MSRB
Municipal Securities Rulemaking Board

MSRB Notice

2025-08

Publication Date
November 3, 2025

Stakeholders
Municipal Securities Dealers, Issuers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
February 2, 2026

Category
Fair Practice

Affected Rules
Rule D-15

Request for Comment on MSRB Rule D-15 Defining the Term Sophisticated Municipal Market Professional

Overview

The Municipal Securities Rulemaking Board (the "MSRB") is publishing this request for comment (the "RFC") to seek comment on draft amendments to MSRB Rule D-15, which defines the term sophisticated municipal market professional ("SMMP"). The draft amendments to Rule D-15 would (i) modify the asset threshold for a municipal entity to qualify as an SMMP and (ii) exempt investment advisers registered with the Securities and Exchange Commission (the "Commission") from having to make certain affirmations in order to qualify for status as an SMMP under MSRB rules (the "Draft Amendments").

The MSRB invites market participants and the public to submit comments in response to this RFC, along with any other information they believe would be useful to the MSRB. Comments should be submitted no later than February 2, 2026 and may be submitted by clicking here or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.[1] Potential commenters are welcome to contact Market Regulation staff during the comment period for this RFC with any questions or seeking clarifications at 202-838-1500 to assist in better understanding the Draft Amendments.

Receive emails about MSRB Notices.

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

History and Purpose of SMMP Definition

The notion of an SMMP under MSRB rules was first introduced by the MSRB in 2000 in draft interpretive guidance published for comment in connection with then-emerging electronic trading systems and related new market practices for municipal securities (the "2000 draft guidance").[2] In publishing the 2000 draft guidance for comment, the MSRB sought to allow electronic trading systems, including alternative trading systems (ATSs) and systems operated by a broker, dealer or municipal securities dealer ("dealer") as single dealer platforms, to develop for municipal securities while preserving the high level of customer protection standards required by MSRB rules. Market participants viewed allowing self-directed sophisticated investors to participate in these new venues on relatively equal footing with dealers, which were already participating in venues such as ATSs, as a critical ingredient in the development of a fair and efficient electronic trading environment. Based on industry input at the time, one perceived impediment to the evolution of electronic trading in the municipal securities market that included such sophisticated investors was the need to comply with a range of baseline MSRB rules designed to also apply to retail investors and less sophisticated institutional customers, often requiring processes and levels of effort and timing inconsistent with the operations of these electronic venues and, in some respects, also inconsistent with the notion of a self-directed investor with sophistication in the municipal securities market that may rival or, in some cases, even surpass that of many dealers.

After considerable feedback from market participants on the 2000 draft guidance, the MSRB filed with the Commission in 2002 interpretive guidance (the "2002 interpretation") defining an SMMP as an institutional customer for which a dealer has reasonable grounds for concluding, and other known facts do not contradict such a conclusion, that it: (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities.[3] For purposes of the SMMP definition, an institutional customer consisted of an entity, other than a natural person (corporation, partnership, trust, or otherwise), with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management. When transacting with an SMMP, a dealer's largely retail-oriented duties under several MSRB rules would be deemed to be fulfilled.[4] The MSRB believes that adoption of the SMMP definition and related regulatory

---

[2] *See* MSRB Notice 2000-30, Notice and Draft Interpretive Guidance on Dealer Responsibilities in Connection with Both Electronic and Traditional Municipal Securities Transactions (September 28, 2000).

[3] *See* Exchange Act Release No. 45849 (April 30, 2002), 67 FR 30743, 30744 (May 7, 2002) (SR-MSRB-2002-02). *See also* MSRB Notice 2002-16, Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (May 6, 2002).

[4] Such duties deemed to be fulfilled, in whole or in part, included certain duties currently set forth in Rules G-47 (time of trade disclosure, then consisting of a series of interpretations under Rule G-17), G-30 (prices and commissions), G-19 (suitability), G-13 (quotations) and, by subsequent amendments, G-18 (initially consisting

approach has allowed a large segment of the sophisticated institutional investor community qualifying as SMMPs to participate on ATSs and other dealer marketplaces on an equal footing with dealers, to the benefit of the municipal market as a whole.

