



Understanding the Criteria-Based Exemption Under MSRB Rule G-3 for Municipal Advisor Representatives

OVERVIEW

The Municipal Securities Rulemaking Board (MSRB) developed this compliance resource to enhance municipal advisors' understanding of the one-time criteria-based exemption under MSRB Rule G-3, on professional qualification requirements, should they seek to use it to requalify a municipal advisor representative without reexamination.¹ **This compliance resource is specifically addressing regulatory requirements for individuals who have experienced a lapse in qualifications.**

Under Rule G-3(d)(ii)(B), an individual experiences a lapse in qualification when the person ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor for two years after qualifying as a municipal advisor representative by taking and passing the Municipal Advisor Representative Qualification Examination (Series 50) exam. The criteria-based exemption provides a municipal advisor representative a period not to exceed three years in which such person can cease to act as a municipal advisor representative and not be required to requalify as such by retaking and repassing the Series 50 exam.

This compliance resource outlines the conditions that must be satisfied and filings that must be made with the Securities and Exchange Commission (SEC) and MSRB in connection with the exemption. It includes a checklist of the steps that a municipal advisor professional and a municipal advisor firm with which it intends to associate should take when utilizing the criteria-based exemption.



STEP 1: ORGANIZATIONAL ASSESSMENT



STEP 2: SUBMISSION OF FORMS

This compliance resource also answers certain questions about invoking the exemption.

¹ See Securities Exchange Act of 1934 ("Exchange Act") Release No. 98353 (September 12, 2023), 88 FR 63984 (September 18, 2023) (File No. SR-MSRB-2023-05); see also MSRB Notice 2023-07 (September 12, 2023).

CHECKLIST FOR UTILIZING THE CRITERIA-BASED EXEMPTION TO REQUALIFY AS A MUNICIPAL ADVISOR REPRESENTATIVE

The conditions that must be satisfied when a former municipal advisor representative whose qualification has lapsed seeks to requalify as a municipal advisor representative without retaking and repassing the Series 50 exam are set out in MSRB Rule G-3(h)(ii) and are summarized below.

Requirements Applicable to the Individual:

- The individual was previously qualified as a municipal advisor representative by taking and passing the Series 50 exam.
- The individual maintained the municipal advisor representative qualification for at least three consecutive years during the period in which the individual was both (i) associated with a municipal advisor firm and (ii) engaging in municipal advisory activities.
- No more than three years have passed since the individual was last associated with and engaged in municipal advisory activities on behalf of a municipal advisor firm.
- The individual has not engaged in municipal advisory activities requiring qualification as a municipal advisor representative during the relevant time that the individual ceases to be associated with a municipal advisor firm.²
- The individual is not subject to any events or proceedings that resulted in the submission of one or more disclosure reports, known as disclosure reporting pages ("DRPs"), on SEC Form MA-I relating to regulatory actions, civil judicial actions, customer complaints/arbitration/civil litigation, criminal actions or terminations.³
- The individual has not previously obtained an exemption from requalification by examination.⁴

² This specified condition is not meant to prohibit individuals from engaging in other capacities within the industry during the relevant period that qualify for an exclusion or exemption from the SEC's municipal advisor registration requirements under Exchange Act Rule 15Ba1-1(d)(2) and (3).

³ Certain other categories of DRPs on SEC Form MA-I (Information Regarding Natural Persons Who Engage in Municipal Advisory Activities) relating to investigations or judgments/liens do not have an impact on qualifying for this exemption. Any DRP disclosed on a Form MA-I at any time by any firm with respect to which the individual is the subject would result in this exemption from reexamination not being available for such individual.

⁴ Individuals can only utilize the exemption to requalify as a municipal advisor representative without reexamination once and then would need to requalify by examination should the individual experience a subsequent lapse in qualification.



STEP 1: ORGANIZATIONAL ASSESSMENT

The firm and individual must undertake the following steps prior to submitting Form MA-I to the SEC and Affirmation to MSRB.

