



Municipal Securities Rulemaking Board

October 17, 2014

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 1 to SR-MSRB-2014-06

Dear Secretary:

On July 24, 2014, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("SEC") a proposed rule change consisting of proposed Rule G-44, on supervisory and compliance obligations of municipal advisors; proposed amendments to Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers; and proposed amendments to Rule G-9, on preservation of records (the "original proposed rule change").¹ The SEC published the original proposed rule change for comment in the Federal Register on August 5, 2014² and received eight comment letters. On October 17, 2014, the MSRB submitted its response to comments and filed a partial amendment ("Amendment No. 1") to the original proposed rule change.

A copy of Amendment No. 1 is attached to this letter, and the changes to the rule text of the original proposed rule change can be found in Exhibit 4 thereto.

If you have any questions regarding this matter, please contact me or Carl Tugberk, Assistant General Counsel, at (703) 797-6600.

Sincerely,

Michael L. Post
Deputy General Counsel

¹ See File No. SR-MSRB-2014-06 (Jul. 24, 2014), Exchange Act Release No. 72706 (Jul. 29, 2014).

² See 79 FR 45546 (Aug. 5, 2014).

The Municipal Securities Rulemaking Board (“MSRB”) is filing this partial amendment (“Amendment No. 1”) to File No. SR-MSRB-2014-06, originally filed with the Securities and Exchange Commission (the “Commission”) on July 24, 2014, with respect to a proposed rule change concerning supervisory and compliance obligations of municipal advisors (the “original proposed rule change” and, together with Amendment No. 1, the “proposed rule change”). The MSRB intends to implement the proposed rule change six months after Commission approval, except for proposed Rule G-44(d), which the MSRB intends to implement eighteen months after Commission approval.

The original proposed rule change consists of proposed Rule G-44 (Supervisory and Compliance Obligations of Municipal Advisors), and proposed amendments to Rule G-8 (Books and Records to Be Made by Brokers, Dealers and Municipal Securities Dealers) and Rule G-9 (Preservation of Records).

The MSRB submitted the original proposed rule change to establish supervisory and compliance obligations of municipal advisors when engaging in municipal advisory activities, and fundamental books-and-records requirements for municipal advisors, including those related to their supervisory and compliance obligations.

Amendment No. 1 would partially amend the text of the original proposed rule change to revise paragraphs .01 and .02 of the Supplementary Material to proposed Rule G-44. The principal purpose of the amendment is to no longer limit the requirement in paragraph .02 that the written supervisory procedures address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules to only municipal advisors with a single associated person. The provision, as amended, would apply to all firms with any associated persons permitted under all applicable law to supervise their own activities, and would be moved to paragraph .01 to better organize the Supplementary Material in light of the revised scope of the provision. Additionally, the amendment would make two minor, technical changes: (i) revise Rule G-44(e) to reference “Rule G-8(h)(v)(A)-(E)” rather than “Rule G-8(h)(iii)” and (ii) revise Rule G-9(k) to reference “Rule 15Ba1-8(d)” under the Securities Exchange Act of 1934 (“Act”) rather than “Rule 15a1-8(d)” under the Act.

The MSRB is proposing the revisions to paragraphs .01 and .02 of the Supplementary Material to the original proposed rule change to expand the applicability of the provision, requiring a municipal advisor’s written supervisory procedures to address how its supervision is adequate even without having separate supervisors, to account for instances of self-supervision that may occur in firms that are not sole-proprietorships. The MSRB is proposing the two technical revisions to indicate the correct cross-references.

