requires disclosure of the fact that a security prepays principal and the amount of unpaid principal that will be delivered on the transaction. The MSRB proposes a minor amendment to this section to offer “factor bonds” as an example of a type of bond that prepays principal, and therefore, could trigger the time of trade disclosure obligation. Factor bonds are bonds for which partial redemptions are processed by a proportional return of principal to each bondholder. Subsequent to the redemption, the factor must be applied to the face value in order to determine interest payments as well as the principal amount for each future transaction.

IV. Draft Amendments Regarding Specified Time of Trade Disclosure Obligations

The MSRB proposes to specify in Rule G-47 that the following information may be material and require time of trade disclosure to a customer.

a. Unavailability of Official Statement or Availability Only from the Underwriter

Securities that are exempt from the requirements of SEC Rule 15c2-12, such as those issued pursuant to the limited offering exemption set forth in SEC Rule 15c2-12(d)(1), are exempt from the obligation under that rule for the issuer or obligated person to review and provide to investors a copy of the official statement. The MSRB proposes to add new supplementary material to Rule G-47 providing that the fact that no official statement is available for a customer's security or is available only from the underwriter (as may be the case for securities that are exempt from the requirements of SEC Rule 15c2-12) may require disclosure under Rule G-47.[7]

b. Continuing Disclosures

The MSRB proposes to amend Rule G-47 to provide that whether an issuer is required to make continuing disclosures with respect to a customer's security that will be available to the customer may require disclosure under the rule. The MSRB believes that such information about the security may be material and is reasonably accessible to the market.[8]

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[7] Dealers may access the Electronic Municipal Market Access ("EMMA®") website to determine whether an official statement is available to investors or only available from the underwriter during a primary offering. The "Issue Details" page for a security issued pursuant to the limited offering exemption will indicate that an official statement is not available on EMMA and will indicate that this is pursuant to the "15c2-12 Exempt Limited Offering."

[8] For example, a review of the official statement or other information available on EMMA typically would indicate whether the issuer or obligated person has undertaken to provide continuing disclosures on the bonds. As another example, EMMA could be used to identify whether an offering was issued pursuant to the limited offering exemption under SEC Rule 15c2-12(d)(1)(i). Below, the MSRB seeks comment as to whether there may be circumstances under which the fact that continuing disclosures will or will not be available to a customer may not be reasonably accessible to the market.

c. Yield to Worst

Pursuant to Rule G-15(a)(i)(A)(5), for transactions that are effected on the basis of a yield to maturity, yield to a call date, or yield to a put date, the yield at which the transaction was effected must be disclosed on a customer's confirmation. In addition, if the computed yield required by Rule G-15 (generally, subject to exceptions, the lower of call or nominal maturity date) is different than the yield at which the transaction was effected, the computed yield also must be shown on the confirmation in addition to the yield at which the transaction was effected. While the MSRB appreciates that this information is disclosed on the customer confirmation on a typically after-the-fact basis, the MSRB proposes to specify that such information—sometimes referred to as the yield to worst—may be material and therefore also may require disclosure under Rule G-47.

Related Initiatives

1. Retagging of Time of Trade Disclosure Interpretive Guidance

The Board explained when adopting Rule G-47 that all interpretive guidance under Rule G-17 that speaks to time of trade disclosure obligations should be read to refer to Rule G-47 instead.[9] In order to better facilitate compliance with Rule G-47, the MSRB conducted an audit of all Rule G-17 guidance and, in enhancing the msrb.org website, has "retagged" all such guidance to ensure that all guidance that interprets a dealer's time of trade disclosure obligation is now tagged to Rule G-47.[10] As a result, dealers no longer have to consult the interpretive guidance behind both Rules G-17 and G-47 when looking for guidance related to their time of trade disclosure obligations.

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[9] *See* MSRB Notice 2014-07, SEC Approves MSRB Rules G-47 on Time-of-Trade Disclosure Obligations, MSRB Rules D-15 and G-48 on Sophisticated Municipal Market Professionals, and Revisions to MSRB Rule G-19 on Suitability of Recommendations and Transactions (March 12, 2014).

[10] Interpretive guidance tagged to Rule G-47 can be found here: https://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-47. To the extent the guidance relates to a dealer's time of trade disclosure obligations and other fair dealing obligations, such guidance is "tagged" to both Rule G-17 and Rule G-47.

2. Time of Trade Disclosure Obligations with Respect to 529 Savings Plans

Currently, the interpretive guidance under Rule G-17 outlines dealers' time of trade disclosure obligations, including the out-of-state disclosure obligations and suitability obligations with respect to 529 savings plans.[11] At the time of adoption of Rule G-47, the MSRB elected not to codify the interpretive guidance under Rule G-17 that pertains to time of trade disclosure obligations in connection with 529 savings plans into Rule G-47. Instead, the MSRB noted that it may create a separate rule regarding time of trade disclosure obligations for 529 savings plans or a rule consolidating dealers' obligations related to 529 savings plans.[12] Specifically, the MSRB stated that until the MSRB adopts a rule specific to 529 savings plans, Rule G-47 and such interpretive guidance continues to apply to 529 savings plans.[13] Similarly, in the interest of addressing dealers' suitability obligations for 529 savings plans at a later time, the MSRB did not incorporate the suitability guidance[14] noted under Rule G-17 into revised Rule G-19, on suitability of recommendations and transactions. The MSRB is considering whether to propose a standalone time of trade disclosure rule for 529 savings plans, which would consolidate the prior interpretive guidance. Additionally, the MSRB is considering a restatement of the existing interpretive guidance regarding dealers' suitability obligations and other sales practice-related activities with respect to 529 savings plans. Below, the MSRB seeks comment relevant to potentially establishing a standalone time of trade disclosure rule that would codify the interpretive guidance under Rule G-17.[15]

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[11] *See* Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans (Aug. 7, 2006).

[12] *See supra* note 2.

[13] The MSRB previously stated, "[a]ll statements in the remaining MSRB interpretative guidance that refer to Rule G-17 in connection with the time-of-trade disclosure obligations should be read instead to refer to new Rule G-47." *See supra* note 9.

[14] The MSRB previously said, "[u]ntil the MSRB adopts a rule specific to 529 plans, MSRB Rule G-19 and the related interpretive guidance will continue to apply to 529 plans." *See supra* note 9.

[15] Since the adoption of Rule G-47, similar to 529 savings plans, interests in Achieving a Better Life Experience (ABLE) programs are also considered municipal securities under federal securities laws and are deemed municipal fund securities under MSRB rules. Consequently, similar to 529 savings plans, a new standalone rule would have general application to ABLE programs and dealers who sell interests in ABLE programs.

3. Consolidated Fair Dealing Guidance on Time of Trade Disclosure Obligations in Connection with Inter-Dealer Transactions

   Rule G-47 applies only in connection with customer transactions, not inter-dealer transactions. However, certain MSRB guidance discusses a dealer's fair dealing disclosure obligations in connection with inter-dealer transactions. The MSRB proposes to consolidate the substance of these pieces of guidance into a short standalone piece of guidance. This would permit the MSRB to retire any guidance that pertains to both customer disclosure obligations and inter-dealer disclosure obligations as the customer disclosure standards would be incorporated into Rule G-47 and the inter-dealer disclosure standards would be consolidated into the standalone piece. Specifically, after incorporating the relevant inter-dealer disclosure content into a consolidated piece of guidance, the MSRB proposes to retire:

   - Rule G-17 interpretive guidance, dated March 19, 1991, pertaining to securities that prepay principal;
   - Rule G-15 interpretive guidance, dated May 15, 1986, pertaining to the disclosure of pricing (calculating the dollar price of partially pre-refunded bonds);[16] and
   - Rule G-17 interpretive guidance, dated April 30, 1986, pertaining to the description provided at or prior to the time of trade.

The draft consolidated guidance is set forth further below.

If, informed in part by the comments received in response to this Request for Comment, the MSRB determines that a standalone time of trade disclosure rule for 529 savings plans may be appropriate, the MSRB would expect to publish a separate Request for Comment on such a draft rule.

[16] The MSRB notes that this Rule G-15 guidance also pertains to the application of Rule G-12(c), Rule G-15(a) and Rule G-30 to the fact pattern described in the guidance. However, the MSRB does not believe that the substantive principles espoused in those portions of the guidance state any principles that are not also expressed elsewhere in the rule book. For example, the Rule G-12(c) and G-15(a) related substance of this guidance is noted in MSRB Rule G-12 guidance, dated August 15, 1989, pertaining to confirmation requirements for partially refunded securities, while the Rule G-30 related principles are currently codified into the text of Rule G-30, Supplementary Material .02(b)(vii)(B).

Summary Of Rule D-15 Draft Amendments

I. Rule D-15 Generally

Rule D-15 defines the term SMMP which is used in Rule G-48, on transactions with sophisticated municipal market professionals. Rule G-48 generally provides for modified dealer regulatory obligations under certain MSRB rules when dealing with SMMPs. Per Rule D-15, an SMMP is defined by three essential requirements: the nature of the customer; a determination of sophistication by the dealer; and an affirmation by the customer, as specified in the rule. Currently, Rule D-15 provides that the three categories of customers that may qualify as an SMMP pursuant to the "nature of the customer" requirement are: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person or entity with total assets of at least $50 million.

II. Attestation Exception for SEC-Registered Investment Advisers

As noted above, in order to qualify as an SMMP under Rule D-15, an SMMP must, among other things, meet the affirmation requirement set forth in the rule. Specifically, the customer must affirmatively indicate that it: (1) is exercising independent judgment in evaluating: (A) the recommendations of the dealer; (B) the quality of execution of the customer's transactions by the dealer; and (C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and (2) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

The MSRB proposes to exempt investment advisers registered with the Commission from having to make such affirmations in order to qualify for SMMP status under Rule D-15. These investment advisers generally maintain over $100 million in regulatory assets under management and owe a fiduciary duty to their clients. The MSRB understands that these investment advisers are typically very sophisticated and, as a result, some market participants have

questioned whether the burdens associated with obtaining an attestation from these professionals is sufficiently outweighed by the protections afforded to them. The MSRB is sensitive to the cost-benefit analysis associated with the application of its rules and seeks comment below as to whether the MSRB should remove the attestation requirement for Commission-registered investment advisers to qualify as SMMPs.

Economic Analysis

Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (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 carefully considers the costs and benefits of new and amended rules. Accordingly, the Board's policy on economic analysis in rulemaking states that, prior to proceeding with rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted would, in its judgement, meet that need.[17] The MSRB does not believe that the proposed changes to MSRB Rule G-47, on time of trade disclosure and definitional Rule D-15, on sophisticated municipal market professionals, would result in any burden on competition in accordance with the purposes of the Exchange Act. The MSRB seeks comment on the economic effects of amending MSRB Rules G-47 and D-15.

A. The Need for Amended Rules G-47 and D-15

The purpose of this Request for Comment is to address the MSRB's ongoing retrospective rule review. As part of the MSRB's ongoing retrospective rule review initiatives, the MSRB has also been examining published interpretive guidance.