In 2012, in connection with an amendment and restatement of the 2002 interpretation (the "2012 restated interpretation"), the SMMP definition was modified to, in relevant part, eliminate the reference to an entity with total invested assets of $100 million in municipal securities and instead referenced the definition of "institutional account" in Rule G-8(a)(xi), on recordkeeping.[5] This change effectively lowered the $100 million threshold to $50 million and changed the nature of the assets from investments in municipal securities to any assets (that is, need not be investments and need not be in municipal securities). In connection with this change in the threshold, the 2012 restated interpretation added language providing that, as part of the reasonable basis analysis required by the interpretation, a dealer should consider the amount and type of municipal securities owned or under management by the institutional customer. In addition, the 2012 restated interpretation introduced the requirement that the SMMP affirmatively indicate that it is exercising independent judgment in evaluating the recommendations of the dealer. The modified threshold for SMMP status as well as the affirmation requirement made the SMMP definition more consistent with the approach taken by the Financial Industry Regulatory Authority (FINRA) with respect to institutional customers, and the MSRB stated that it generally considered it desirable from the standpoint of reducing the cost of compliance by dealers to maintain consistency with FINRA rules, absent clear reasons for treating transactions in municipal securities differently.

In 2014, the Commission approved new Rule D-15, codifying the definition of SMMP, and related Rule G-48, setting out the modified duties of dealers in transactions with SMMPs. The 2014 rule change also retired the 2012 restated interpretation, and the changes to the SMMP definition made in the 2012 restated interpretation as described above were carried over into the current definition of SMMP in Rule D-15. In connection with the MSRB's adoption of Rule G-18, on best execution, effective in 2015, Rule D-15 was further modified into its current form, as described below.

As in 2000 – when the MSRB sought to ensure that the market had the freedom to more fully and efficiently embrace the emerging benefits of electronic trading while ensuring appropriate levels of investor protection tailored to the sophistication and needs of investors – the MSRB today continues to seek to maintain a ruleset that reflects the current and future contours of the marketplace. The MSRB is committed to reducing barriers to market

---

of fair pricing of agency trades, now consisting of best execution) and G-10 (investor education and protection). The rules deemed to be fulfilled are currently set out in Rule G-48, on Transactions with Sophisticated Municipal Market Professionals.

[5] *See* Exchange Act Release No. 67064 (May 25, 2012), 77 FR 32704 (June 1, 2012) (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). No commenter opposed the filing of the 2012 restated interpretation.

innovation, expanding opportunities for participation in the marketplace, and ensuring critical investor protections. The MSRB seeks comment on whether the Draft Amendments described in this RFC effectively further these goals or if there are alternative means for achieving them.

Current SMMP Definition

Currently, Rule D-15 allows a dealer to treat an individual or entity as an SMMP if three requirements are met relating to: (a) the nature of the customer, consisting of certain categories of investors set out in the rule; (b) the determination of the customer's sophistication by the dealer; and (c) the affirmation by the customer with regard to the exercise of its own judgment. A customer does not currently qualify as an SMMP if any of the three requirements is not met.

Nature of the Customer. The nature of the customer requirement in Rule D-15(a) lists three categories of customers that may qualify as an SMMP:

(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.

Any person or entity that does not fit into any of these categories may not be treated as an SMMP.

Dealer Determination of Customer Sophistication. Rule D-15(b) requires dealers to have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities. Rule D-15 Supplementary Material .01 further requires that dealers consider the amount and type of municipal securities owned or under management by the customer when engaging in a reasonable basis analysis to determine the level of customer sophistication. A dealer may not treat an investor as an SMMP if the dealer does not have such a reasonable belief.

Customer Affirmation. The customer affirmation requirement in Rule D-15(c) requires a customer to 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.

Rule D-15 Supplementary Material .02 provides that the customer affirmation may be given either orally or in writing, and may be given on a trade-by-trade basis, a type-of-transaction basis, a type-of-municipal-security basis (*e.g.*, general obligation, revenue, variable rate), or an account-wide basis. A dealer may not treat an investor as an SMMP if the investor does not provide such affirmation, even if the investor meets the other requirements for being considered an SMMP, such as a sophisticated investor that may seek to rely on the dealer's judgment for a particular transaction or a particular municipal securities asset class.