The MSRB believes the Commission has good cause, pursuant to Section 19(b)(2) of the Act, for granting accelerated approval of Amendment No. 1. Specifically, the revised Supplementary Material to proposed Rule G-44 more properly identifies and captures the subset of municipal advisors for which the written supervisory procedures must address the additional matter, and it appropriately balances the flexibility the proposed rule affords to municipal advisor firms to have adequate supervisory systems, including small firms and even single-person

entities. Further, the revised provision is important to ensure all municipal advisors establish meaningful written supervisory procedures that would satisfy the minimum standards established by the proposed rule, and it would create a requirement substantially similar to one approved by the Commission in the Financial Industry Regulatory Authority's ("FINRA") consolidated supervision rule.³ The other two revisions included in Amendment No. 1 are minor, technical corrections and do not alter the substance of the original proposed rule change. In total, all of the revisions are consistent with the purpose of the original proposed rule change and do not raise significant new issues.

The changes made by Amendment No.1 to the original proposed rule change are indicated as attached in Exhibit 4. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

³ See FINRA Rule 3110(b)(6)(C); Exchange Act Release No. 71179 (Dec. 23, 2013), 78 FR 79542 (Dec. 30, 2013) (approving FINRA Rule 3110).

EXHIBIT 4**Rule G-44: Supervisory and Compliance Obligations of Municipal Advisors**

(a) *Supervisory System.* Each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules (“applicable rules”). Final responsibility for proper supervision shall rest with the municipal advisor. A municipal advisor’s supervisory system shall provide, at a minimum, for the following:

(i) *Written Supervisory Procedures.* The establishment, implementation, maintenance and enforcement of written supervisory procedures that are reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The written supervisory procedures shall be promptly amended to reflect changes in applicable rules and as changes occur in the municipal advisor’s supervisory system, and such procedures and amendments shall be promptly communicated to all associated persons to whom they are relevant based on their activities and responsibilities.

(ii) *Appropriate Principal.* The designation of one or more municipal advisory principals to be responsible for the supervision required by this rule.

(b) *Compliance Processes.* Each municipal advisor shall have in place and implement processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules, and shall conduct, no less frequently than annually, a review of the compliance policies and supervisory procedures.

(c) *Chief Compliance Officer.* Each municipal advisor shall designate one individual to serve as its chief compliance officer.

(d) *Annual Certification.* Each municipal advisor shall have its chief executive officer(s) (or equivalent officer(s)) certify in writing annually that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules. This requirement, however, shall not apply to municipal advisors that are subject to a substantially similar certification requirement of Financial Industry Regulatory Authority with respect to all applicable rules.

(e) *Exemption for Federally Regulated Banks.* A municipal advisor that is a bank or separately identifiable department or division of a bank as defined in Securities Exchange Act Rule 15Ba1-1(d)(4) shall, to the extent it engages in municipal advisory activities in the exercise

of any fiduciary powers as defined in 12 C.F.R. Section 9.2(g) or substantially identical powers, be exempt from this rule and Rule G-8(h)(~~iii~~)(~~v~~)(A)-(E) if such municipal advisor certifies in writing annually that it is, with respect to such activities, subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of this rule and the books and records requirements of Rule G-8(h)(~~iii~~)(~~v~~)(A)-(E).

(f) *Definition.* “Municipal advisor,” for purposes of this rule, shall mean a person registered or required to be registered as a municipal advisor under section 15B of the Act and rules and regulations thereunder.

---Supplementary Material:

.01 Written Supervisory Procedures. A municipal advisor’s written supervisory procedures shall take into consideration, among other things, the advisor’s size; organizational structure; nature and scope of municipal advisory activities; number of offices; the disciplinary and legal history of its associated persons; the likelihood that associated persons may be engaged in relevant outside business activities; and any indicators of irregularities or misconduct (*i.e.*, “red flags”). In the case of a municipal advisor with any associated persons permitted under all applicable law to supervise their own activities, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.

.02 Small Municipal Advisors. A municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system under this rule. The rule allows the designation of one person to be responsible for supervision, and allows the tailoring of written supervisory procedures based on, among other things, an advisor’s size. [In the case of a municipal advisor with a single associated person, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.]

.03 Appropriate Principal. Designated supervisory principals must be vested with the authority to carry out the supervision for which they are responsible and have sufficient knowledge, experience and training to understand and effectively discharge their responsibilities. They also must have the authority to implement the established written supervisory procedures and take any other action necessary to fulfill their responsibilities. Even if not so designated, whether a person has responsibility for supervision under this rule depends on whether, under the facts and circumstances of a particular case, that person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.