The draft amendments to Rule G-47 and Rule D-15 are intended to improve the municipal securities market's operational efficiency and promote regulatory certainty by streamlining requirements and providing dealers with a clearer understanding of regulatory obligations that are incorporated into rule text from the current interpretive guidance. In addition, the draft amendments to Rule G-47 and Rule D-15 are intended to benefit dealers by reducing a burden through clarification of the existing rule requirements and

[17] *See* 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. Available at: Policy on the Use of Economic Analysis in MSRB Rulemaking | MSRB.

eliminating unnecessary compliance time and paperwork.

There are twelve specific proposals with regard to Rules G-47 and D-15:

1. Clarifying the time of trade disclosure obligation that dealers, based on a dealer's policies and procedures regarding insider trading, do not need to disclose material information that is intentionally withheld from registered representatives who are engaged in sales with customers.

2. Revising Supplementary Material .01(d) to specify that, while customers do not have a Rule G-47 obligation to dealers, purchasing dealers should obtain from a selling customer sufficient information about the securities so that the dealer can accurately describe the securities when the dealer reintroduces them into the market.

3. Streamlining the description of the term "material information."

4. Codifying guidance on market discount, and zero coupon bonds and stepped coupon bonds into the substance of Rule G-47 and retiring the market discount guidance.

5. Retiring Rule G-15 guidance on costs associated with converting registered certificates to bearer form and Rule G-17 guidance related to the attachment of evidence of insurance to securities as such practices are no longer common in the marketplace.

6. Amending Rule G-47 Supplementary Material .03 to offer "factor bonds" as an example of a type of bond that prepays principal.

7. Adding new draft supplementary material regarding continuing disclosures.

8. Adding new draft supplementary material regarding official statements.

9. Adding new draft supplementary material regarding yield to worst disclosure.

10. Retagging all time of trade disclosure interpretive guidance under Rule G-17 to Rule G-47.

11. Consolidating certain fair dealing statements applicable to a dealer's time of trade disclosure obligations with respect to inter-dealer transactions and retiring the source guidance.

12. Exempting investment advisers registered with the Commission from the affirmation requirement set forth in Rule D-15.

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

To evaluate the potential impact of draft amendments to Rules G-47 and D-15, a baseline or baselines must be established as a point of reference to compare the expected state with the draft amendments. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state. For the purposes of this Request for Comment, the baseline is current Rule G-47 and Rule D-15.

C. Identifying and evaluating reasonable alternative regulatory approaches

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

One alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission. The MSRB considered both state-registered and Commission-registered investment advisers in the interest of providing equal regulatory burdens. However, the MSRB deemed this alternative to be inferior to the one proposed in this Request for Comment. It is the MSRB's understanding that investment advisers registered with the Commission are typically much larger than state-registered advisers.[18]

Another alternative the MSRB considered was for Rule G-47 to pivot to an entirely principles-based approach when determining what information is considered material and therefore must be disclosed to customers at or before the time of trade. An entirely principles-based

[18] *See* SEC Office of Investor Education and Advocacy, "Investor Bulletin: Transition of Mid-Sized Investment Advisers from Federal to State Registration," December 2011.

approach would provide an overarching objective for the dealer to use in determining whether specific information should be provided at the time of trade. The MSRB determined this alternative to be inferior as dealers currently rely on the list of fifteen specific scenarios contained in Rule G-47 Supplementary Material .03 to assist them in their compliance efforts. While the draft amendments to Rule G-47 would still provide dealers with the latitude to make a judgement on what is material while offering specific examples, the alternative would defeat the original purpose of creating Rule G-47 in 2014 to consolidate the previously issued guidance into rule language without substantively changing the existing obligations.

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. The MSRB is currently unable to quantify the economic effects of the draft amendments to Rule G-47 and Rule D-15 in totality because not all of the information necessary to provide a reasonable estimate is available. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with the draft amendments to Rules G-47 and D-15, the MSRB has considered these costs and benefits primarily in qualitative terms and believes the aggregate costs to dealers are relatively minor and benefits should accrue to dealers and investors over time and therefore exceed costs. The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the draft amendments.

Benefits

The draft amendments to Rule G-47 and Rule D-15 would provide several benefits for dealers. First, the MSRB believes that the draft rule changes would streamline the process for dealers to understand what disclosures must be disclosed to an investor at the time of trade, and thus would reduce the burden on regulated entities. Additionally, the MSRB believes the proposed codification of the disclosures specified in the three newly specified supplementary material paragraphs (continuing disclosures by an issuer, unavailability of an official statement and the yield to worst) as part of Rule G-47 would benefit investors by helping to ensure that such information that is easily and readily accessible to dealers is disclosed to investors. Furthermore, consolidating certain pieces of interpretive guidance and

retiring six pieces of interpretive guidance will streamline the rulebook by consolidating existing guidance into the text of the rulebook and facilitate compliance by reducing the number of sources a dealer must review when complying with the rule. Finally, the draft amendments to Rule G-47 and Rule D-15 would benefit dealers by reducing a burden through clarification of the existing rule and eliminating unnecessary compliance time and paperwork. These include a clarification that the time of trade disclosure obligation in Rule G-47 does not require dealers, based on a dealer's policies and procedures regarding insider trading, to disclose material information to their customers that is intentionally withheld, as well as an attestation exception for SEC-registered investment advisers to qualify as an SMMP under Rule D-15.

Costs

The MSRB acknowledges that dealers could incur costs as a result of the proposed actions, relative to the baseline state (current state). These costs include the one-time upfront costs related to setting up and/or revising related policies and procedures and ongoing costs such as compliance costs associated with maintaining and updating relevant disclosures. This could especially be true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47. However, because the MSRB is not modifying the obligation to disclose material information, only specifying certain information and circumstances that could be material, dealers may already have these specific disclosures built into their existing time-of-trade disclosure processes. The MSRB believes that dealers would not incur any costs from changes such as codifying existing interpretive guidance into Rule G-47, since dealers are presumably already in compliance with the existing interpretive guidance and MSRB rules. The MSRB believes that dealers may also have additional costs associated with recordkeeping in relation to the disclosure requirements. Overall, the MSRB believes the aggregate upfront and ongoing costs relative to the baseline would be minor, and the expected aggregate benefits to investors and dealers accumulated over time should exceed the total costs.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the draft amendments to Rule G-47 and Rule D-15 would neither impose a burden on competition nor hinder capital formation. The draft amendments would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing dealers with a clearer understanding of regulatory obligations that are incorporated into rule text. Although the benefits to investors discussed above would require dealers to incur some additional costs, at present, the MSRB is

unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for all market participants would outweigh the upfront costs of revising policies and procedures as well as the ongoing compliance costs by dealers. The MSRB does not expect that the draft amendments to Rule G-47 and Rule D-15 would impose a burden on competition for dealers, as the upfront costs are expected to be relatively minor for all dealers while the ongoing costs are expected to be proportionate to the size and trading activities of each dealer.

Questions

Rule G-47

1. Are there any other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified? Are there any other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03?

2. Is there any other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic?

3. Are there situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of?

4. Are the technical clarifications set forth above helpful and do they alleviate potential sources of confusion?

5. Are the draft amendments regarding specified time of trade disclosure obligations reasonably accessible to the market?

6. Do commenters agree that evidence of insurance generally is not required to be attached to a security for effective transfer?

7. Are there any aspects of the guidance that the MSRB proposes to retire that should be retained in any way (*e.g.,* through codification, consolidation or by retaining such guidance in its current form)? If so, please specify.

Burdens and Impact

8. Would the obligations specified in the newly proposed draft supplementary material result in a disproportionate and/or undue burden for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft amendments? Please offer suggestions.

9. Are any of these burdens unique to minority and women-owned business enterprise ("MWBE"), veteran-owned business enterprise ("VBE") or other special designation firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

10. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

11. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms? If so, do commenters have any specific recommendations to alleviate these impacts while still promoting the objectives of Rule G-47? Please offer suggestions.

Time of Trade Disclosure Obligations Regarding 529 Savings Plans

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

2. Explain how the current business practices (*i.e.,* check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, *etc.*).

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

Rule D-15

1. Do commenters agree with the MSRB's proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement? Should this exemption also extend to state-registered investment advisers? Why or why not?

2. Does the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement remove any unnecessary burdens for dealers while still striking the right balance of protection for issuers and investors?

3. Would the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms? What about access to business opportunities? Would it alleviate any such disproportionate or unique burdens or provide greater access to business opportunities for small dealers?

4. Prior to 2012, assets of at least $100 million (specifically invested in municipal securities in the aggregate in a customer's portfolio and/or under management) were required for a customer to be treated as an SMMP.[19] This $100 million threshold was subsequently lowered to $50 million in assets. Are there any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in

[19] *See* Release No. 34-67064 (May 25, 2012) (*2, FN 7 and *7, FN 12), 77 FR 32704 (June 1, 2012) (File No. SR-MSRB-2012-05); *see also* MSRB Notice 2012-27: Securities and Exchange Commission Approves Revised MSRB Definition of Sophisticated Municipal Market Professional (May 29, 2012).

assets for certain categories of customers? For example, unlike customers who are natural persons, many municipal entities likely would meet the threshold of $50 million in assets. Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (*e.g.,* $50 million specifically invested in municipal securities)?

5. The required affirmations under Rule D-15 aligns with FINRA's under FINRA Rule 2111 related to suitability, but also provides clear disclosure to SMMPs of the other modified dealer obligations under MSRB rules to provide clear disclosures to SMMPs and to obtain affirmative statements from SMMPs that they can, for example, exercise independent judgement in performing the evaluations related to fair pricing, suitability and the other modified dealer obligations. Do commenters feel that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (*e.g.,* FINRA Rule 2111(b)) given the differences between the markets and respective rule sets?

Other

1. While the MSRB proposes to retire the guidance above related to secondary market insurance, would there be value in an educational resource for market participants regarding such bonds? For example, continuing disclosures may not be provided for some bonds that are secondarily insured if, for example, a new CUSIP is obtained on such bonds and the issuer/obligated person is unaware of the new CUSIP number.

2. Are there specific enhancements to EMMA that the MSRB could consider to help investors identify continuing disclosure information that may be relevant to secondarily insured bonds? If so, please describe them and identify any challenges of which the MSRB should be aware.

3. A dealer is not obligated to provide an SMMP relevant Rule G-47 disclosures, which includes disclosure regarding securities sold below the minimum denominations and the potential adverse effect on liquidity of a position below the minimum denomination. Would it provide greater certainty if a dealer's

modified obligations under Rule G-48 specifically identified the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers?

Questions about this notice should be directed to Saliha Olgun, Interim Chief Regulatory Officer, or Justin Kramer, Assistant Director, Market Regulation, at 202-838-1500.

February 16, 2023

* * * * *

Text of Proposed Amendments*

Rule G-47: Time of Trade Disclosure

(a)(i) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market

(ii) Notwithstanding section (a)(i) above, material information is not required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

(b) Definitions.

(i) No change.