Prior Consideration With Respect to Draft Amendments

The MSRB previously published a request for comment on Rule D-15, among other topics, in February 2023 (the "February 2023 RFC").[6] The MSRB received seven comment letters in response to the February 2023 RFC.[7] The February 2023 RFC included a potential amendment to Rule D-15 that would exempt investment advisers registered with the Commission from the affirmation requirement for qualification as an SMMP under Rule D-15(c). Under this 2023 potential amendment, a Commission-registered investment adviser that met the requirements of Rule D-15(a) and (b) could be treated by a dealer as an SMMP even if the investment adviser did not affirm that it was exercising the type of independent judgment or had access to material information described in Rule D-15(c).

The February 2023 RFC also sought comment regarding any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in assets under Rule D-15(a) for certain categories of customers. The February 2023 RFC

---

[6] *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). The February 2023 RFC primarily focused on time of trade disclosures under Rule G-47, and the MSRB filed certain amendments to Rule G-47 with the Commission based on the February 2023 RFC that became effective March 3, 2025. *See* Exchange Act Release No. 100508 (July 11, 2024), 89 FR 58229 (July 17, 2024) (SR-MSRB-2024-03). *See also* MSRB Notice 2024-10, SEC Approves Amendments to Rule G-47 to Add Three New Time of Trade Disclosure Scenarios, Codify and Consolidate Existing Guidance, Delete Certain Guidance, and Make Technical Amendments (July 12, 2024).

[7] Comment letters received in response to the February 2023 RFC are available here.

noted that many municipal entities likely meet the threshold of $50 million in assets and sought comment on whether the asset threshold should be modified to expand the protections afforded by MSRB rules to more municipal entity customers, potentially by altering the threshold to $50 million specifically invested in municipal securities so that fewer municipal entities would qualify as SMMPs.

The comment letters received in response to the questions posed on Rule D-15 in the February 2023 RFC, to the limited extent that they addressed the issue of the asset threshold for municipal entities, illustrated a lack of consensus on whether to alter such threshold. For example, one commenter suggested that the SMMP asset threshold in Rule D-15(a) should be altered to $100 million in municipal securities investments due to the fact that even small municipalities may meet the $50 million in assets threshold simply by owning infrastructure, which is not necessarily an indication of the level of investor sophistication of those municipalities.[8] However, another commenter stated that the current threshold of $50 million in assets is appropriate as the vast majority of customers meeting that threshold will be sophisticated enough to evaluate investment decisions.[9]

Separately, two commenters supported the potential amendment to exempt investment advisers registered with the Commission from the affirmation requirement of Rule D-15(c) and suggested that this exemption be expanded to include all investment advisers, regardless of whether they are registered with the Commission or any applicable state regulator.[10] More specifically, SIFMA suggested that state registered investment advisers have essentially the same duties as investment advisers registered with the Commission, but only have a smaller amount of assets under management, and therefore should also be exempt from the affirmation requirement of Rule D-15(c).[11] Additionally, BDA stated that it does not believe the size of an investment adviser is a driving factor in the investment adviser's sophistication, and that state registered investment advisers generally bear a fiduciary duty to their customers comparable to the fiduciary duty imposed by the Commission on investment advisers.[12]

After discussions with these commenters and other market participants, including dealers, municipal entities and investment advisers, the MSRB has determined to issue this second RFC, which is more directly focused on Rule D-15 as it relates to the treatment of municipal

---

[8] *See* Comment letter from Emily Brock, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA") (July 21, 2023) (the "GFOA Letter").

[9] *See* Comment letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") (April 17, 2023) (the "SIFMA Letter").

[10] *See* SIFMA Letter. *See also* Comment Letter from Michael Decker, Senior Vice President, Bond Dealers of America ("BDA") (April 17, 2023) (the "BDA Letter").

[11] *See* SIFMA Letter at 2.

[12] *See* BDA Letter at 2.

entities and investment advisers than was the February 2023 RFC, in order to consider any further comments from a potentially broader group of commenters.