.04 Review of Compliance Policies and Supervisory Procedures. The reviews under paragraph (b) of this rule should, at a minimum, consider any compliance matters that arose since the previous review, any changes in the municipal advisory activities of the municipal advisor or its affiliates, and any changes in applicable rules that might suggest a need to revise the written compliance policies or supervisory procedures. Although paragraph (b) specifically requires reviews to be conducted at least annually, municipal advisors should consider the need, in order to comply with all of the other requirements of this rule, for interim reviews.

.05 Chief Compliance Officer. A chief compliance officer has a unique and integral role in the administration of a municipal advisor's compliance processes. A chief compliance officer is a primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts in order to comply with applicable rules. To fulfill this role, a chief compliance officer should have competence in the process of (1) gaining an understanding of the services and activities that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the applicable rules and standards of conduct pertaining to such services and activities based on experience and/or consultation with others; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with applicable rules and standards of conduct; and (4) developing programs to test compliance with the municipal advisor's policies and procedures. It is the intention of this rule to foster regular and significant interaction between senior management and the chief compliance officer regarding the municipal advisor's comprehensive compliance program. The chief compliance officer may be a principal of the firm or a non-employee of the firm. If a non-employee, then the person designated as chief compliance officer must have the competence described above and the municipal advisor retains ultimate responsibility for its compliance obligations.

.06 Responsibility for Compliance Functions. The chief compliance officer, and any compliance officers that report to the chief compliance officer, shall have responsibility for and perform the compliance functions contemplated by this rule. Nothing in this rule, however, is intended to limit or discourage the participation by any of the employees of the municipal advisor in any aspect of the municipal advisor's compliance program.

.07 Ability of Chief Compliance Officer to Hold Other Positions. The requirement to designate a chief compliance officer does not preclude that person from holding any other positions within the municipal advisor, including serving in any position in senior management or being designated as a supervisory principal, provided that person can discharge the duties of chief compliance officer in light of all of the responsibilities of any other positions.

.08 Effect of Annual Certification on Business Line Responsibility. The Board recognizes that supervisors with business line responsibility are accountable for the discharge of a municipal advisor's compliance policies and written supervisory procedures. The signatory to the certification required by this rule is certifying only as to having processes in place to establish,

maintain, review, test and modify the municipal advisor's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

(a) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) *General Business Records.* All books and records described in Rule 15Ba1-8(a)(1)-(8) under the Act.

(ii) Reserved.

(iii) Reserved.

(iv) Reserved.

(v) *Records Concerning Compliance with Rule G-44.*

(A) The written supervisory procedures required by Rule G-44(a)(i);

(B) A record of all designations of persons responsible for supervision as required by Rule G-44(a)(ii);

(C) Records of the reviews of written compliance policies and written supervisory procedures as required by Rule G-44(a) and (b);

(D) A record of all designations of persons as chief compliance officer as required by Rule G-44(c);

(E) The annual certifications as to compliance processes required by Rule G-44(d); and

(F) Any certifications made as to substantially equivalent supervisory and compliance obligations and books and records requirements pursuant to Rule G-44(e).

* * * * *

Rule G-9: Preservation of Records

(a) - (d) No change.

(e) *Method of Record Retention.* Whenever a record is required to be preserved by this rule, such record may be retained either as an original or as a copy or other reproduction thereof, or on microfilm, magnetic tape, electronic storage media, or by the other similar medium of record retention, provided that such broker, dealer, municipal securities dealer, or municipal advisor shall have available adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies thereof and, in the case of records retained on microfilm, magnetic tape, electronic storage media, or other similar medium of record retention, duplicates of such records shall be stored separately from each other for the periods of time required by this rule.