(ii) "Material information": Information is considered to be material if there is a substantial likelihood that the information would be considered important ~~or significant~~ by a reasonable investor in making an investment decision.

(iii) No change.

* Underlining indicates new language; strikethrough denotes deletions.

Supplementary Material

.01 **Manner and Scope of Disclosure.**

a. - c. No change.

d. Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material. Customers do not owe any obligations under Rule G-47 to purchasing dealers. However, a municipal securities professional buying securities from a customer should obtain sufficient information about the securities that is not otherwise readily available to the market so that it can accurately describe the securities when the dealer reintroduces them into the market.

.02. No change.

.03 Disclosure Obligations in Specific Scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

a. - h. No change.

i. **Bonds that prepay principal.** The fact that the security prepays principal (e.g., factor bonds) and the amount of unpaid principal that will be delivered on the transaction.

j. - o. No change.

p. **Whether the Issuer is Required to Make Continuing Disclosures.** Whether the issuer is required to make continuing disclosures with respect to the security that will be available to the customer.

q. **Market Discount.** The fact that a municipal security bears market discount and that all or a portion of the investor's investment return represented by accretion of the market discount might be taxable as ordinary income.

r. **Unavailability of an Official Statement.** The fact that no official statement is available or only available from the underwriter.

s. **Yield to Worst.** The computed yield required by Rule G-15(a)(i)(A)(5)(c) if different than the yield at which the transaction was effected.

t. **Zero coupon bonds or stepped coupon bonds.** The special characteristics of zero coupon bonds or stepped coupon bonds and, with respect to stepped coupon securities, the details of the increases to the interest rates.

Rule D-15: "Sophisticated Municipal Market Professional"

The term "sophisticated municipal market professional" or "SMMP" is defined by three essential requirements: the nature of the customer; a determination of sophistication by the broker, dealer or municipal securities dealer ("dealer"); and an affirmation by the customer; as specified below.

(a) - (b) No change.

(c) Customer Affirmation. ~~The customer must affirmatively indicate that it:~~

(1) The customer must affirmatively indicate that it:

~~(1)~~(A) is exercising independent judgment in evaluating:

~~(A)~~(i) the recommendations of the dealer;

~~(B)~~(ii) the quality of execution of the customer's transactions by the dealer; and

~~(C)~~(iii) the transaction price for non-recommended secondary market agency transactions as to which ~~(i)~~(1) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and ~~(ii)~~(2) the dealer does not exercise discretion as to how or when the transactions are executed; and

~~(2)~~(B) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

(2) Exception for Commission-registered investment advisers. The affirmation described in this section (c) is not required for investment advisers registered with the Commission under Section 203 of the Investment Advisers Act of 1940.

Consolidated Interpretive Guidance

Time of Trade Disclosures in Inter-Dealer Transactions

For inter-dealer transactions, there is no specific requirement for brokers, dealers or municipal securities dealers (individually and collectively, "dealers") to disclose all material facts to another dealer at time of trade. A selling dealer is not generally charged with the responsibility to ensure that the purchasing dealer knows all relevant features of the securities being offered for sale. The selling dealer may rely, at least to a reasonable extent, on the fact that the purchasing dealer is also a professional and will satisfy their need for information prior to entering into a contract for the securities.

The items of information that professionals in an inter-dealer transaction must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary

adequately to describe the security that is the subject of the contract. As a general matter, these items of information do not encompass all material facts, but should be sufficient to distinguish the security from other similar issues. The Board has interpreted Rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry. The rule also prohibits dealers from knowingly misdescribing securities to another dealer. As a result, it is possible that non-disclosure of an unusual feature might constitute an unfair practice and thus become a violation of Rule G-17 even in an inter-dealer transaction.

For example, with respect to bonds that prepay principal, non-disclosure of the fact that a bond prepays principal could be a violation of Rule G-17. This would be especially true if the information about the prepayment feature is not accessible to the market and is intentionally withheld by the selling dealer. Whether or not non-disclosure constitutes an unfair practice in a specific case would depend upon the individual facts of the case. However, to avoid trade disputes and settlement delays in inter-dealer transactions, it generally is in dealers' interest to reach specific agreement on the existence of any prepayment feature and the amount of unpaid principal that will be delivered.

EXHIBIT 2b

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2023-02 (FEBRUARY 16, 2023)

1. AKF Consulting: Letter from Andrea Feirstein, Managing Director, and Mark Chapleau, Senior Consultant, dated April 20, 2023
2. Bond Dealers of America: Letter from Michael Decker, Senior Vice President, dated April 17, 2023
3. College Savings Plans Network: Letter from Rachel Biar, Nebraska Assistant State Treasurer, NEST 529 College Savings Program Director, Chairman, College Savings Plans Network, dated April 17, 2023
4. Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated July 21, 2023
5. McLane, Curtis: Email dated April 19, 2023
6. my529: Letter from Richard K. Ellis, Executive Director, dated April 17, 2023
7. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, dated April 17, 2023

AKF CONSULTING

VIA ELECTRONIC DELIVERY

April 20, 2023

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

Re: Comments Concerning MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals*

Dear Mr. Smith:

Thank you for the opportunity to submit comments pursuant to the above-referenced MSRB Notice 2023-02 (the "Notice"). AKF Consulting LLC dba AKF Consulting Group is a registered Municipal Advisor that works solely with State issuers of municipal fund securities including 529 Savings Plans and 529A ABLE Plans. We also advise State Administrators of Auto-IRA Programs, which, as currently structured, fit within the definition of municipal fund securities under MSRB Rule D-12.[1] Since our formation in 2002, we have had the privilege of working with 49 State Administrators across 37 States. We recognize and value the important role that the MSRB plays in regulating brokers, dealers, and municipal advisors in the municipal fund securities market, and recommend best industry practices reflected in the MSRB rules to our State issuer clients that are otherwise outside of the MSRB's jurisdiction.

With this in mind, our comments solely address Question 1 under Time of Trade Disclosure Obligations with Respect to 529 Savings Plans (page 19 of the Notice). While AKF professionals collectively understand the dealer obligations and business practices addressed in Questions 2 through 4, we base our comments on our service as a fiduciary to the State issuers of municipal fund securities.

> **1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?**

AKF Consulting appreciates that when Rule G-47 was adopted, it specifically did not codify the August 7, 2006 *Interpretive Guidance on Consumer Protection Obligations Relating to the Marketing of 529 College Savings Plans* (the "Guidance"). In our view, codification was likely unnecessary since college savings

[1] State-run Auto-IRA Programs are subject to the rules and regulations applicable to Roth IRAs

market participants understood and even embraced the Guidance's directives regarding matters such as out-of-state disclosures from the start. To that end, specific points have been included in the Voluntary Disclosure Principles adopted by the College Savings Plans Network, which have been amended over time to reflect regulatory developments and evolving best practices.

Notwithstanding the clarity of the Guidance and the universal implementation of the disclosures it includes, we would support a new, standalone rule that expressly applies to 529 College Savings and ABLE Plans as municipal fund securities. In taking this position, we recognize that 529 College Savings and ABLE Plans (and by analogy, State-run Auto IRAs) are more like mutual funds than traditional municipal debt obligations. To that point, the time of trade disclosures should incorporate the concepts that apply to continuously offered securities as opposed to securities that are offered at one time, with set terms and durations. Having such a rule would acknowledge the magnitude of the market overall for State-run Investment Plans, which in our view, include 529, ABLE and Auto-IRA Plans. Importantly, a dedicated rule would eliminate any uncertainties about the consumer protections that must be in place for investors in any of these important programs.

In our role as fiduciaries to State issuers of 529, ABLE and Auto-IRA Plans, we work with our clients to ensure that each one understands its obligations and responsibilities under applicable federal securities laws. A clear, concise rule that addresses material time of trade disclosures in connection with the municipal securities issued by these Plans would, in our view, assist State issuers and consumers by clarifying dealers' obligations and promote consistent application of the Guidance within the industry.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. Please contact us if you have any questions or if would like additional information.

Sincerely,

Andrea Feirstein

Andrea Feirstein
Managing Director
andrea@akfconsulting.com

Mark Chapleau/akf

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April 17, 2023

Ronald W. Smith, Corporate Secretary
MSRB
1300 I Street NW
Washington DC 20005

Dear Mr. Smith,

The Bond Dealers of America ("BDA") is pleased to provide comments on MSRB Notice 2023-02, "Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals" (the "Proposal"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Proposal describes contemplated changes to MSRB Rules G-47 and D-15 and related guidance as part of the Board's retrospective rule review. Many of the amendments in the Proposal are consolidations or reorganizations of existing policy documents, including incorporating guidance into rule text and consolidating and retiring some guidance. The Proposal would also add three data items that "may be material and require time of trade disclosure to a customer." These are whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. The Proposal would also specify that dealers do not need "to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer."

Proposed amendments to Rule D-15 would remove the requirement with respect to a SEC-Registered Investment Advisor ("RIA") for a dealer to obtain an attestation from the customer as a condition of that investor having the status of Sophisticated Municipal Market Professional ("SMMP").

BDA is generally not opposed to the Proposal as it relates to Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens[1]. The exceptions to this are the three additional data items not currently referenced as "information that may be material in specific scenarios and require time of trade disclosures to a customer" in Supplementary Material .03 of Rule G-47—whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. While some dealers likely incorporate these disclosures currently, not all do. For those who do not, these amendments

[1] To ensure the descriptions and explanations contained in the soon-to-be-archived guidance remain easily accessible, we recommend adding a link to "Archived Interpretive Guidance" (www.msrb.org/MSRB-Archived-Interpretive-Guidance) to the MSRB's "Regulatory Documents for the Municipal Market" landing page (msrb.org/Regulatory-Documents).

would impose costs on dealers to update written supervisory procedures and obtain additional sources for this information, likely from vendors.

As the Proposal recognizes, "dealers could incur costs as a result of the proposed actions." As the Proposal also recognizes, this is especially "true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47." Compliance costs are not borne equally across the industry. Smaller dealers tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue. While the marginal compliance costs associated with the Proposal may be relatively small, they would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule. Together, these initiatives would impose significant new compliance costs on MSRB-regulated dealers. We urge the MSRB to be mindful of the combined effects of the Board's initiatives as well as regulations promulgated by the SEC, especially the effects on small and mid-size dealers.

BDA supports the proposed changes to MSRB Rule D-15. We agree with the Proposal that SEC-registered RIAs "are typically very sophisticated" and "the burdens associated with obtaining an attestation from these professionals" are not supported "by the protections afforded to them."

The Proposal states "one alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission." Apparently the Board rejected this provision because "investment advisers registered with the Commission are typically much larger than state-registered advisers." We do not believe the size of the RIA is a driving factor in the RIA's sophistication or their ability to otherwise meet the requirements of SMMPs. State-registered RIAs generally bear a fiduciary duty to their customers comparable to the fiduciary duty imposed by SEC RIA rules. We urge the Board to reconsider the D-15 proposal and include state-registered RIAs in the proposed exemption from the requirement to obtain a SMMP attestation.