Summary of Draft Amendments

Customer Affirmation for Commission-Registered Investment Advisers

Rule D-15(c) requires a customer to make an affirmative indication regarding its exercise of independent judgment and access to material information in order for a dealer to treat such customer as an SMMP, as described above. The MSRB proposes to remove the requirement for such an affirmation to qualify for SMMP status under Rule D-15 in the case of an investment adviser registered with the Commission. As noted above, the MSRB previously proposed this amendment to Rule D-15 in the February 2023 RFC and received two supportive comment letters from groups representing dealers, which suggested that the affirmation requirement also be removed for state-registered investment advisers. The MSRB did not receive any comment letters on this proposal from investors that might be affected by the change and only very limited input from such market participants since then. As previously noted in the February 2023 RFC, investment advisers registered with the Commission generally maintain over $100 million in regulatory assets under management and owe a fiduciary duty to their clients, with investment advisers not meeting such threshold generally being subject to state registration.[13] The MSRB stated in the February 2023 RFC that it understood that Commission-registered 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 continues to be sensitive to ensuring that the burden of administering the SMMP definition by dealers is appropriate in light of any potential benefits arising from the manner of determining whether an investor should be treated as an SMMP. To better assess the relative benefits and burdens of this proposal, the MSRB is providing industry participants, including dealers and investors that might be affected by this change, an additional opportunity to comment on this proposal as part of the Draft Amendments, including whether to extend such proposal to all investment advisers, regardless of whether they are Commission-registered or state-registered.

Threshold for SMMP Qualification for Municipal Entity Customers

Under Rule D-15(a)'s nature of the customer requirement, one manner for qualification as an SMMP is to be a person or entity with total assets of at least $50 million. The Draft Amendments would keep this threshold for non-municipal entity customers but change the threshold for municipal entity customers to $100 million in municipal securities investments, returning the threshold, but just for municipal entities, to the original standard established in

[13] *See* Investment Advisers Act of 1940, as amended, Sections 203 and 203A.

the 2002 interpretation and which remained in effect until the threshold was modified in the 2012 restated interpretation.[14] As noted above, the MSRB has heard concerns from some industry participants that the threshold of total assets of at least $50 million might not account for municipal entities that would easily meet this threshold by way of owning assets such as schools, bridges or fire stations. Therefore, Rule D-15(a) in its current form might not be a representative test for municipal entity customers of the type of sophistication intended to be captured by the rule.

The MSRB acknowledges that the current asset threshold for SMMP qualification under Rule D-15(a) of a person or entity with total assets of at least $50 million mirrors FINRA Rule 4512(c)(3)'s definition of institutional account, as well as the MSRB's definition of such term in Rule G-8(a)(xi). The Draft Amendments would seek to address the view that the $50 million in asset threshold is potentially an insufficient test of sophistication for municipal entity customers that typically have large amounts of non-investment related assets such as public infrastructure, while also keeping Rule D-15(a) aligned with FINRA Rule 4512 and MSRB Rule G-8(a)(xi) for all other non-municipal entity customers.

The MSRB is open to considering other alternatives to this RFC's proposed Rule D-15 asset threshold. One alternative approach would be to keep the current $50 million threshold for all customers, including municipal entities, but limit the assets to those representing investments in municipal securities in the case of municipal entities while retaining the total assets threshold (*i.e.*, not just investments in municipal securities) for all other classes of customers.

Another alternative approach would be to keep the current $50 million threshold in total assets for all classes of customers, including municipal entities, but to add language to Rule D-15 Supplementary Material .01 that would strengthen the standard of review for a dealer's reasonable basis analysis when the customer is a municipal entity. This alternative would be intended to ensure that the reasonable basis analysis undertaken by dealers under Rule D-15(b) when the customer is a municipal entity takes into account the degree to which the municipal entity's total assets are represented by infrastructure or other municipal assets owned by that municipal entity rather than assets held for investment purposes.

Yet another alternative to Rule D-15's current $50 million in assets threshold would be to increase the threshold to $100 million in assets for all classes of customers, which would raise the threshold dollar limit as suggested by GFOA, but keep the 'in assets' language currently in the rule language and not add the requirement that the $100 million be invested in municipal securities. However, this would entail raising the threshold for all municipal securities investors above the comparable threshold for investors in other fixed income asset classes under FINRA's institutional investor standard without evidence that municipal securities are riskier than such other asset classes. It would also be unclear whether only

[14] The threshold of $100 million in municipal securities investments was proposed in the GFOA Letter submitted in response to the February 2023 RFC.

raising the asset threshold amount, without changing the nature of the assets held, would result in a more meaningful distinction between the population of municipal entities that could or could not qualify as an SMMP. The MSRB preliminarily believes that it is likely that only a relatively small number of municipal entities have infrastructure or other assets that fall within the range of $50 to $100 million that would be impacted by such a change in threshold and has no information as to whether that relatively small shift in qualifying municipal entities would represent a meaningful distinction as to their relative sophistication with regard to investing in municipal securities.

