

2021-13

Publication Date

October 6, 2021

Stakeholders

Brokers, Dealers,
Municipal Securities
Dealers, Investors,
General Public

Notice Type

Approval Notice

Effective Date

October 12, 2021

Category

Fair Practice

Affected Rules

[Rule G-10](#), [Rule G-48](#),
[Rule D-9](#), and [Rule D-15](#)

SEC Approves Amendments to Rules G-10 and G-48 Clarifying Notification Requirements for Dealers

Overview

On October 5, 2021, the Municipal Securities Rulemaking Board (MSRB) received approval from the U.S. Securities and Exchange Commission (SEC) for a rule change consisting of amendments to Rule G-10, on investor and municipal advisory client education and protection, clarifying and aligning the requirements for brokers, dealers and municipal securities dealers (collectively, “dealers”) to provide required notifications under the rule directly to those customers for whom a purchase or sale of a municipal security was effected in the past year and to each customer who holds a municipal securities position. The SEC also approved an accompanying amendment to Rule G-48, on transactions with sophisticated municipal market professionals (SMMPs), allowing dealers to conditionally excluded SMMPs from the requirements under Rule G-10(a).¹ The rules become effective on October 12, 2021.

Background

Rule G-10 was designed to educate and protect investors and municipal advisory clients by ensuring that they are provided with information about the MSRB rules designed to protect them and the process for filing a complaint with the appropriate regulatory authority. The rule requires dealers and municipal advisors (collectively, “regulated entities”) to provide specified notifications to customers and municipal advisory clients, respectively, within specified timeframes. More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information (“notifications”):

- (i) A statement that the regulated entity is registered with the SEC and the MSRB;



Receive emails about
MSRB Notices.

¹ See Exchange Act Release No. 93621 (October 5, 2021) [File No. SR-MSRB-2021-04].

(ii) A statement as to the availability to the customer or municipal advisory client of a brochure that is available on the MSRB's website at [msrb.org](https://www.msrb.org) that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.²

Retrospective Rule Review

Prior to 2017, Rule G-10 only applied to dealers and required dealers to provide a customer with a paper copy of the MSRB's investor brochure after a customer had made a complaint to the dealer.³ In 2017, the MSRB amended Rule G-10 to extend its application to municipal advisors and also modernized the rule, recognizing that the post-complaint paper delivery requirement for dealers did not afford customers the best use of the information in a timely manner.⁴ The 2017 amendment replaced the post-complaint paper delivery requirement with a requirement for dealers to provide the notifications to customers at least once a year, which may be electronic.⁵

Given there has been a reasonable implementation period to allow the MSRB to obtain meaningful insight on the operation of the rule, the MSRB conducted a review of the obligations under Rule G-10, resulting in the decision to modify dealer obligations under Rule G-10.⁶ The MSRB sought comment on a draft amendment to MSRB Rule G-10 notification requirements for dealers on May 14, 2021,⁷ and received four

² See MSRB's [Information for Municipal Securities Investors](#) and [Information for Municipal Advisory Clients](#).

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

⁴ See Exchange Act Release No. 79801 (January 13, 2017), 82 FR 7898 (January 23, 2017), (File No. SR-MSRB-2016-15).

⁵ *Id.*

⁶ The MSRB determined not to modify a municipal advisor's obligations under Rule G-10 as the MSRB determined that the obligations were already limited in scope, requiring that municipal advisor firms provide the required notifications to municipal advisory clients promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement.

⁷ See [MSRB Notice 2021-08](#) (May 14, 2021).

comment letters.⁸ The MSRB filed its proposed rule change with the SEC on August 2, 2021,⁹ and the SEC received two comment letters.¹⁰ In response to commentors, MSRB filed Amendment No. 1 to its original proposed rule change on September 28, 2021 (together with the original proposed rule change, “proposed rule change”). On October 5, 2021, the SEC approved the MSRB’s proposed rule change to revise Rule G-10 dealer obligations to provide notifications to certain customers; and to revise Rule G-48.¹¹ Below is a summary of the rule change.

Summary of Rule Changes

Narrowed Definition of Customer

Previously, dealers were obligated to provide the required notifications to all customers, including SMMPs, even if those customers had not effected any transaction in municipal securities and may never effect a transaction in municipal securities. The rule change amends Rule G 10(a) to narrow the definition of customer to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year period or who hold a municipal securities position. Thus, Rule G-10(a) no longer requires a dealer to make the annual notifications to customers that have not, and may never, engage in municipal securities transactions, so long as the dealer has the notifications available to these customers on its website.¹² Narrowing the dealer direct notifications delivery obligation to only those customers that engage in municipal securities transactions reduces the burden of remitting the notifications unnecessarily to all customers, while ensuring that dealers remit the notifications to customers

⁸ See Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association (“ASA Letter” or “ASA”), dated June 28, 2021; Letter from Michael Decker, Senior Vice President, Bond Dealers of America (“BDA Letter” or “BDA”), dated June 28, 2021; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association (“SIFMA Letter” or “SIFMA”), dated June 28, 2021; and Letter from Jennifer Szaro (“Szaro Letter” or “Szaro”), dated May 17, 2021, available [here](#).

⁹ See Exchange Act Release No. 92677 (August 16, 2021), 86 FR 46890 (August 20, 2021) [File No. SR-MSRB-2021-04].