BDA is again pleased to provide comments on the Proposal. We are generally not opposed to the proposed changes to Rule G-47, and we fully support the proposed changes to Rule D-15. Please call or write if you have any questions.

Sincerely,

Michael Decker
Senior Vice President

By Electronic Delivery

April 17, 2023

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

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice"). CSPN is an affiliate of the National Association of State Treasurers ("NAST") and membership includes elected officials and senior staff in state government with responsibilities with regard to 529 College Savings Plans ("529 Plans"). These state members of CSPN are not brokers, dealers and municipal securities dealers (collectively, "Dealers") under the rules of the Municipal Securities Rulemaking Board (the "MSRB") and so do not have direct insight into some aspects of this request for comment. CSPN also has corporate affiliate members who may be Dealers. However, this response is not made on their behalf as we assume they will provide their own responses to the Notice.

We appreciate the MSRB's continuing commitment to assisting consumers seeking to invest in 529 College Savings Plans ("529 Plans") and its interest in ensuring that State administrators of 529 Plans receive sound, balanced support from their advisors. CSPN appreciates the opportunity to provide comment on time of trade disclosure obligations regarding 529 Plans and is pleased to offer the following responses to Questions 1 and 2.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify

existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

CSPN is appreciative of the guidance received in 2006, *Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans* ("Guidance") to date on the time of trade obligations of brokers, dealers and municipal securities dealers (collectively, "Dealers"). We believe the Guidance is clear and are unaware of member difficulties in applying the Guidance. The Guidance is also memorialized in the CSPN Disclosure Principles Statement No. 7, which was adopted October 6, 2020 (available at: https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf).

In light of the consistent application of the Guidance within the industry, we do not believe codification of the Guidance is required at this time.

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

In general, for 529 Plans sold directly to the public, the Plan's disclosure documents are provided at the time the participant opens an account. Generally, 529 Plans require participants to acknowledge that they have received, read and understand the applicable disclosure documents. This happens during the online enrollment process or on the paper application if the participant is not enrolling online.

In general, for 529 Plans sold through financial professionals, the Plan's disclosure documents are provided to the financial professional by the 529 Plan so that the financial professional can satisfy any time of trade obligations.

In addition, 529 Plans generally have significant disclosures included in marketing and outreach materials. These materials include printed, electronic and website disclosures advising the reader of important considerations including:

- Investment returns are not guaranteed, and you could lose money by investing in the 529 Plan
- Read and consider carefully the 529 Plan's disclosure documents before investing. These documents include investment objectives, risks, charges, expenses, and other important information.
- Before you invest, consider whether your or the beneficiary's home state offers any state tax or other benefits that are only available for investments in that state's 529 Plan. Other state benefits may include financial aid, scholarship funds, and protection from creditors.

We are unaware of difficulties caused by current business practices in meeting applicable time of trade obligations, regardless of the method of enrollment in the 529 Plan.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach CSPN by contacting Chris Hunter at (202) 630-0064 or chris@statetreasurers.org.

Sincerely,

Rachel Biar
Nebraska Assistant State Treasurer
NEST 529 College Savings Program Director
Chairman, College Savings Plans Network

Government Finance Officers Association
660 North Capitol Street, Suite 410
Washington, D. C. 20001
(202) 393-8467

July 21, 2023

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Notice 2023–02 Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Participants

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) appreciates the opportunity to provide comments regarding the request for information that was included in MSRB Notice 2023-02. Specifically, we would like to address the definition of Sophisticated Municipal Market Professionals (SMMP) as part of MSRB Rule D-15.

Question #4 in the Notice asks ……. "*Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (e.g., $50 million specifically invested in municipal securities)?"*

As you are aware, municipal entities are not only issuers of municipal securities, but also may be investors of municipal securities.

The current definition of SMMP in Rule D-15 (and corresponding FINRA rules) states that one of the criteria that needs to be met for SMMP status is for the investor (or institutional account as noted in Rule D-15), to have $50 million in assets. This is different than the language that was part of Rule G-47 and the definition of SMMP held prior to changes in 2012, where the threshold for one of the SMMP criteria was $100 million in municipal securities investments.

The GFOA believes that the definition and SMMP criteria should be reinstated to the threshold prior to 2012: $100 million in municipal securities investments. Many governments – including small governments - have a great deal of infrastructure and assets in place; however, that is not an indication of whether those entities are sophisticated investors.

We believe that this definition as it currently stands (governments with $50M or more in assets) captures a vast audience of governments who should not be labeled SMMP and therefore a broader audience forfeits several layers of protections. Rule D-15 should be changed to better reflect whether an entity is likely a sophisticated investor based on criteria that directly corresponds to investing.

One of the MSRB's greatest roles is to protect issuers and investors. Keeping one of the criteria for the SMMP definition at $50 million in assets, jeopardizes rather than enhances investor protections for municipal entities. By changing the definition to investible assets, the MSRB (and FINRA in corresponding rules) can avoid capturing a vast audience of governments that should not go without vital disclaimers, best execution standards, suitability standards and time of trade disclosures about their investments.

We would also like to mention that in this Notice, other concepts raised related to disclosures in limited private offerings. While disclosures are not required nor are they the responsibility of issuers in these transactions, we understand the concerns the MSRB has that these bonds could be sold in the secondary market to investors who are unaware of the agreement with the initial purchaser at the time of initial sale. GFOA supports efforts to ensure investors understand when disclosures may not be available.

Sincerely,

Emily S. Brock

Emily Brock
Director, Federal Liaison Center

cc: Ms. Saliha Olgun, Interim Chief Regulatory Officer - MSRB
Dave Sanchez, Director – Office of Municipal Securities, Securities and Exchange Commission

Comment on Notice 2023-02

From: Curtis McLane,

On: April 19, 2023

Comment:

It Would be more conservative on a time basis in all honesty I do greatly appreciate MSRB and SEC they honestly do try to do what's fair and true even if it burdens them. And they do it with ease I hope one day I can learn to be as effective as you all are and as helpful. we all should be grateful for the time and effort you spend everyday trying to make things fair and equal for everyone.

my529®

By Electronic Delivery

April 17, 2023

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

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The Utah Educational Savings Plan dba my529 ("my529") was established by the State of Utah as a qualified tuition program under 26 U.S.C. § 529 (529 Plan(s)). my529 is the official and only 529 plan sponsored by the State of Utah. Since its founding, my529 has become the third largest direct-sold 529 Plan in the country. my529 is pleased to have the opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice").

my529 appreciates the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 Plans. my529 is uniquely situated in the industry in that it does not have an advisor-sold 529 plan, nor does it contract with any firm as an underwriter to distribute the Plan's securities. Nevertheless, my529 strives to align its practices with applicable MSRB rules and thus feels compelled to provide comments.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

Although 529 Plans are issuing a municipal security, the municipal fund security issued by 529 Plans is fundamentally different from the bulk of municipal securities overseen by the MSRB.

Because of the fundamental differences between a contribution to a 529 Plan and the purchase of a municipal bond, my529 believes that there may be utility in codifying a standalone rule regarding time of trade disclosure obligations for 529 Savings Plans. A standalone rule for 529 Plans would have two benefits: (1) it would allow the MSRB to better see and understand the unique nature of municipal fund securities issued by 529 Plans; and (2) it would provide greater certainty, as well as a potential safe harbor to 529 Plans.

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When an account owner contributes to a 529 Plan, the account owner is investing in a municipal fund security. That contribution looks and acts, however, far more like an investment in a mutual fund[1] than a purchase of a municipal bond which has a set maturity date and coupon rate. In contrast, the municipal security issued by a 529 Plan is a continuous offering.

Contributions to 529 Plans typically fit into one of the following areas, each requiring different time of trade disclosures.

1. **Initial account opening**. An account owner opening a new account should receive offering materials prior to opening the account. As a continuous offering, disclosure materials are readily available. Generally, hardcopies are made available to any account owner who has not requested electronic delivery. Clear guidance on electronic delivery or availability of the disclosure materials is needed.

2. **Automatic or one-time contributions**. Account owners may contribute automatically with scheduled contributions, or may choose to contribute sporadically when they have funds to invest. Clear guidance is needed in these circumstances. Providing disclosure documents for every transaction after the account is opened is impractical and expensive. Like mutual funds, supplemental materials should be provided when plan changes material to the investment decision are made.

3. **Third-party contributions**. Anyone is allowed to contribute to a beneficiary's 529 Plan account (e.g., gifting platform, grandparent, friend, aunt, etc.). Clarity is needed around any disclosure requirements in this circumstance. my529 believes no disclosure requirement is needed because these are gifts to an account over which the giver has no control.

If the MSRB were to propose a new standalone rule, existing Rule G-17 interpretative guidance addressing out-of-state disclosure obligations should be codified because it would provide greater certainty to 529 Plans. The current guidance has been voluntarily adopted by the College Savings Plans Network ("CSPN") in recommended disclosure principles for 529 Plans. The current version of these disclosure principles is CSPN Disclosure Principles Statement No. 7, which was adopted on October 6, 2020 (available at: https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf).

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

[1] In fact, my529 has observed that some account owners may get confused that they do not own the underlying mutual funds when they make a contribution to their account (i.e., invest in a municipal fund security). Accordingly, my529 has taken steps to better communicate to its account owners and prospective account owners about the fundamental nature of the municipal fund security that they are purchasing when they contribute to their accounts.

my529's current business practice is to provide its program disclosure document (i.e., the my529 Program Description) to all new account owners prior to opening an account. Whether opening an account online or using a paper form, my529 makes the my529 Program Description available in hard copy or electronic format (depending on the stated preference of the individual account owner) as part of the account signup process. New account owners must specifically agree and certify to the following:

> "I have received, read, understand, and agree to all the terms and conditions in the Program Description and this Account Agreement and will retain a copy of the Account Agreement for my records."

The my529 Program Description is also available on my529's web site and is posted publicly as a voluntary disclosure on EMMA.

When the my529 Program Description is updated via supplement, copies of the supplement are sent to all account owners either in hard copy or electronic format. The Supplements are also posted to my529's website and are posted to EMMA as a matter of best practices.

my529's advertisements (except for those that meet an exception to MSRB Rule G-21(e)(i)(B)) also contain disclosure urging the reader to "[c]arefully read the Program Description in its entirety for more information and consider all investment objectives, risk, charges and expenses before investing." This disclosure would be present on all advertising that presents a "call to action" on the part of the viewer—whether the viewer is an existing account owner or merely a prospective one.

Time of trade disclosures are generally not a hindrance to current account-opening business practices. However, a requirement to provide disclosure materials for every contribution after the initial account opening would be expensive and impracticable. As an example, my529 processed more than 3.1 million contributions in 2022.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

my529 is not a municipal dealer and does not work with any dealers on distribution. As a result, my529 does not have direct knowledge of municipal dealers' current business practices. my529 is, however, mindful of the burden and cost imposed on dealers who are required to provide time of trade disclosures either orally or in writing. As noted previously, the municipal fund securities sold by 529 Plans are fundamentally different than a municipal bond. my529 believes that dealers, and self-operated plans like my529, may satisfy their time of trade disclosure obligations by electronic notice and reference to program disclosure documents that are publicly available, whether that be on the website of a 529 Plan or on EMMA.