The firm must administer, and the individual must complete, continuing education (CE) training covering, at minimum, the following subject areas *(if a new firm is being established as a sole proprietorship, the individual must first conduct a needs analysis and develop a written training plan before completing the requisite training)*:

- ▶ Principles of fair dealing under MSRB Rule G-17
- ▶ The applicable regulatory obligations under MSRB Rules G-20 (gifts and gratuities), G-37 (political contributions), G-40 (advertising) and G-8 (books and records)
- ▶ Core conduct standards under MSRB Rule G-42 (duties of non-solicitor municipal advisors), including the fiduciary duty obligation to municipal entity clients⁵
- ▶ Any changes to applicable securities laws and regulations, including applicable MSRB rules adopted since the individual was last associated with a municipal advisor

The firm must provide, and the individual must review, the firm's compliance policies and procedures *(if a new firm is being established as a sole proprietorship, the individual must first develop the firm's policies and procedures and then document their review of such policies and procedures)*.



STEP 2: SUBMISSION OF FORMS

After completing step 1, the firm must submit Form MA-I to the SEC and Affirmation to MSRB prior to permitting the individual to engage in municipal advisory activities.

After completing the steps required to be undertaken by the firm as described above, the firm must then complete and submit SEC Form MA-I to identify the individual as an associated person engaging in municipal advisory activities on behalf of the firm.

Within 30 days after SEC acceptance of Form MA-I, the firm and the individual must submit the required Affirmation notification to MSRB attesting that the conditions have been met in order for the individual to be exempt from retaking and passing the Series 50 exam *(if a new firm is being established as a sole proprietorship, this step would be completed by the same person)*.⁶

⁵ In the alternative, for solicitor municipal advisors, this element of CE training would instead consist of the core obligations of solicitor municipal advisors under MSRB Rule G-46.

⁶ See MSRB Rule G-3(h)(ii)(I) and Supplementary Material .02 to Rule G-3.

The Affirmation to be provided to MSRB, including the information outlined below, must be on firm letterhead — please see page 5 for the Sample Affirmation Notification Template. If a new firm is being established as a sole proprietorship, the individual would draft the Affirmation notification and submit it on behalf of the firm and themselves.

The notice must be sent to MSRB at Compliance@msrb.org.

- The Affirmation notification must include the following information:
 - (1) Firm's MSRB ID number
 - (2) Individual's First and Last name
 - (3) Individual's CRD number, if applicable
 - (4) Start date (refers to the individual's association with the firm)
 - (5) An affirmative statement that the firm has undertaken a diligent effort to reasonably conclude that the individual met the requirements to obtain the exemption
 - (6) An affirmative statement attesting that the firm provided the requisite CE training and the firm's compliance policies and procedures to the individual for review (along with the date(s) the individual completed the training and reviewed the compliance policies and procedures)
 - (7) The date the firm filed SEC Form MA-I on behalf of the individual
- The affirmation notification must be signed by:
 - ▶ The individual attesting that the conditions for the exemption have been met and
 - ▶ A municipal advisor principal attesting that based on the exercise of reasonable diligence, the conditions for the criteria-based exemption have been met.⁷

The individual seeking to requalify as a municipal advisor representative without retaking and repassing the Series 50 exam by virtue of this exception may begin to engage in municipal advisory activities only after submitting the required Affirmation notification to MSRB. A municipal advisor firm (or sole proprietor) should check the ["Series 50-Qualified Representatives" list](#), to ensure the individual has been added to the list of qualified individuals.

⁷ As previously mentioned, in the case in which a new firm is being established as a sole proprietorship, this step would be completed by the same person. As a reminder, MSRB Rule G-3(e)(ii)(C) does allow individuals who are qualified as municipal advisor representatives to function as municipal advisor principals up to 120 days without having taken and passed the Series 54 examination. Municipal advisor representatives who are duly requalified based on having satisfied the criteria-based exemption would be able to avail themselves of this provision.