The MSRB is interested in hearing from commenters on the asset threshold included in the Draft Amendments, the alternatives to such threshold outlined above, and any other possible asset thresholds for qualification as an SMMP, as well as whether no change should be made with respect to municipal entity customers.

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.[15] The MSRB has considered the economic impact of the Draft Amendments in this RFC. The MSRB does not believe that the Draft Amendments described herein would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB seeks comments on the economic effects of the Draft Amendments.

A. The need for draft amendments to Rule D-15

The MSRB's policy on economic analysis in rulemaking states that, prior to proceeding with rulemaking, the MSRB should evaluate the need for the potential rule change and determine whether the rule change as drafted would, in its judgment, meet that need. The purpose of this RFC is to continue the MSRB's ongoing review of Rule D-15. In February 2023, the MSRB released the February 2023 RFC that covered Rule D-15, among other topics.[16] The February 2023 RFC comment letters relating to Rule D-15 illustrated a lack of consensus around protections afforded to municipal entity customers qualifying as SMMPs under Rule D-15.

The Draft Amendments are intended to revise the definition for SMMPs by including two amended criteria: (i) providing an exemption to Rule D-15(c)'s customer affirmation requirement for investment advisers registered with the Commission;[17] and (ii) increasing

---

[15] *See* The MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.

[16] *See* February 2023 RFC.

[17] The MSRB first proposed in the February 2023 RFC to amend Rule D-15(c) to exempt investment advisers registered with the Commission from having to make an affirmation to qualify for the SMMP status.

the threshold from $50 million in *total assets* to $100 million in *municipal securities investments* for municipal entity customers as one method to satisfy Rule D-15(a)'s nature of the customer requirement. However, the Draft Amendments would maintain the $50 million in *total assets* for non-municipal entity customers. The Draft Amendments are intended to protect municipal entity investors while also continuing to protect, and maintaining an alignment with FINRA Rule 4512 for, non-municipal entity customers. For municipal entity customers, the more restrictive threshold to qualify as an SMMP provides this group with enhanced protection. The Draft Amendments are also intended to address concerns from industry participants that the current minimum of $50 million in total assets does not adequately consider municipal entities that might meet this threshold solely through ownership of physical assets such as schools, bridges, or fire stations, and the threshold therefore may not accurately reflect the intended sophistication of certain customers under the rule. Additionally, the Draft Amendments would remove a burden for dealers by relieving them of the need to obtain an affirmation from investment advisers registered with the Commission, who are generally regarded as sophisticated investors.

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

To evaluate the potential impact of the Draft Amendments, a baseline or baselines must be established as a point of reference to compare the expected state with the Draft Amendments. The economic impact of the draft changes is generally viewed as the difference between the baseline state and the expected state. For the purposes of this RFC, the baseline is Rule D-15 in its current form.

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. The MSRB identified potential alternative regulatory approaches for Rule D-15.[18]

The first alternative the MSRB considered was to amend Rule D-15 to change one manner of satisfying the nature of the customer requirement by altering the asset threshold to $100 million in assets for all classes of customers. This change would increase the threshold to

[18] The MSRB previously discussed reasonable alternative approaches to exempting Commission-registered investment advisers from having to make affirmations to qualify for SMMP status under Rule D-15(c) in the February 2023 RFC. *See* February 2023 RFC at 15. The MSRB stated in the February 2023 RFC that one alternative approach was to exempt state regulated investment advisers from Rule D-15's affirmation requirement in addition to investment 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 RFC as well as the February 2023 RFC, which only proposes to exempt investment advisers registered with the Commission. It was the MSRB's understanding that investment advisers registered with the Commission are typically much larger than state-registered investment advisers.

qualify as an SMMP but would still apply to all assets and all classes of customers in municipal securities. This alternative increases the difficulty for investors, including municipal entity investors, to qualify for SMMP status; however, by applying the threshold to all assets, some smaller issuers who may have a large amount of physical infrastructure or other types of illiquid assets could still qualify as an SMMP, even though possession of these assets would not necessarily be indicative of whether the entities were sophisticated investors. It is for this reason, as well as the fact that this would raise the threshold for all municipal securities investors above the comparable threshold for investors in other fixed income asset classes under FINRA's institutional investor standard without evidence that municipal securities are riskier than such other asset classes, that the MSRB deemed this alternative as inferior to the Draft Amendments. A similar but narrower alternative would be to increase the asset threshold to $100 million in assets just for municipal entity customers. While this alternative would narrow the breadth of municipal securities investors that would be treated differently than for investors in other asset classes under FINRA's standard without evidence that municipal securities are riskier, this alternative would likely affect only a limited number of municipal entities since, as noted above, even smaller issuers may have a large amount of physical infrastructure or other types of illiquid assets that would often exceed the potential $100 million threshold. Thus, the MSRB believes that this approach would have minimal beneficial impact and, therefore, any such benefit would likely be outweighed by the added compliance burden of administering two separate thresholds.