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4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

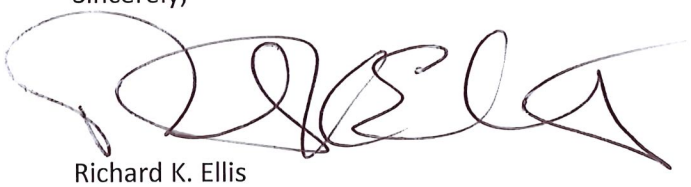
It is common for my529 account owners to set up automatic contributions that happen on a monthly or other regularly-scheduled basis. This complicates time of trade disclosures because the investment decision is not made when each contribution is made—rather the investment decision is made when the account owner sets the automatic, recurring contribution schedule.

The account owner's motivation in setting such a schedule is so that he or she does not have to make further investing decisions, unless he or she wants to cancel or modify that automatic, recurring contribution. To require a 529 Plan to provide ongoing, mandatory time of trade disclosures under such circumstances is expensive and impracticable. For example, the printing and mailing costs for my529's most recent Program Description was approximately $2.30 per account. Program Descriptions were mailed to more than 34,000 account owners. This does not include personnel expenses for drafting, editing and review by compliance and disclosure employees or consultants. For the 15 percent of account owners that request printed documents, the cost would exceed $1.0 million annually, or an increase to my529's annual budget of seven percent. Such disclosures, if mandated, would only needlessly increase cost and damage the goodwill that exists between a 529 Plan and its account owners because the account owners would receive such disclosures long after the investing decision had already been made.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach my529 by calling Greg Dyer at (801) 366-8441.

Sincerely,



Richard K. Ellis
Executive Director
my529
60 South 400 West
Salt Lake City, UT 84101
Tel: 801.321.7134

sifma

April 17, 2023

VIA ELECTRONIC SUBMISSION

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

Re: MSRB Notice 2023-02 – Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input on the Municipal Securities Rulemaking Board's ("MSRB's") Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (the "Notice").[2] SIFMA applauds the MSRB's goal to modernize the rules while continuing to provide appropriate issuer and investor protections without placing undue compliance burdens on regulated entities. In furtherance of this goal:

- MSRB rules should be harmonized with the Investment Advisers Act rules.
- All RIAs should be exempt from attestation requirement.
- Supplemental Material .01 (d) is outdated and should be retired, as security information is now readily available.
- The scope of time of trade disclosures should be clear and not increase; MSRB should clarify that rules should not be construed to require broker dealers to give tax advice.

[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 2023-02 (February 16, 2023).

- Time of trade disclosures for 529 savings plans should be covered in a separate rule.

I. MSRB Rules Should be Harmonized with the Investment Advisers Act Rules,

It is important that the rules be consistent with rules adopted under the Investment Advisers Act of 1940 (the "Advisers Act"). RIAs registered with the SEC are subject to the requirements of the Advisers Act and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act obviate the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48. If the RIA does not comply with such obligations, they are arguably not fulfilling their fiduciary duties, so the MSRB should not need to layer on additional investor protections for municipals.

The MSRB should codify the guidance related to transactions in managed accounts as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client). The MSRB has appropriately recognized that, a dealer trading with an RIA is not required to obtain a customer affirmation from the ultimate investor for purposes of qualifying the person, separately, as an SMMP under MSRB Rule D-15, on transactions with SMMPs, if the RIA is itself an SMMP.[3] In other words, for purposes of Rule D-15 the RIA is the customer. The logic that led to this interpretation applies equally with respect to time-of-trade disclosure, so for the purposes of MSRB Rule G-47, the MSRB should consider the RIA, and not the underlying investors, to be the dealer's customer. For example, when an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, in these scenarios, the dealer does not have any customer obligations to the underlying investors. When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer.

II. All RIAs Should be Exempt from Attestation Requirement

SIFMA strongly agrees that all SEC registered investment advisers should be exempt from the Rule D-15 attestation requirement. This exemption should also be extended to state registered investment advisers, who have essentially the same duties as federally registered investment advisers but a smaller amount of assets under management. RIAs typically are given discretion to trade on behalf of their clients, who may not want to be informed of the details of each trade

[3] *See,* Application of MSRB Rules to Transactions in Managed Accounts (December 1, 2016), https://www.msrb.org/Application-MSRB-Rules-Transactions-Managed-Accounts.

or may be forbidden from knowing the details of trades in their account.[4] Investment advisers are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients.

III. Supplemental Material .01 (d) Is Outdated and Should Be Retired, as Security Information is Now Readily Available

The draft amendments to Supplementary Material .01(d) attempt to codify certain language from existing interpretive guidance reminding purchasing dealers to obtain information about limited information bonds. The original 1986 guidance states:

> Customers are not subject to the Board's rules, and no specific disclosure rules would apply to customers beyond the application of the anti-fraud provisions of the federal securities laws. I note, however, that a municipal securities professional buying securities from a customer should obtain sufficient information about the securities so that it can accurately describe these securities when the dealer reintroduces them into the market.[5]

The original guidance does not state that the dealer is to obtain information from the customer, however, merely that the dealer must obtain the information prior to reintroducing the security to the market. Regardless, this guidance is outdated and should be retired instead of codified. The information environment in the municipal securities market is fundamentally different today than when the original guidance was published, thanks in large measure to the work of the MSRB and its EMMA website.

Furthermore, the language in the Notice codifying this 1986 guidance is unclear and misleading. This provision should have been a mere reminder that a dealer must understand the securities they are selling, and that one source of the information could be to obtain information from the selling customer. However, the language in the Notice sets a new standard beyond what is required by Rule G-47. It is important to make clear that a dealer does not have a duty to obtain information about a security from a customer in all cases, and security information need not be obtained from the selling customer. For these reasons, this guidance should be retired, as codifying the language as proposed in the Notice will merely create confusion and potentially the perception that an information inquiry must be made of all customers.

IV. The Scope of Time of Trade Disclosures Should Be Clear and Not Increase; MSRB Should Clarify that Rules Should Not Be Construed to Require Broker Dealers to Give Tax Advice

SIFMA is concerned about the proposed increase in scope of time of trade disclosures. Requiring time of trade disclosures about factor bonds, zero coupon bonds, stepped coupon bonds, the availability of an official statement, and yield to worst calculations adds compliance

[4] Examples of investors being forbidden from knowing the details of trading in their account include members of Congress, persons in financial services with access to material non-public information, etc.

[5] *See,* Rule G-17 interpretive guidance (April 30, 1986), https://msrb.org/Description-Provided-or-Prior-Time-Trade.

risks and burdens. Further, SIFMA is concerned that information that is widely available and obvious will be required to be disclosed (as well as documented and subject to supervisory policies and procedures). Time of trade disclosure of obvious information, on the contrary, obfuscates material information.

Currently firms likely do have access to non-public information, including information in data rooms, that should not be required to be disclosed. SIFMA appreciates the MSRB retaining the clarification that it is not the MSRB's intent to require dealers to violate dealer processes that have been established to facilitate compliance with another obligation in order to comply with Rule G-47.

SIFMA is further concerned about the discount disclosures and feels strongly that it should be made clear that broker dealers neither give tax advice nor should they be perceived to be giving tax advice. We believe that the original guidance should be preserved,[6] which merely requires notification of the existence of a discount. Dealers have a growing concern about examination inquiries into discount disclosures to clients that may force dealers to move closer to the line of giving tax advice, as some FINRA examiners have been requiring dealers to disclose the de minimis cutoff price. SIFMA requests that the MSRB clarifies that dealers are merely obligated to indicate where there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

In conclusion, the list of time of trade disclosures has become over-broad and unnecessarily increases risks to broker dealers without providing material benefit to issuers and investors. SIFMA urges the MSRB to reconsider the changes that add these additional time of trade disclosures.

V. Time of Trade Disclosures for 529 Savings Plans Should be Covered in a Separate Rule.

529 savings plans are more similar to mutual fund investments than state and local government bond debt, and SIFMA has long felt that there were areas in the MSRB ruleset that should be amended to more effectively regulate these plans. Like mutual funds, 529 savings plans have offering documents or circulars that are updated as necessary. The rules governing 529 savings plans should be more closely harmonized with those governing mutual funds, and an exemption from the dealer time of trade disclosure obligations is appropriate for transactions in 529 savings plans. A new standalone rule covering obligations for sales of 529 savings plans is warranted. As part of that effort, the MSRB should review the existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations before such a standalone rule is codified. As stated above, SIFMA members would like the MSRB to clarify that dealers are merely obligated to indicate where there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

* * *

[6] The archived guidance is still helpful. SIFMA requests that archived guidance be easier to find on the MSRB's website.

Thank you for considering SIFMA's comments. SIFMA greatly appreciates the MSRB's review of the rules regarding time of trade disclosures and the SMMP affirmation requirements. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

Leslie M. Norwood
Managing Director and Associate General Counsel
Head of Municipal Securities

cc: ***Municipal Securities Rulemaking Board***
Saliha Olgun, Interim Chief Regulatory Officer
Gail Marshall, Senior Advisor to Chief Executive Officer
Justin Kramer, Assistant Director, Market Regulation

APPENDIX A

QUESTIONS

Rule G-47

1. Are there any other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified? Are there any other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03?

SIFMA members feel that the MSRB should codify the guidance related to transactions in managed accounts, as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client). Also, a dealer trading with an RIA is not required to obtain a customer affirmation from the ultimate investor for purposes of qualifying the person, separately, as an SMMP under MSRB Rule D-15, on transactions with SMMPs, if the RIA is itself an SMMP.[7] For the purposes of MSRB Rule G-47, the MSRB must legally consider the RIA, and not the underlying investors, to be the dealer's customer. When an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, in these scenarios, the dealer does not have any customer obligations to the underlying investors. When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer.

RIAs registered with the SEC are subject to the Investment Advisers Act of 1940 and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act reduce the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48.

Other than as noted above, there are no other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified. There are no other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03. On the contrary, SIFMA members feel the list of disclosures has grown to be unnecessarily long.

[7] *See*, Application of MSRB Rules to Transactions in Managed Accounts (December 1, 2016), https://www.msrb.org/Application-MSRB-Rules-Transactions-Managed-Accounts.

2. Is there any other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic?

There is no other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic.

3. Are there situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of?

There are no situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of.

4. Are the technical clarifications set forth above helpful and do they alleviate potential sources of confusion?

The technical clarifications set forth above are largely helpful and do alleviate potential sources of confusion. Additionally, we do suggest retirement of Supplemental Material .01(d).

5. Are the draft amendments regarding specified time of trade disclosure obligations reasonably accessible to the market?

The information required to be disclosed pursuant to the draft amendments regarding specified time of trade disclosure obligations is reasonably accessible to the market.

6. Do commenters agree that evidence of insurance generally is not required to be attached to a security for effective transfer?