MUNICIPAL ADVISOR SAMPLE AFFIRMATION NOTIFICATION TEMPLATE

The Municipal Securities Rulemaking Board (MSRB) is providing a sample affirmation notification for municipal advisor firms to review in drafting and submitting on firm letterhead the required information that must be contained within the Affirmation notification to the MSRB.

Sample Affirmation Notification Template

Firm MSRB ID number:

Individual's name:

Individual's CRD number (if applicable):

Start Date:¹

Affirmative Statement Example:

[Firm Name] has undertaken a diligent effort to have a reasonable belief that the individual named above, seeking the criteria-based exemption, has met the requirements of Rule G-3 subparagraphs (h)(ii)(A) through (H). **[Firm Name]** also attests that it has provided the requisite continuing education, which the individual completed on **[month, day, year]**. Furthermore, the municipal advisor firm provided its compliance policies and procedures to the individual, and the individual completed such review of the firm's compliance policies and procedures on **[month, day, year]**.

File Date:²

Accepted Date:³

Individual's Signature

By signing this affirmation notification, I attest that the conditions outlined to obtain the criteria-based exemption were met, pursuant to Rule G-3(h)(ii)(A) through (H).

Municipal Advisor Principal's Signature

By signing this affirmation, I attest on behalf of the firm that based on the exercise of reasonable diligence, the conditions outlined to obtain the criteria-based exemption were met, pursuant to Rule G-3(h)(ii)(A) through (H).

¹ This is referring to individual's association with the municipal advisor firm.

² Date the municipal advisor firm filed the SEC Form MA-I.

³ Date the SEC accepted the filed Form MA-I.

BOOKS AND RECORDS TO BE MADE BY MUNICIPAL ADVISORS UTILIZING THE EXEMPTION

MSRB Rule G-8(h)(vii)(C) requires that municipal advisor firms make and maintain the following records to evidence compliance with the requirements related to the criteria-based exemption:

- A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., copy of the print-out of the individual's results or exam result certification letter provided by MSRB)
- Documentation supporting the municipal advisor firm's exercise of reasonable diligence in determining that the conditions outlined for the exemption were met in making the required Affirmation (e.g., copies of relevant SEC form filings reviewed; records related to continuing education provided and completed; compliance policies and procedures provided and reviewed; and attestations or other documentation to support such a determination)⁸
- A copy of the Affirmation notification sent to MSRB
- A record evidencing that the Affirmation notification was made in the prescribed manner and within the required period (e.g., automatic email delivery receipt)

MSRB Rule G-44, on municipal advisor supervision, requires each municipal advisor firm to develop a system to supervise the activities of the firm and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable MSRB rules. A municipal advisor's supervisory system includes the establishment, implementation, maintenance and enforcement of the firm's written supervisory procedures. Therefore, a municipal advisor firm that intends to utilize the criteria-based exemption process when hiring municipal advisor representatives must update its compliance policies and procedures to reflect the criteria-based exemption requirements. *And, if a new firm is being established as a sole proprietorship, the individual must develop overarching compliance policies and procedures and include language that addresses the criteria-based exemption requirements.*

⁸ As previously mentioned, in the case in which a new firm is being established as a sole proprietorship, this step would be completed by the same person.

FREQUENTLY ASKED QUESTIONS

The following FAQs are intended to address certain questions regarding the use of the criteria-based exemption for requalification under Rule G-3. Municipal advisors may be able to use these FAQs as a resource in developing and assessing their compliance and supervisory programs.

Questions Related to the Criteria-Based Exemption:

1. **What date is used by MSRB in determining that a lapse of qualification has occurred (i.e., the individual ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor firm)?**

MSRB uses the filing date of the last amended SEC Form MA-I submitted on behalf of an individual in which the firm is disassociating the individual from the municipal advisor firm. This information can be found on the [SEC's Electronic Data Gathering, Analysis, and Retrieval \(EDGAR\) system](#). In addition, from the [MSRB-Registered Municipal Advisor Firms and Qualified Representatives and Principals webpage](#), MSRB makes available links to the required disclosures that municipal advisor firms make to the SEC on SEC Forms MA and MA-I.