The MSRB also considered two additional alternatives that would keep the existing $50 million in assets threshold for satisfying Rule D-15(a)'s nature of the customer threshold. One such alternative would, only for municipal entity clients, limit the $50 million in assets to investments in municipal securities. This approach would provide only a portion of the relief sought by municipal entities in the GFOA Letter by creating a potentially larger group of municipal entities that could qualify as an SMMP than under the Draft Amendments, assuming the other two requirements of Rule D-15 are met, while maintaining the same level of compliance burden as would apply for the proposal included in this RFC. With this alternative, the balance of benefits to municipal entity customers and the burdens to dealers would be lower for this option.

The second alternative for keeping the existing $50 million in assets threshold would be to provide additional language strengthening the standard of review for a dealer's reasonable basis analysis when the customer is a municipal entity. This alternative would provide additional guidance for dealers regarding working with a municipal entity in the capacity of a customer. However, it would also likely impose an additional burden on dealers by creating two sets of criteria for evaluating a customer's sophistication through the rational basis analysis—there would be a baseline criteria for non-municipal entity customers, but then additional criteria that would relate to evaluating municipal entity customers. While the Draft Amendments would create two separate asset thresholds for municipal entity customers and non-municipal entity customers, the Draft Amendments would not require dealers to make different rational basis analyses based on two different standards of a customer's sophistication. As such, the MSRB evaluated this alternative and believes that it

would require dealers to conduct a more time-consuming and costly reasonable basis analysis. The MSRB's analysis of this alternative identified that dealers would incur one-time upfront costs of approximately $4,553.[19] The MSRB also identified ongoing compliance costs of $1,381 per each reasonable basis analysis by a dealer of a potential municipal entity SMMP.[20]

D. Assessing the benefits and costs of the draft changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a draft rule change when the rule change is fully implemented against the context of the economic baselines. The MSRB is currently unable to quantify the economic effects of the Draft Amendments in their totality because not all the information necessary to provide a reasonable estimate is available. Given the limitations on the MSRB's ability to conduct a comprehensive quantitative assessment of the costs and benefits associated with the Draft Amendments, the MSRB has considered these costs and benefits partially in qualitative terms but believes the upfront costs to dealers are relatively minor and benefits should accrue to dealers and investors over time and therefore are expected to exceed costs over time. The MSRB is seeking, as part of this RFC, additional data or studies relevant to the costs and benefits of the Draft Amendments.

(i) Benefits

The MSRB anticipates that dealers would benefit from a reduction in compliance costs and paperwork from creating an exception from Rule D-15(c)'s affirmation requirement. Investment advisers registered with the Commission generally maintain over $100 million in regulatory assets under management and owe a fiduciary duty to their clients. The MSRB believes that these investment advisers are typically of a sophisticated nature. The process for these investment advisers to qualify for the SMMP status under Rule D-15 requires time and effort by a dealer that may result in costs with limited or no corresponding benefits. Therefore, the proposed affirmation exemption for investment advisers registered with the Commission would reduce a burden on dealers.

In addition, the MSRB believes that increasing the total asset threshold for municipal entity customers from $50 million to $100 million in municipal security investments while

---

[19] The MSRB estimates four hours for an in-house attorney at $537 per hour (4 X $537 = $2,148) to revise firm policies and procedures and 1 hour for a senior compliance person at $103 per hour (1 X $103 = $103) to review the changes. The MSRB also anticipated one hour for a compliance attorney at $517 per hour (1 X $517 = $517) and one hour for the chief compliance officer of a firm at $751 per hour (1 X $751 = $751) to provide the in-house counsel review. Lastly, staff anticipates two hours for a compliance attorney at $517 per hour (2 X $517 = $1,034) to provide any training on changes to the rule. Therefore, the total estimated upfront costs would be $4,553 ($2,148 +$103 + $517 + $751 +$1,034 = $4,553).