SIFMA agrees that evidence of insurance generally is not required to be attached to a security for effective transfer.

7. Are there any aspects of the guidance that the MSRB proposes to retire that should be retained in any way (e.g., through codification, consolidation or by retaining such guidance in its current form)? If so, please specify.

There are no aspects of the guidance that the MSRB proposes to retire that should be retained in any way (e.g., through codification, consolidation or by retaining such guidance in its current form).

Burdens and Impact

8. Would the obligations specified in the newly proposed draft supplementary material result in a disproportionate and/or undue burden for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft amendments? Please offer suggestions.

The obligations specified in the newly proposed draft supplementary material do not result in a disproportionate and/or undue burden for small dealers but impose an equal burden on all dealers.

9. Are any of these burdens unique to minority and women-owned business enterprise ("MWBE"), veteran-owned business enterprise ("VBE") or other special designation firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

These burdens are not unique to MWBE, VBE, or other special designation firms.

10. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

The obligations proposed in connection with Rule G-47 do not result in an undue impact to access to business opportunities specifically for small dealers, but instead impact all dealers similarly.

11. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms? If so, do commenters have any specific recommendations to alleviate these impacts while still promoting the objectives of Rule G-47? Please offer suggestions.

The obligations proposed in connection with Rule G-47 are unlikely to result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms.

Time of Trade Disclosure Obligations Regarding 529 Savings Plans

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

As 529 savings plans are more similar to mutual fund investments than state and local government bond debt, a new standalone rule would be more appropriate. As part of that effort, SIFMA believes that the MSRB should review the existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations before such a standalone rule is codified.[8] SIFMA members would like the MSRB to clarify that dealers are merely obligated to indicate where

[8] *See,* MSRB Rule G-17 Interpretive Guidance, "Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans," dated August 07, 2006, available at: https://www.msrb.org/Customer-Protection-Obligations-Relating-Marketing-529-College-Savings-Plans.

there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

Other than at account opening, investors may engage in self-directed activity (contributions, withdrawal, rollover, etc.) regarding 529 savings plans, some or all of which may be automated to occur once or on a recurring basis. These types of transactions hinder dealers in meeting their time of trade compliance obligations related to 529 savings plans. Again, SIFMA members propose that regulation of 529 savings plans be harmonized with those governing mutual fund investment vehicles.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

SIFMA member firms have a variety of supervisory systems and tools in place to support their supervisory review of time of trade disclosures that are made orally or in writing during the various points of the lifecycle of a trade related to 529 savings plans.

4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

As 529 savings plans are more similar to mutual fund investments than state and local government bond debt, they have offering documents or circulars that are updated as necessary. SIFMA members do believe that an exemption from the dealer time of trade disclosure obligations would be appropriate for transactions in 529 savings plans, as these instruments are more similar to mutual fund investments than state and local government bond debt, and the rules governing 529 savings plans should be more closely harmonized with those governing mutual funds.

Rule D-15

1. Do commenters agree with the MSRB's proposal to exempt SEC registered investment advisers from the Rule D-15 attestation requirement? Should this exemption also extend to state registered investment advisers? Why or why not?

SIFMA strongly agrees that SEC registered investment advisers should be exempt from the Rule D-15 attestation requirement. SIFMA members believe this exemption should also be extended to state registered investment advisers, who have essentially the same duties as federally registered investment advisers but a smaller amount of assets under management. Registered

investment advisers typically are given discretion to trade on behalf of their clients, who may not want to be informed of the details of each trade or may be forbidden from knowing the details of trades in their account.[9] Investment advisers are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients.

2. Does the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement remove any unnecessary burdens for dealers while still striking the right balance of protection for issuers and investors?

Exempting SEC-registered investment advisers from the Rule D-15 attestation requirement removes unnecessary burdens for dealers, while still providing appropriate protection for issuers and investors. SIFMA members feel that all registered investment advisers should be exempt from the attestation requirement.

3. Would the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms? What about access to business opportunities? Would it alleviate any such disproportionate or unique burdens or provide greater access to business opportunities for small dealers?

The proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement does not result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms. On the contrary, such an exemption would alleviate an unnecessary burden on all dealers.

4. Prior to 2012, assets of at least $100 million (specifically invested in municipal securities in the aggregate in a customer's portfolio and/or under management) were required for a customer to be treated as an SMMP. This $100 million threshold was subsequently lowered to $50 million in assets. Are there any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in assets for certain categories of customers? For example, unlike customers who are natural persons, many municipal entities likely would meet the threshold of $50 million in assets. Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (e.g., $50 million specifically invested in municipal securities)?

SIFMA believes that the current threshold of $50 million in assets is appropriate as a baseline requirement for any customer to be treated as an SMMP. Customers are not required to opt-in to be treated as SMMPs, and there is no requirement that customers provide the attestations to be treated as an SMMP. The vast majority of customers with $50 million in assets will be sophisticated enough to evaluate bonds in which they invest. To the extent a customer does not

[9] Examples of investors being forbidden from knowing the details of trading in their account include members of Congress, persons in financial services with access to material non-public information, etc.

have this level of sophistication, it could simply decline to provide the affirmation. The customer affirmation requirement is designed to ensure that SMMPs have affirmatively and knowingly agreed to forgo certain protections under MSRB rules.

5. The required affirmations under Rule D-15 aligns with FINRA's under FINRA Rule 2111 related to suitability, but also provides clear disclosure to SMMPs of the other modified dealer obligations under MSRB rules to provide clear disclosures to SMMPs and to obtain affirmative statements from SMMPs that they can, for example, exercise independent judgement in performing the evaluations related to fair pricing, suitability and the other modified dealer obligations. Do commenters feel that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets?

SIFMA feels that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets.

Other

1. While the MSRB proposes to retire the guidance above related to secondary market insurance, would there be value in an educational resource for market participants regarding such bonds? For example, continuing disclosures may not be provided for some bonds that are secondarily insured if, for example, a new CUSIP is obtained on such bonds and the issuer/obligated person is unaware of the new CUSIP number.

SIFMA believes that there would be value in an educational resource for market participants regarding secondary market insurance, and the potential impact on continuing disclosure if and when a new CUSIP is obtained on bonds insured in the secondary market.

2. Are there specific enhancements to EMMA that the MSRB could consider to help investors identify continuing disclosure information that may be relevant to secondarily insured bonds? If so, please describe them and identify any challenges of which the MSRB should be aware.

Currently on EMMA, when a bond issuance has a maturity that is secondarily insured, a new CUSIP number may be assigned to that maturity. Investors would need to know, or need to know how to find, the original uninsured CUSIP for that bond to access the continuing disclosure information for the issue. Some investors may not know how to find the original uninsured CUSIP, when necessary. If an investor researches the new CUSIP number for that bond on EMMA, the continuing disclosure information for the issue may not be linked. To assist an investor in finding the continuing disclosure information on the entire issuance with only the CUSIP number for the secondarily insured bond, the MSRB itself should link the secondarily insured CUSIP directly to the issuer's EMMA page for the original issuance of bonds, or, link the new secondarily insured CUSIP directly to the uninsured CUSIP in EMMA.

3. A dealer is not obligated to provide an SMMP relevant Rule G-47 disclosures, which includes disclosure regarding securities sold below the minimum denominations and the potential adverse effect on liquidity of a position below the minimum denomination. Would it provide greater certainty if a dealer's modified obligations under Rule G-48 specifically identified the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers?

SIFMA does not believe it is necessary for a dealer's modified obligations under Rule G-48 to specifically identify the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. SMMPs are knowledgeable regarding potential adverse effects on liquidity of securities sold below the minimum denomination.

EXHIBIT 5

Rule G-47: Time of Trade Disclosure

(a)(i) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market.

(ii) Notwithstanding section (a)(i) above, material information is not required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

(b) Definitions

(i) No change.

(ii) "Material information": Information is considered to be material if there is a substantial likelihood that the information would be considered important [or significant] by a reasonable investor in making an investment decision.

(iii) No change.

Supplementary Material

.01 Manner and Scope of Disclosure

a. The disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered important [significant] by a reasonable investor, and facts that are material to assessing the potential risks of the investment.

b. - d. No change.

.02 No change.

.03 Disclosure obligations in specific scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

a. - h. No change.

i. **Bonds that prepay principal.** The fact that the security prepays principal (e.g. factor bonds to which a factor reflecting a prior partial distribution is applied to determine interest payments and principal amount) and the amount of unpaid principal that will be delivered on the transaction.

j. - o. No change.

p. **Market discount.** The fact that a municipal security bears market discount and that all or a portion of the investor's investment return represented by accretion of the market discount might be taxable as ordinary income.

q. **Zero coupon bonds or stepped coupon bonds.** The special characteristics of zero coupon bonds or stepped coupon bonds and, with respect to stepped coupon securities, the details of the increases to the interest rates.

r. **Yield to worst.** The computed yield required by Rule G-15(a)(i)(A)(5)(c) if different than the yield at which the transaction was effected.

s. **Unavailability of an official statement.** In sales to customers of new issue securities constituting offered municipal securities within the meaning of Rule G-32, the fact that no official statement is available on EMMA or that an official statement is only available from the underwriter.

t. **Whether continuing disclosures may be unavailable.** Whether the issuer or other obligated person has not agreed to make continuing disclosures with respect to the municipal security as contemplated under Securities Exchange Act Rule 15c2-12 that will be available on EMMA.

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Time of Trade Disclosures in Inter-Dealer Transactions

For inter-dealer transactions, there is no specific requirement for brokers, dealers or municipal securities dealers (individually and collectively, "dealers") to disclose all material facts to another dealer at time of trade. A selling dealer is not generally charged with the responsibility to ensure that the purchasing dealer knows all relevant features of the municipal securities being offered for sale. The selling dealer may rely, at least to a reasonable extent, on the fact that the purchasing dealer is also a professional and will satisfy their need for information prior to entering into a contract for the municipal securities.

The items of information that professionals in an inter-dealer transaction must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary adequately to describe the municipal security that is the subject of the contract. As a general matter, these items of information do not encompass all material facts, but should be sufficient to distinguish the municipal security from other similar issues. The Board has interpreted Rule G-17 to require dealers to treat other dealers fairly and to hold them to the

prevailing ethical standards of the industry. The rule also prohibits dealers from knowingly misdescribing municipal securities to another dealer. As a result, it is possible that non-disclosure of an unusual feature might constitute an unfair practice and thus become a violation of Rule G-17 even in an inter-dealer transaction.

For example, with respect to bonds that prepay principal, non-disclosure of the fact that a bond prepays principal could be a violation of Rule G-17. This would be especially true if the information about the prepayment feature is not accessible to the market and is intentionally withheld by the selling dealer. Whether or not non-disclosure constitutes an unfair practice in a specific case would depend upon the individual facts of the case. However, to avoid trade disputes and settlement delays in inter-dealer transactions, it generally is in dealers' interest to reach specific agreement on the existence of any prepayment feature and the amount of unpaid principal that will be delivered.

