



Municipal Securities Rulemaking Board

September 28, 2021

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: MSRB Response to Comments on File Number SR–MSRB–2021–04

Dear Ms. Countryman:

On August 2, 2021, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change consisting of amendments to MSRB Rule G-10, on investor and municipal advisory client education and protection, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals (“SMMPs”) (collectively, the “proposed rule change”).<sup>1</sup> The proposed rule change would clarify the scope of the requirement for brokers, dealers and municipal securities dealers (collectively, “dealers”) to provide the required notifications<sup>2</sup> under Rule G-10(a) to those customers<sup>3</sup> who would best be served by the receipt of the information. The proposed rule change also includes accompanying amendments to Rule G-48 to conditionally exclude SMMPs from the requirements under Rule G-10(a).

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<sup>1</sup> [File No. SR-MSRB-2021-04.](#)

<sup>2</sup> Rule G-10(a) requires dealers to provide, in writing, a statement about the dealer’s registration status with the SEC and MSRB; the website address for the MSRB; and a statement as to the availability of a brochure on the MSRB’s website that describes the protections provided by MSRB rules and how to file a complaint with the appropriate regulatory authority.

<sup>3</sup> Under MSRB Rule D-9, a “customer” means “any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.”

The SEC published the proposed rule change for comment in the Federal Register on August 20, 2021<sup>4</sup> and in response to its notice the SEC received two comment letters.<sup>5</sup> Both commenters generally expressed support for the proposed rule change; however, each suggested modifications to the proposed rule change. This letter responds to the comment letters received by the Commission. After carefully considering, and in response to, those comments, the MSRB is filing this day Amendment No. 1 to SR-MSRB-2021-04 (“Amendment No. 1”) to make certain revisions to the original proposed rule change, as discussed below and in further detail in Amendment No. 1. This letter first describes the response to comments on the original proposed rule change that the MSRB incorporated into Amendment No. 1 and then describes the MSRB’s response to comments on the original proposed rule change that the MSRB declined to incorporate into Amendment No. 1.

### **Comments Incorporated into Amendment No. 1**

#### ***Exception for Dealers Subject to Carrying Agreements***

Proposed Rule G-10(c) provides that any dealer that does not have customers, or who is a party to a carrying agreement in which the carrying dealer has agreed to comply with the required notification requirement of the rule, would be exempt from such notification requirement. This provision is in recognition of the industry practice in which customer accounts may be held at other dealers, subject to a carrying agreement, and that carrying dealers are typically responsible for providing account statements and trade confirmations to such customers.

BDA is concerned that introducing dealers would only be able to avail themselves of the exception provided for under Rule G-10(c), if the introducing dealer is a party to a carrying agreement in which the carrying dealer has agreed to comply with the notification obligation and the allocation of responsibility is memorialized in the carrying agreement. BDA notes, “it is unlikely that this allocation of responsibility will be memorialized in a clearing agreement.” BDA requested that the language of Rule G-10(c) be modified to “a dealer that is an introducing dealer and whose carrying dealer has agreed to comply with section (a) of the rule is exempt from the requirements of the rule.” Additionally, SIFMA stated that the MSRB would best achieve the aim of avoiding duplicative disclosures “if introducing dealers and carrying dealers

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<sup>4</sup> See Exchange Act Release No. 92677 (August 16, 2021), 86 FR 46890 (August 20, 2021) (the “Notice of Proposed Rule Change”).

<sup>5</sup> See Letters from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA Letter”), dated September 10, 2021; and Michael Decker, Senior Vice President, Bond Dealers of America (“BDA Letter”), dated September 10, 2021, available at <https://www.sec.gov/comments/sr-msrb-2021-04/srmsrb202104.htm>.

had the flexibility to allocate responsibility for delivery of the disclosures outside of a clearing agreement.”

Rule G-10(c), as drafted, reflects comments received in response to the MSRB’s Request for Comment<sup>6</sup> in which BDA and SIFMA, while generally supportive of this provision, recommended clarifying language to reflect a mutual agreement between the introducing and carrying dealer as to which firm would undertake the obligation to provide the required notifications. The MSRB believes there is merit to the current points raised by SIFMA and BDA, and is, therefore, revising the proposed rule change. More specifically, the MSRB recognizes that dealers may not delineate all regulatory obligations specifically undertaken by a carrying dealer within the carrying agreement and it is not the MSRB’s intention to place a burden on dealers to modify such agreements to reflect the agreed upon assigning of the regulatory obligation to the carrying dealer. The proposed amendment is meant to clarify that a carrying dealer can comply with the obligation under Rule G-10(a) on behalf of an introducing dealer without the need for it to be specifically called out within the carrying agreement. Accordingly, Amendment No. 1 proposes to amend the clause “any dealer [...] who is a party to a carrying agreement in which the carrying dealer has agreed to comply with section (a) of this rule, is exempt from the requirements of this rule.” to read “any dealer [...] 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.”