(f) *Effect of Lapse of Registration.* The requirements of this rule shall continue to apply, for the periods of time specified, to any broker, dealer, municipal securities dealer, or municipal advisor which ceases to be registered with the Commission, except in the event a successor registrant shall undertake to maintain and preserve the books and records described herein for the required periods of time.

(g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years, provided that the records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

(i) *Municipal Advisor Records Related to Formation and Cessation of its Business.* Every municipal advisor shall comply with the provisions of Rule 15Ba1-8(b)(2) and (c) under the Act.

(j) *Records of Non-Resident Municipal Advisors.* Every non-resident municipal advisor shall comply with the provisions of Rule 15Ba1-8(f) under the Act.

(k) *Electronic Storage of Municipal Advisor Records Permitted.* Whenever a record is required to be preserved by this rule by a municipal advisor, such record may be preserved on electronic storage media in accordance with section (e). Electronic preservation of any record in a manner that complies with Rule 15Ba1-8(d) under the Act will be deemed to be in compliance with the requirements of this rule.

EXHIBIT 5**Rule G-44: Supervisory and Compliance Obligations of Municipal Advisors**

(a) *Supervisory System.* Each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules (“applicable rules”). Final responsibility for proper supervision shall rest with the municipal advisor. A municipal advisor’s supervisory system shall provide, at a minimum, for the following:

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of any fiduciary powers as defined in 12 C.F.R. Section 9.2(g) or substantially identical powers, be exempt from this rule and Rule G-8(h)(v)(A)-(E) if such municipal advisor certifies in writing annually that it is, with respect to such activities, subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of this rule and the books and records requirements of Rule G-8(h)(iii).

(f) *Definition.* “Municipal advisor,” for purposes of this rule, shall mean a person registered or required to be registered as a municipal advisor under section 15B of the Act and rules and regulations thereunder.

---Supplementary Material:

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requires reviews to be conducted at least annually, municipal advisors should consider the need, in order to comply with all of the other requirements of this rule, for interim reviews.

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.06 Responsibility for Compliance Functions. The chief compliance officer, and any compliance officers that report to the chief compliance officer, shall have responsibility for and perform the compliance functions contemplated by this rule. Nothing in this rule, however, is intended to limit or discourage the participation by any of the employees of the municipal advisor in any aspect of the municipal advisor's compliance program.

.07 Ability of Chief Compliance Officer to Hold Other Positions. The requirement to designate a chief compliance officer does not preclude that person from holding any other positions within the municipal advisor, including serving in any position in senior management or being designated as a supervisory principal, provided that person can discharge the duties of chief compliance officer in light of all of the responsibilities of any other positions.

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Rule G-8: Books and Records to be Made by Brokers, Dealers, [and] Municipal Securities Dealers, and Municipal Advisors

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(D) A record of all designations of persons as chief compliance officer as required by Rule G-44(c);

(E) The annual certifications as to compliance processes required by Rule G-44(d); and

(F) Any certifications made as to substantially equivalent supervisory and compliance obligations and books and records requirements pursuant to Rule G-44(e).

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Rule G-9: Preservation of Records

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(e) *Method of Record Retention.* Whenever a record is required to be preserved by this rule, such record may be retained either as an original or as a copy or other reproduction thereof, or on microfilm, [electronic or] magnetic tape, electronic storage media, or by the other similar medium of record retention, provided that such broker, dealer, ~~or~~ municipal securities dealer, or municipal advisor shall have available adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies thereof and, in the case of records retained on microfilm, [electronic or] magnetic tape, electronic storage media, or other similar medium of record retention, duplicates of such records shall be stored separately from each other for the periods of time required by this rule.

(f) *Effect of Lapse of Registration.* The requirements of this rule shall continue to apply, for the periods of time specified, to any broker, dealer, [or] municipal securities dealer, or municipal advisor which ceases to be registered with the Commission, except in the event a successor registrant shall undertake to maintain and preserve the books and records described herein for the required periods of time.

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(h) *Municipal Advisor Records.* Every municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years, provided that the records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

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