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[**Time of Trade Disclosure—Disclosure of Market Discount**

Overview

MSRB Rule G-47, on time of trade disclosure, requires brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose to their customers, at or prior to the time of trade, all material information known about the transaction, as well as material information about the municipal security that is reasonably accessible to the market. The MSRB has previously provided interpretive guidance, now codified in supplementary material to Rule G-47, on specific types of information that is material where specific scenarios occur and requires time of trade disclosure. Rule G-47, however, emphasizes that this list of specific disclosures is not exhaustive, and that other information may be material to a customer and required to be disclosed. The MSRB is publishing this notice to state its interpretation that the fact that a municipal security bears market discount is material information that must be disclosed to a customer under Rule G-47.

Market Discount

When a municipal security is acquired in the secondary market for less than par value, the security may have "market discount." The amount of market discount is equal to the excess, if any, of the stated redemption price at maturity over the basis of the security immediately after its purchase by the investor. Market discount occurs when the value of a municipal security declines after its issue date—which often may occur due to a rise in interest rates. The fact that a municipal security bears market discount may significantly affect its tax treatment. Under federal tax law, for bonds purchased after April 30, 1993, the market discount is taxed at the investor's ordinary income tax rate, rather than the capital gains rate.[1]

[[1] Tax treatment and the amount of market discount and original issue discount (if any) are determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.]

Original Issue Discount Bonds. Market discount is calculated differently for original issue discount (OID) bonds. An OID bond is a bond that was sold at the time of issue at a price that included an original issue discount. The original issue discount is the amount by which the bond's stated redemption price at maturity exceeded its public offering price at the time of its original issuance and, for a tax-exempt municipal security, is generally treated as tax-exempt interest.[2]

Market discount exists for an OID bond when the bond is acquired in the secondary market for less than its revised or adjusted issue price. The revised or adjusted issue price for an OID bond is equal to the bond's original issue price plus the accrued OID up to the date of purchase. The amount of market discount is equal to the excess, if any, of the revised issue price over the basis of the bond immediately after its purchase by the investor.

De Minimis Rule. Bonds with a *de minimis* amount of market discount are subject to more favorable tax treatment than bonds with a non-*de minimis* amount of market discount. Under the *de minimis* rule, if the amount of market discount is less than one-fourth of 1% (.0025) of the stated redemption price of the bond multiplied by the number of complete years from the date of purchase to the date of maturity, the market discount is *de minimis* and is generally taxed as a capital gain, rather than ordinary income.

Market Discount Disclosure at or Prior to the Time of Trade

As noted, Rule G-47 requires dealers to disclose to their customers, at or prior to the time of trade, "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market."[3] This disclosure obligation applies whether the transaction is unsolicited or recommended, and whether it is a primary offering or secondary market transaction. Information is considered to be material under Rule G-47 if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The MSRB has previously stated, and codified as supplementary material to Rule G-47, that the fact that a municipal security bears an original issue discount is material information that dealers are obligated to disclose, because it may affect the tax treatment of the security.[4] Significantly, in explaining this interpretation of the

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[2 For more information about original issue discount bonds, *see* MSRB, About Original Issue Discount Bonds, available at: https://www.msrb.org/msrb1/pdfs/Original-Issue-Discount-Bonds.pdf.]

[3 MSRB Rule G-47(a). However, under MSRB Rule G-48, on transactions with sophisticated municipal market professionals, a dealer is relieved of the obligation to disclose to a sophisticated municipal market professional or SMMP material information that is reasonably accessible to the market. *See* Rule G-48(a). Accordingly, dealers do not have an obligation to disclose to SMMPs the existence of market discount.]

[4 *See* MSRB Rule G-47, Supplementary Material .03(f); *see also* Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts—Disclosure of Original

Board's rules, the MSRB noted that appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction. The MSRB also noted its concern that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the discount is tax-exempt, and might therefore, for example, sell the security at an inappropriately low price (*i.e.*, a price not reflecting the tax-exempt portion of the discount).

Similarly, the MSRB is concerned that, absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the market discount is taxable as ordinary income, and therefore might, for example, purchase the securities at an inappropriately high price (*i.e.*, a price not reflecting the potentially higher tax rate applicable to the discount). The existence of market discount may impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond. As a result, the MSRB believes that the fact that a security has market discount is material information that is required to be disclosed to a customer under Rule G-47 at or prior to the time of trade.]

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[**Confirmation, Delivery and Reclamation of Interchangeable Securities**

In March 1988, the Securities and Exchange Commission approved amendments to rules G-12 and G-15 concerning municipal securities that may be issued in bearer or registered form (interchangeable securities).[1] These amendments will become effective for transactions executed on or after September 18, 1988. The amendments revise rules G-12(e) and G-15(c) to allow inter-dealer and customer deliveries of interchangeable securities to be either in bearer or registered form, ending the presumption in favor of bearer certificates for such deliveries. The amendments also delete the provision in rule G-12(g) that allows an inter-dealer delivery of interchangeable securities to be reclaimed within one day if the delivery is in registered form. In addition, the amendments remove the provisions in rules G-12(c) and G-15(a) that require dealers to disclose on inter-dealer and customer confirmations that securities are in registered form.

The Board has received inquiries on several matters concerning the amendments and is providing the following clarifications and interpretive guidance.

Deliveries of Interchangeable Securities

Issue Discount Bonds (January 5, 2005); Rules G-12 and G-15, Comments Requested on Draft Amendments on Original Issue Discount Securities, *MSRB Reports*, Vol. 4, No. 6 (May 1994) at 7.]

[[1] See SEC Release No. 34-25489 (March 18, 1988); *MSRB Reports* Vol. 8, no. 2 (March 1988), at 3.]

Several dealers have asked whether the amendments apply to securities that can be converted from bearer to registered form, but that cannot then be converted back to bearer form. These securities are "interchangeable securities" because they originally were issuable in either bearer or registered form. Therefore, under the amendments, physical deliveries of these certificates may be made in either bearer or registered form, unless a contrary agreement has been made by the parties to the transaction.[2]

The Board also has been asked whether a mixed delivery of bearer and registered certificates is permissible under the amendments. Since the amendments provide that either bearer or registered certificates are acceptable for physical deliveries, a delivery consisting of bearer and registered certificates also is an acceptable delivery under the amendments.

Fees for Conversion

Transfer agents for some interchangeable securities charge fees for conversion of registered certificates to bearer form. Dealers should be aware that these fees can be substantial and, in some cases, may be prohibitively expensive. Dealers, therefore, should ascertain the amount of the fee prior to agreeing to deliver bearer certificates. A dealer may pass on the costs of converting registered securities to bearer form to its customer. In such a case, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade, and the customer must agree to pay it.[3] In addition, rule G-15(a)(iii)(J)* requires that the dealer note such an agreement (including the amount of the conversion fee) on the confirmation.[4] The conversion fee, however, should not be included in the price when calculating the yield shown on the confirmation.[5] In collecting this fee, the dealer merely would be passing on the costs imposed

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[2 The amendments should substantially reduce delays in physical deliveries that result because of dealer questions about whether specific certificates should be in bearer form. This efficiency would be impossible if these "one-way" interchangeable securities were excluded from the amendments since dealers would be required to determine, for each physical delivery of registered securities, whether the securities are "one-way" interchangeable securities.]

[3 Rule G-17, on fair dealing, requires dealers to disclose all material facts about a transaction to a customer at or before the time of trade. In many cases, the conversion fee is as much as $15 for each bearer certificate. The Board also has been made aware of some cases in which the transfer agent must obtain new printing plates or print new bearer certificates to effect a conversion. The conversion costs then may be in excess of several hundred or a thousand dollars. Therefore, it is important that the customer be aware of the amount of the conversion costs prior to agreeing to pay for them.]

[4 This rule requires that, in addition to any other information required on the confirmation, the dealer must include "such other information as may be necessary to ensure that the parties agree on the details of the transaction."]

[5 Rule G-15(a)(i)(I) [currently codified at rule G-15(a)(i)(A)(5)] requires the yield of a customer transaction to be shown on the confirmation.]

by a third party, voluntarily assumed by the customer, relating to the form in which the securities are held. The conversion fee thus is not a necessary or intrinsic cost of the transaction for purposes of yield calculation.[6]

Continued Application of the Board's Automated Clearance Rules

The Board's automated clearance rules, rules G-12(f) and G-15(d), require book-entry settlements of certain inter-dealer and customer transactions.[7] The amendments on interchangeable securities address only physical deliveries of certificates and, therefore, apply solely to transactions that are not required to be settled by book-entry under the automated clearance rules.

When a physical delivery is permitted under Board rules (*e.g.*, because the securities are not depository eligible), dealers may agree at the time of trade on the form of certificates to be delivered. When such an agreement is made, this special condition must be included on the confirmation, as required by rules G-12(c)(vi)(I) and G-15(a)(iii)(J).[8]* Dealers, however, may not enter into an agreement providing for a physical delivery when book-entry settlement is required under the automated clearance rules, as this would result in a violation of the automated clearance rules.[9]

Need for Education of Customers on Benefits of Registered Securities

Dealers should begin planning as soon as possible any internal or operational changes that may be needed to comply with the amendments. The Depository Trust Company (DTC) has announced plans for a full-scale program of converting interchangeable securities now held in

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[6 Some customers, for example, may ask dealers to convert registered securities to bearer form even though the customers also may be willing to accept registered certificates if this is more economical.]

[7 Rule G-12(f)(ii) requires book-entry settlement of an inter-dealer municipal securities transaction if both dealers (or their clearing agents for the transaction) are members of a depository making the securities eligible and the transaction is compared through a registered securities clearing agency. Rule G-15(d)(iii) requires book-entry settlement of a customer transaction if the dealer grants delivery versus payment or receipt versus payment privileges on the transaction and both the dealer and the customer (or the clearing agents for the transaction) are members of a depository making the securities eligible.]

[8 These rules require that, in addition to the other information required on inter-dealer and customer confirmation, confirmations must include "such other information as may be necessary to ensure that the parties agree to the details of the transaction."]

[9 Of course, dealers may withdraw physical certificates from a depository once a book-entry delivery is accepted.]

bearer form to registered form beginning on September 18, 1988.[10] When possible, DTC plans to retain a small supply of bearer certificates in interchangeable issues to accommodate withdrawal requests for bearer certificates.[11] The general effect of the amendments and DTC's policy, however, will make it difficult for dealers, in certain cases, to ensure that their customers will receive bearer certificates. Dealers should educate customers who now prefer bearer certificates on the call notification and interest payment benefits offered by registered certificates and dealer safekeeping and advise them when it is unlikely that bearer certificates can be obtained in a particular transaction. Dealers safekeeping municipal securities through DTC on behalf of such customers also may wish to review with those customers DTC's new arrangements for interchangeable securities.]

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[**Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features**

It has come to the Board's attention that insurance companies are offering to insure whole maturities of issues of municipal securities outstanding in the secondary market. The Board understands that municipal securities professionals must apply for the insurance which, once issued, will remain in effect for the life of the security. The Board further understands that other credit enhancement devices also may be developed for secondary market issues.