Again, the MSRB believes that the revisions in Amendment No. 1 are directly responsive to the comments received and avoid an unnecessary and burdensome process in order for introducing dealers being able to avail themselves of the exception provided under Rule G-10(c).

#### **Comments Not Incorporated into Amendment No. 1**

##### ***Annual Notifications by Municipal Advisors***

SIFMA commented that the MSRB’s proposed rule change should address the obligations of municipal advisors to provide the required notifications to their municipal advisory clients; and more specifically, SIFMA stated, current Rule G-10(b) renumbered as Rule G-10(d) “should not require annual notifications by municipal advisors to their municipal advisory clients.” As the MSRB noted in its Request for Comment<sup>7</sup> and its subsequent filing<sup>8</sup> the proposed rule change is

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<sup>6</sup> See MSRB Notice 2021-08, “Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers,” (May 14, 2021) available at <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-08.ashx??n=1>.

<sup>7</sup> *Id.*

<sup>8</sup> See *supra* note 1.

specific to dealers' obligations under Rule G-10 and the MSRB is not proposing to modify municipal advisors' obligations under the rule. The MSRB has previously stated that it identified an opportunity to better align the scope of the rule's application by requiring dealers only to provide the specified notifications to those customers who would best be served by the receipt of the information.<sup>9</sup> In the same context, the MSRB further noted that the obligation of municipal advisors is already limited in scope in that a municipal advisor must provide the required notifications promptly after the establishment of a municipal advisory relationship and then no less than once each calendar year thereafter during the course of the municipal advisory relationship.

SIFMA also stated that "these notifications are already made promptly after the establishment of a municipal advisory relationship in the engagement letter/agreement where other required disclosures are included as required under G-42" and that "it strongly disagree[s] with the MSRB's assertion that the G-10 notifications are not commonly included in municipal advisor engagement letters as most members believed this to be a natural place for them and updated their templates to include them." The MSRB does not dispute that some municipal advisors may use a template that has the initial notification included within the engagement letter or that a natural place to include the notifications would be with the engagement letter or conflicts of interest disclosures. The MSRB believes this process is not inconsistent with the requirement to provide the notification promptly after the establishment of a municipal advisory relationship and did not seek comment on, or discuss, this matter in the proposed rule filing.

Additionally, SIFMA posited that requiring municipal advisors to provide the specified notifications to municipal advisory clients throughout the duration of the terms of the engagement is a "manual and unnecessary process" and that "there are no other municipal advisor disclosures that are required to be made on an annual basis." The MSRB notes that the current obligation for municipal advisors with respect to providing the required notifications annually throughout the municipal advisory relationship is in furtherance of creating an awareness amongst municipal advisory clients of the SEC, MSRB and regulatory framework. Moreover, municipal advisors' obligations under the rule are consistent with the ongoing regulatory obligation of dealers to provide the required notifications once each calendar year to those customers, with the exception of SMMPs, who have effected a transaction in municipal securities or hold a municipal securities position, during the requisite period.<sup>10</sup>

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<sup>9</sup> The obligation dealers currently have under Rule G-10 is broader in that each dealer must provide the required notifications to all customers even if those customers have not effected any transaction in municipal securities and may never effect a transaction in municipal securities.

<sup>10</sup> Proposed Supplementary Material .01 of Rule G-10 would clarify that the requirement to provide the notifications once each calendar year to applicable customers would be

Lastly, SIFMA expressed that “the information required to be disclosed by Rule G-10 can adequately be communicated by municipal advisors to their municipal advisory clients as it has been in the municipal advisory engagement letter/agreement or through website disclosure.” The MSRB has previously stated that a “regulated entity [has] the flexibility to include the written annual notifications with other materials. Those other materials may include the written disclosure of material conflicts of interest and other information required to be provided by a municipal advisor under Rule G-42(b).”<sup>11</sup> Furthermore, the MSRB has stated that, “if a regulated entity would like to post the annual notifications on its website, in addition to sending the written annual notifications to its customers or municipal advisory clients, the regulated entity may do so as long as the information on the regulated entity’s website complies with Board and any other applicable laws, rules and regulations.”<sup>12</sup> While flexibility in the delivery mechanism is afforded, the MSRB continues to believe that municipal advisory clients should receive annual notifications during the course of the municipal advisory relationship.