¹⁰ See Letters from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, dated September 10, 2021; and Michael Decker, Senior Vice President, BDA, dated September 10, 2021, available [here](#).

¹¹ See *supra* note 2.

¹² The MSRB also modified a reference to the MSRB’s website, [msrb.org](#), previously located in a separate sentence under Rule G-10(a)(ii) to now include the direct website reference in new Rule G-10(a)(ii).

who would most benefit from receiving them. Customers who do not receive the notifications directly pursuant to Rule G-10(a) will still have access to them, as section (b) of Rule G-10 requires each dealer to have the required notifications available on its website for the benefit of such customers. Accordingly, the MSRB does not believe there is a detrimental impact to such customers and believes that not receiving the notifications may avoid confusion for customers who currently receive such notifications even though they have not effected a municipal securities transaction nor do they hold municipal securities. In addition, dealers may incur cost savings when not required to send out the additional communications to these customers.

Conditional Exception for SMMPs

The MSRB's related amendment adding section (f) to Rule G-48 provides that SMMP customers who would otherwise receive the required notifications as a result of a municipal securities transaction or by maintaining a municipal securities position, are excepted from direct receipt of the Rule G-10(a) notifications, so long as the dealer has the notifications available on its website. The MSRB believes that customers who meet the definition of SMMP under Rule D-15 are sophisticated in their understanding of the municipal securities market. In the event that an SMMP is seeking the information found in the required notifications, including the MSRB's website address, dealer registration status and how to file a complaint with the appropriate regulatory agency, a sophisticated customer is likely to know the information, or seek access to it from the dealer's or MSRB's websites. In addition, the MSRB believes that the amendment to Rule G-48 balances the burden on dealers to remit the required notifications to SMMPs against the usefulness of SMMPs receiving such notifications when the information is otherwise readily available.

Exceptions for Dealers Subject to Carrying Agreements and Dealers That Do Not Have Customers

The MSRB amended Rule G-10(c) to add two exceptions for dealers from the Rule G-10(a) notifications delivery requirement, including: (1) a dealer that does not have customers; or (2) a dealer that agrees with a carrying dealer servicing its customer accounts that the carrying dealer will comply with Rule G-10(a) requirements. The MSRB recognizes that customer accounts may be held at other dealers, and that carrying dealers are often responsible for providing account statements and trade confirmations. The MSRB also recognizes that dealers may not delineate all regulatory obligations within the carrying agreement and is not requiring dealers to modify such agreements to reflect the agreed upon assigning of the Rule G-10(a) regulatory obligation to the carrying dealer. Accordingly, an introducing dealer that agrees with a carrying dealer that the carrying dealer will provide the notifications would not be required to provide notifications under Rule

G-10(a), acknowledging common business practices and avoiding duplicative notifications. Additionally, as noted above, the amendment to Rule G-10(c) expressly clarifies that a dealer would not be subject to the notifications requirement in cases where the dealer conducts a limited business and does not have customers.

Supplementary Material Under Rule G-10

The rule change includes supplementary material under Rule G-10 that provides clarity on the timeframe for delivery of required notifications. Supplementary Material .01 of Rule G-10 makes clear that the obligation to provide the required notifications once each calendar year to applicable customers would be deemed satisfied if a dealer delivers the required notifications at any given point in each calendar year, so long as any customers that effected a transaction in municipal securities or who hold such securities after that given date each calendar year, receive the notifications within the following rolling 12-month period. More explicitly, after a dealer provides the notifications to customers, the next notifications must be provided within 12 months of the date of the last notifications, and in no event may a dealer exceed 12 months without providing the notifications to applicable customers.¹³ For example, recognizing that the rule amendment became effective on October 12, 2021, assume a dealer opts to remit the required notifications on November 1, 2021, and in December 2021, a non-SMMP customer who has never held municipal securities effects a transaction in municipal securities for the first time. The dealer would not be required to remit the notifications to that customer in calendar year 2021 but would be required to remit the notifications to that customer, along with all other applicable customers, on or before November 1, 2022.

Technical Changes

Finally, the rule change makes technical amendments streamlining Rule G-10(a) by removing the previous Rule G-10(a)(ii) website-only reference and moving the website reference to amended Rule G-10(a)(ii), which now includes the website reference along with other information. The amendment also re-numbers the remainder of Rule G-10 accordingly.

October 6, 2021

* * * * *

¹³ Dealers may choose to provide the notifications more frequently than once each calendar year if they wish to do so.

Text of the Amendments*

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

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

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

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

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

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

(c) Notwithstanding the requirement in section (a) of this rule, any dealer that does not have customers, or that agrees with a carrying dealer servicing its customer accounts that the carrying dealer will comply with section (a) of this rule, is exempt from the requirements of this rule.

~~(d)~~ No change.

~~(e)~~ No change.

Supplementary Material

.01 Sequencing of Dealer Notifications.

A dealer shall be deemed to have satisfied the obligation under section (a) if a dealer provides the notifications to the applicable customers at a given point in the calendar year and any additional customer(s) that calendar year who subsequently effect a purchase or sale of a municipal security or hold a municipal securities position receive the notifications within the following rolling 12-month period. In

* Underlining indicates new language; strikethrough denotes deletions.

accordance with this section, a dealer may provide the notifications within a shorter time period from the preceding notifications, but in no event may a dealer exceed 12 months without remitting the notifications to a customer.

* * * *

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

(a) – (e) No change.

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