2. **Can an individual engage in municipal advisory activities on behalf of the municipal advisor firm while completing the necessary requirements related to the criteria-based exemption?**

No. The individual must first satisfy all of the requirements outlined in the rule (i.e., completing the requisite continuing education and reviewing of the firm's compliance policies and procedures). Secondly, the firm must file SEC Form MA-I and then submit the Affirmation notification to MSRB within 30 days of acceptance of the SEC's Form MA-I before the individual can engage in municipal advisory activities on behalf of the municipal advisor firm.

3. **If there was a break within a municipal advisor representative's prior employment (e.g., 30 days), would the individual be able to avail themselves of the criteria-based exemption after experiencing a lapse in qualification?**

Yes, an individual can seek the one-time criteria-based exemption after a lapse in qualification as long as the individual maintained the municipal advisor representative qualification for **at least three consecutive years prior to the lapse**. MSRB recognizes that there may be small breaks such as a few weeks off between changes in employment. In these instances, a municipal advisor representative would not be precluded from availing themselves of the criteria-based exemption. This question is meant to highlight that while small breaks in employment over a span of one's career may happen, the rule still requires an individual to have acted in the capacity of a municipal advisor representative for a period of three consecutive years prior to a lapse in qualification excluding such breaks in employment.

4. After a municipal advisor firm submits the Affirmation notification, when would an individual who obtained the exemption be added to MSRB.org as a municipal advisor representative?

A municipal advisor firm having provided the Affirmation notification to compliance@msrb.org will trigger the MSRB's review to ensure SEC Form MA-I (and Form MA, in the case of a sole proprietor) has been accepted by the SEC. If all conditions have been met, MSRB will update the "[Series 50-Qualified Representatives](#)" list with the specified individual's name.⁹

5. Is there an exemption from retaking and repassing the Municipal Advisor Principal Qualification Examination after a lapse in qualification by a municipal advisor principal?

No. Rule G-3 does not provide an exemption from retaking and repassing the Municipal Advisor Principal Qualification Examination ("Series 54") to qualify as a municipal advisor principal. As a result, given qualifying as a municipal advisor representative is a pre-requisite to qualifying as a municipal advisor principal, the individual would need to obtain the one-time exemption before retaking and repassing the Series 54 examination to function in a principal-level capacity. MSRB Rule G-3(e)(ii)(C) does allow individuals who are qualified as municipal advisor representatives to function as municipal advisor principals up to 120 days without having taken and passed the Series 54 examination. Municipal advisor representatives who are duly requalified based on having satisfied the criteria-based exemption would be able to avail themselves of this provision.

⁹ MSRB.org is updated weekly, generally on the first business day of the week. A misspelled name or lack of uniformity in the individual's first, middle and last name on SEC Form MA-I and information initially submitted to enroll to take the Series 50 exam could delay the display of a municipal advisor representative's name on MSRB.org.

This resource is not a rule or legal interpretation, and regulated entities, examining authorities, and others should not interpret this resource as establishing new obligations, mandating any specific practice beyond the requirements of existing rules, creating a safe harbor, or obviating compliance with existing regulatory obligations to establish, implement, maintain and enforce supervisory procedures reasonably designed to ensure that the conduct of municipal advisory activities of the firm and its associated persons complies with applicable rules. This compliance resource should be read in conjunction with applicable [MSRB rules and interpretations](#), as this resource does not provide a comprehensive list of considerations for ensuring compliance with all applicable rules.

About MSRB

The Municipal Securities Rulemaking Board (MSRB) was established by Congress in 1975 with the mission to protect investors, issuers and the public interest and to promote efficiency, competition and capital formation. MSRB is a private, self-regulatory organization governed by an independent board of directors with market knowledge and expertise. MSRB does not receive federal appropriations and is funded primarily through fees paid by regulated entities. MSRB is overseen by Congress and the Securities and Exchange Commission.

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