In conclusion, the MSRB continues to believe that the proposed rule change, as modified by Amendment No. 1, strikes the correct balance and is not proposing additional modifications, at this time. The attachment to this letter sets forth Amendment No. 1.

If you have any questions, please contact me or Bri Joiner, Director, Regulatory Compliance at (202) 838-1500.

Sincerely,



Gail Marshall  
Chief Regulatory Officer

Attachment

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satisfied if dealers deliver the required notifications at a given point in each calendar year, so long as any customers that effected a transaction in municipal securities or held municipal securities after that given date in each calendar year receive the notifications within the following rolling 12-month period.

<sup>11</sup> See MSRB Letter Response to Comments on SR-MSRB-2016-15, from Pamela Ellis, Associate General Counsel, dated January 10, 2017.

<sup>12</sup> *Id.*

The Municipal Securities Rulemaking Board (“MSRB”) is filing this amendment (“Amendment No. 1”) to File No. SR-MSRB-2021-04, originally filed with the Securities and Exchange Commission (the “SEC” or “Commission”) on August 2, 2021, to amend MSRB Rule G-10, on investor and municipal advisory client education and protection, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals (“SMMPs”) (“original proposed rule change”). The original proposed rule change, together with Amendment No. 1 (collectively, “the proposed rule change”) is designed to clarify the scope of the requirements for brokers, dealers and municipal securities dealers (collectively “dealers”) to provide the required notifications under Rule G-10 to those customers who would best be served by the receipt of the information, and also make accompanying amendments to MSRB Rule G-48 to exclude SMMPs from certain requirements under Rule G-10. More specifically, the proposed rule change would require dealers to provide the notifications to those customers for whom a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position. The SEC published the original proposed rule change on August 16, 2021 and notice of the original proposed rule change was published in the Federal Register on August 20, 2021.<sup>1</sup>

The Commission received two comment letters in response to the original proposed rule change.<sup>2</sup> After carefully considering these comment letters, the MSRB is submitting this Amendment No. 1 to solely revise the language in originally proposed section (c) of Rule G-10 pertaining to excepting introducing dealers from the requirements of Rule G-10(a). The MSRB proposes to amend the clause “any dealer [...] who is a party to a carrying agreement in which the carrying dealer has agreed to comply with section (a) of this rule, is exempt from the requirements of this rule.” to read “any dealer [...] 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.”

Amendment No 1 is meant to clarify that the assigning of the obligation under Rule G-10(a) to a carrying dealer does not need to be specifically called out within the carrying agreement. The MSRB recognizes that dealers may not delineate all regulatory obligations specifically undertaken by a carrying dealer within the carrying agreement and it is not the MSRB’s intention to place the onerous burden on dealers to modify such agreements to reflect the agreed upon assigning of the regulatory obligation to the carrying dealer.

The changes made by Amendment No. 1 to the original proposed rule change are contained in the attached Exhibit 4. The text proposed to be added is underlined, and text

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<sup>1</sup> See Exchange Act Release No. 92677 (August 16, 2021), 86 FR 46890 (August 20, 2021) (File No. SR-MSRB-2021-04).

<sup>2</sup> See Letters from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA Letter”), dated September 10, 2021; and Michael Decker, Senior Vice President, Bond Dealers of America (“BDA Letter”), dated September 10, 2021, available at <https://www.sec.gov/comments/sr-msrb-2021-04/srmsrb202104.htm>.

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

The MSRB believes the Commission has good cause, pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, for granting accelerated approval of the proposed rule change. Specifically, the modifications to the original proposed rule change are directly responsive to commenters. More specifically, Amendment No. 1 revises the original proposed rule change to provide greater clarity in the interpretation of Rule G-10(c) and this modification is consistent with the original proposed rule change.

**TEXT OF DRAFT 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) 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](http://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 [who is a party to a carrying agreement in which the carrying dealer has agreed to] 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. No change.

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**Rule G-48: Transactions with Sophisticated Municipal Market Professionals**

(a) - (f). No change.



**TEXT OF DRAFT 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](http://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.

[(b)d] No change.

[(c)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 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.

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## **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.