[20] The MSRB estimated a blended research analyst of $108 per hour for 8 hours of work, plus one hour of review by an in-house compliance attorney at the $517 hourly rate, for a total of $1,381, in order to determine the appropriateness of the SMMP designation for a municipal entity customer.

maintaining the $50 million in all assets for non-municipal entity customers better tailors the rule to protect both groups. Some municipal entity investors who may be considered as an SMMP under the current requirements in Rule D-15 would no longer qualify under the Draft Amendments, and those investors should benefit from added protection from potentially risky investment decisions through the full application of the MSRB's investor protection rules that are otherwise deemed satisfied under Rule G-48. The higher threshold for municipal entity customers of $100 million focused specifically on investments in municipal securities, in addition to narrowing the assets considered to municipal securities investments only, would better protect unsophisticated municipal entity investors. This is because many municipal entities have physical assets such as infrastructure, which does not indicate the sophistication level of an investor. The MSRB is proposing that the threshold be established at $100 million rather than $50 million of municipal securities investments for the following reasons: this was the prior threshold used by the MSRB without any expressed concerns, this threshold was suggested by a commenter representing municipal entities on the February 2023 RFC, and this threshold would have a greater impact from the Draft Amendments while not creating any materially higher level of compliance burden for dealers.

(ii) Costs

The MSRB acknowledges that dealers could incur costs as a result of the Draft Amendments, primarily related to the higher threshold for municipal entity customers to be qualified as an SMMP, relative to the baseline (the current state under Rule D-15). Dealers with municipal entity customers may incur one-time, upfront costs related to setting up and/or revising all related policies and procedures and various ongoing costs including continuing education costs and compliance costs associated with transactions with non-SMMP investors. The MSRB estimates that dealers would incur relatively minor one-time upfront costs of approximately $2,684. As for ongoing costs to dealers, the MSRB expects that dealers would need to engage in one hour of continuing education annually totaling $517, as shown in Table 1.

Table 1. Upfront and Partial Ongoing Costs for Dealers[21]

Cost Components	Hourly Rate	Number of Hours	Cost per Firm
Upfront Costs			
- Revision of Policies and Procedures			
In-House Attorney	$ 537	1.0	$ 537
Senior Compliance Person	$ 103	1.0	$ 103
- In-House Counsel Review			
Compliance Attorney	$ 517	1.0	$ 517
Chief Compliance Officer	$ 751	1.0	$ 751
- Training			
Compliance Attorney	$ 517	1.5	$ 776
Subtotal		**5.5**	**$ 2,684**
Ongoing Costs			
- Continuing Education			
Compliance Attorney	$ 517	1.0	$ 517
Subtotal		**1.0**	**$ 517**

In addition, the MSRB anticipates dealers would incur incremental compliance costs in relation to municipal entity investors that qualified as an SMMP under the current requirements in Rule D-15 but would not qualify for SMMP status in the future with a higher and more restrictive threshold. These costs are related to transactions with these municipal entity customers that no longer meet the criteria for SMMP status and are associated with compliance obligations required by Rule G-47 (time of trade disclosure) as well as other key MSRB investor protection rules, including Rules G-10 (investor education and protection), G-13 (quotations), G-18 (best execution), G-19 (suitability) and G-30 (prices and commissions). For dealers that currently transact with both SMMP and non-SMMP customers, the MSRB believes the incremental compliance costs would be minor as these dealers should already have their compliance programs in place for SMMP and non-SMMP customers.

[21] The hourly rates data is gathered from the Commission's filing on "Amendments Regarding the Definition of "Exchange" and "Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities." *See* Exchange Act Release No. 94062 (January 26, 2022), 87 FR 15496, 15624 (March 18, 2022) (File No. S7–02–22). The Commission's economic analysis utilizes the Securities Industry and Financial Markets Association, Management & Professional Earnings in the Securities Industry—2013 Report for the hourly rates of various financial industry market professionals. To compensate for inflation, the data reflects the 2024 hourly rate level after adjusting for the annual cumulative wage inflation rate of 37% between 2013 and 2023, and another 4% between 2023 and 2024. *See* The Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries Private Industry. The number of hours for each task is based on the MSRB's internal estimate.