The Board wishes to remind the industry of the application of rule G-17, the Board's fair dealing rule, in connection with transactions with customers in securities that are subject to secondary market insurance or other credit enhancement devices or in securities for which arrangements for such insurance or device have been initiated.[1] The Board is of the view that facts, for example, that a security has been insured or arrangements for insurance have been initiated, that will affect the market price of the security are material and must be disclosed to a customer at or before execution of a transaction in the security. In addition, the Board believes that a dealer should

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[10 DTC expects this conversion process to take approximately two years. Midwest Securities Trust Company and The Philadelphia Depository Trust Company have not yet announced their plans with regard to interchangeable securities.]

[11 DTC Notice to Participants on Plans for Comprehensive Conversion of Interchangeable Municipal Bonds to the Registered Form (August 10, 1988).]

[* [Currently codified at rule G-15(a)(i)(A)(8)]]

[1 Rule G-17 provides:

In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.]

advise a customer if evidence of insurance or other credit enhancement feature must be attached to the security for effective transference of the insurance or device.[2]

The Board also wishes to remind the industry that under rule G-13, concerning quotations, all quotations relating to municipal securities made by a dealer must be based on the dealer's best judgment of the fair market value of the securities at the time the quotation is made. Offers to buy securities that are insured or otherwise have a credit enhancement feature, or for which arrangements for insurance or other credit enhancement have been initiated, must comply with rule G-13. Similarly, the prices at which these securities are purchased or sold by a municipal securities dealer must be fair and reasonable to its customers under Board rule G-30 on prices and commissions.]

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[**Notice Concerning Securities that Prepay Principal**

The Board has become aware of several issues of municipal securities that prepay principal to the bondholders over the life of the issue. These securities are issued with a face value that equals the total principal amount of the securities. However, as the prepayment of principal to bondholders occurs over time, the "unpaid principal" associated with a given quantity of the securities become an increasingly lower percentage of the face amount. The Board believes that there is a possibility of confusion in transactions involving such securities, since most dealers and customers are accustomed to municipal securities in which the face amount always equals the principal amount that will be paid at maturity.

Because of the somewhat unusual nature of the securities, the Board believes that dealers should be alert to their disclosure responsibilities. For customer transactions, rule G-17 requires that the dealer disclose to its customer, at or prior to the time of trade, all material facts with respect to the proposed transaction. Because the prepayment of principal is a material feature of these securities, dealers must ensure that the customer knows that securities prepay principal. The dealer also must inform the customer of the amount of unpaid principal that will be delivered on the transaction.

For inter-dealer transactions, there is no specific requirement for a dealer to disclose all material facts to another dealer at time of trade. A selling dealer is not generally charged with the responsibility to ensure that the purchasing dealer knows all relevant features of the securities being offered for sale. The selling dealer may rely, at least to a reasonable extent, on the fact that the purchasing dealer is also a professional and will satisfy his need for information prior to entering into a contract for the securities. Nevertheless, it is possible that non-disclosure of an unusual feature such as principal prepayment might constitute an unfair practice and thus become a violation of rule G-17 even in an inter-dealer transaction. This would be especially true if the information about the prepayment feature is not accessible to the market and is

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[2 The Board has adopted amendments to rule G-15 which, among other things, require that deliveries to customers of insured securities be accompanied by some evidence of the insurance.]

intentionally withheld by the selling dealer. Whether or not non-disclosure constitutes an unfair practice in a specific case would depend upon the individual facts of the case. However, to avoid trade disputes and settlement delays in inter-dealer transactions, it generally is in dealers' interest to reach specific agreement on the existence of any prepayment feature and the amount of unpaid principal that will be delivered.]

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[**Disclosure of Pricing: Calculating the Dollar Price of Partially Prerefunded Bonds**

Disclosure of pricing: calculating the dollar price of partially prerefunded bonds. This is in response to your March 21, 1986 letter concerning the application of Board rules to the description of municipal securities provided at or prior to the time of trade and the application of rules G-12(c) and G-15(a) on calculating the dollar price of partially prerefunded bonds with mandatory sinking fund calls.

You describe an issue, due 10/1/13. Mandatory sinking fund calls for this issue begin 10/1/05 and end 10/1/13. Recently, a partial refunding took place which prerefunds the 2011, 2012 and 2013 mandatory sinking fund requirements totalling $11,195,000 (which is 43.6% of the issue) to 10/1/94 at 102. The certificate numbers for the partial prerefunding will not be chosen until 30 days prior to the prerefunded date. Thus, a large percentage of the bonds are prerefunded and all the bonds will be redeemed by 10/1/10 because the 2011, 2012, and 2013 maturities no longer exist.

You note that the bonds should be described as partially prerefunded to 10/1/94 with a 10/1/10 maturity. Also, you state that the price of these securities should be calculated to the cheapest call, in this case, the partial prerefunded date of 10/1/94 at 102. You add that there is a 9½ point difference in price between calculating to maturity and to the partially prerefunded date.

You note that the descriptions you have seen on various brokers' wires do not accurately describe these securities and a purchaser of these bonds would not know what they bought if the purchase was based on current descriptions. You ask the Board to address the description and calculation problems posed by this issue.

Your letter was referred to a Committee of the Board which has responsibility for interpreting the Board's fair practice rules. That Committee has authorized this response.

Board rule G-17 provides that

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

In regard to inter-dealer transactions, the items of information that professionals must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary adequately to describe the security that is the subject of the contract. As a

general matter, these items of information do not encompass all material facts, but should be sufficient to distinguish the security from other similar issues. The Board has interpreted rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry.[1] The rule also prohibits dealers from knowingly misdescribing securities to another dealer.[2]

Board rules G-12(c) and G-15(a) require that

> where a transaction is effected on a yield basis, the dollar price shall be calculated to the lowest of price to call, price to par option, or price to maturity ...

In addition, for customer confirmations, rule G-15(a) requires that

> for transactions effected on the basis of dollar price, ... the lowest of the resulting yield to call, yield to par option, or yield to maturity shall be shown....

These provisions also require, in cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, that this must be stated and the call or option date and price used in the calculation must be shown. The Board has determined that, for purposes of making this computation, only "in-whole" calls should be used.[3] This requirement reflects the longstanding practice of the municipal securities industry that a price calculated to an "in-part" call, for example, a partial prerefunding date, is not adequate because, depending on the probability of the call provision being exercised and the portion of the issue subject to the call provision, the effective yield based on the price to a partial prerefunding date may not bear any relation to the likely return on the investment.

These provisions of Rules G-12(c) and G-15(a) apply, however, only when the parties have not specified that the bonds are priced to a specific call date. In some circumstances, the parties to a particular transaction may agree that the transaction is effected on the basis of a yield to a particular date, *e.g.*, a partial prerefunding date, and that the dollar price will be computed in this fashion. If that is the case, the yield to this agreed upon date must be included on confirmations

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[1 In addition, the Board has interpreted this rule to require that, in connection with the purchase from or sale of a municipal security to a customer, at or before execution of the transaction, a dealer must disclose all material facts concerning the transaction which could affect the customer's investment decision, including a complete description of the security, and not omit any material facts which would render other statements misleading.]

[2 While the Board does not have any specific disclosure requirements applicable to dealers at the time of trade, a dealer is free to disclose any unique aspect of an issue. For example, in the issue described above, a dealer may decide to disclose the "effective" maturity date of 2010, as well as the stated maturity date of 2013.]

[3 *See* [Rule G-15 Interpretation - Notice Concerning Pricing to Call], December 10, 1980 ... at ¶ 3571.]

as the yield at which the transaction was effected and the resulting dollar price computed to that date, together with a statement that it is a "yield to [date]." In an August 1979 interpretive notice on pricing of callable securities, the Board stated that, under rule G-30, a dealer pricing securities sold to a customer on the basis of a yield to a specified call feature should take into account the possibility that the call feature may not be exercised.[4]

Accordingly, the price to be paid by the customer should reflect this possibility, and the resulting yield to maturity should bear a reasonable relationship to yields on securities of similar quality and maturity. Failure to price securities in such a manner may constitute a violation of rule G-30 since the price may not be "fair and reasonable" in the event the call feature is not exercised. The Board also noted that the fact that a customer in these circumstances may realize a yield in excess of the yield at which the transaction was effected does not relieve a municipal securities dealer of its responsibilities under rule G-30.

Accordingly, the calculation of the dollar price of a transaction in the securities you describe, unless the parties have agreed otherwise, should be made to the lowest of price to the first in-whole call, par option, or maturity. While the partial prerefunding effectively redeems the issue by 10/1/10, the stated maturity of the bond is 10/1/13 and, subject to the parties agreeing to price to 10/1/10, the stated maturity date should be used.]

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[**Description Provided at or Prior to the Time of Trade**

Description provided at or prior to the time of trade. This is in response to your February 27, 1986 letter and our prior telephone conversation concerning the application of Board rules to the description of municipal securities exchanged at or prior to the time of trade. You note that it is becoming more and more common in the municipal securities secondary market for sellers, both dealers and customers, to provide only a “limited description” and CUSIP number for bonds being sold. Recently you were asked by a customer to bid on $4 million of bonds and were given the coupon, maturity date, and issuer. When you asked for more information, you were given the CUSIP number. You then bid on and purchased the bonds. After the bonds were confirmed, you discovered that the bonds were callable and that, when these bonds first came to market, they were priced to the call. You state that the seller was aware that the bonds were callable.

Your letter was referred to a Committee of the Board which has responsibility for interpreting the Board’s fair practice rules. That Committee has authorized this response.

Board rule G-17 provides that

> In the conduct of its municipal securities business, *each broker, dealer, and municipal securities dealer* shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. (emphasis added)

[4 *See* [Rule G-30 Interpretation - Interpretive Notice on Pricing of Callable Securities] August 10, 1979 ... at ¶ 3646.]

The Board has interpreted this rule to require that, in connection with the purchase from or sale of a municipal security to a customer, at or before execution of the transaction, a dealer must disclose all material facts concerning the transaction which could affect the customer's investment decision and not omit any material facts which would render other statements misleading. The fact that a municipal security may be redeemed in-whole, in-part, or in extraordinary circumstances prior to maturity is essential to a customer's investment decision and is one of the facts a dealer must disclose.

I note from our telephone conversation that you ask whether Board rules specify what information a customer must disclose to a dealer at the time it solicits bids to buy municipal securities. Customers are not subject to the Board's rules, and no specific disclosure rules would apply to customers beyond the application of the anti-fraud provisions of the federal securities laws. I note, however, that a municipal securities professional buying securities from a customer should obtain sufficient information about the securities so that it can accurately describe these securities when the dealer reintroduces them into the market.

In regard to inter-dealer transactions, the items of information that professionals must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary adequately to describe the security that is the subject of the contract. As a general matter, these items of information may not encompass all material facts, but must be sufficient to distinguish the security from other similar issues. The Board has interpreted rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry. Also, dealers may not knowingly misdescribe securities to another dealer.]