Finally, there is a risk that dealers that currently only work with SMMP customers, including municipal entity investors qualified as SMMPs, may decide to forgo these municipal entity customers in the future if they no longer qualify as SMMPs under the Draft Amendments. These dealers may choose not to have a separate compliance program for non-SMMP municipal entity customers.

Overall, however, the MSRB believes the expected aggregate benefits to investors and dealers would accumulate over time and exceed the total costs.

E. Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the Draft Amendments 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 lessening dealers' paperwork obligations in connection with affirmations that would no longer be required for investment adviser clients registered with the Commission. Although the benefits to municipal entities and dealers 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 various ongoing costs borne by dealers. The MSRB does not expect that the Draft Amendments 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

Nature of the Customer

1. Should the asset threshold in current Rule D-15(a)(3), as applied to municipal entities for SMMP qualification, be "assets" or "investments in municipal securities?" If the current language should be changed from "assets" to "investments in municipal securities," should that change be limited to municipal entities or should it apply to some or all other categories of investors? In addition, what should be the appropriate threshold amount, and should a changed threshold amount be applicable solely to municipal entities or to some or all other categories of investors?

2. Would the adoption of an asset threshold in current Rule D-15(a)(3) of $100 million invested in municipal securities preclude most municipal entity customers from SMMP qualification? Please describe any potential positive or negative consequences to municipal entities that could result from such a change in asset threshold. If the MSRB were to adopt such a threshold for municipal entities, should

such heightened threshold apply to any other categories of investors, or should it be raised for all types of investors?

3. Should municipal entity customers be wholly excluded from qualifying as SMMPs?

4. How important is it for municipal entity customers to qualify and be treated as an SMMP?

5. If a dealer cannot treat a municipal entity customer as an SMMP, how, if at all, would that impact the dealer's ability to serve, or the dealer's manner of serving, such customers?

6. For dealers that only work with SMMPs, what would these dealers choose to do if some of their municipal entity customers no longer qualify as SMMPs?

7. Would dealers that only work with SMMPs potentially forfeit business with some municipal entity customers because the cost of implementing a compliance framework for non-SMMPs would be too high?

8. If the answer to Question 7 is yes, would this significantly impact the number of dealers a municipal entity customer can choose from?

9. Are there specific products or services that would no longer be available to municipal entity customers, or are there other consequences that could result, if they were not able to qualify for SMMP status?

10. How important is it to dealers for Rule D-15 to be harmonized with analogous FINRA rules, such as FINRA Rule 4512(c)(3) on customer account information, which contains a provision allowing a customer with total assets of at least $50 million to be considered an institutional account? Please describe any other potential positive or negative consequences, other than any described in response to the questions above, to dealers, municipal entities and/or the marketplace as a whole that could result from such lack of harmonization.

Determination of Sophistication

11. Do commenters believe that dealers are properly determining customer sophistication, as required under Rule D-15(b), on a case-by-case basis?

12. Do commenters believe that Rule D-15 Supplementary Material .01 provides enough guidance for dealers when conducting a reasonable basis analysis of customer sophistication? If not, should there be a more exacting standard of review for

determining a customer's level of sophistication when the customer is a municipal entity?

Customer Affirmation

13. Are customers sufficiently aware of the customer protections they are giving up when completing Rule D-15(c)'s customer affirmation for qualification as an SMMP?

14. Are dealers taking proper steps to ensure that the appropriate individual is completing the affirmation under Rule D-15(c) when the customer is a municipal entity?

15. Should investment advisers registered with the Commission be exempt from Rule D-15(c)'s customer affirmation requirement? Would such an exemption be consistent with current requirements under FINRA Rule 2111(b), on which the customer affirmation requirement was partially based? Why or why not?

16. If the exemption for investment advisers registered with the Commission is adopted, should it be extended to state-registered investment advisers? Why or why not? Would such an extension be consistent with FINRA Rule 2111(b)?

Other

17. Would the Draft Amendments result in a disproportionate and/or undue burden for small dealers?

• • • • • •

Text of Draft Amendments*

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) *Nature of the Customer*. The customer must be:

* Underlining indicates new language; strikethrough denotes deletions.

(1) No change.

(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) a municipal entity with $100 million in municipal securities investments; or

(4) any other person or entity, other than a municipal entity, with total assets of at least $50 million.

(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) 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)~~ (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.

Supplementary Material

.01 - .02 No change.