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Page 1 of \* 56

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2024 - \* 04

Amendment No. (req. for Amendments \*)

Filing by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b> <input checked="" type="checkbox"/>	<b>Amendment *</b> <input type="checkbox"/>	<b>Withdrawal</b> <input type="checkbox"/>	<b>Section 19(b)(2) *</b> <input type="checkbox"/>	<b>Section 19(b)(3)(A) *</b> <input checked="" type="checkbox"/>	<b>Section 19(b)(3)(B) *</b> <input type="checkbox"/>
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<b>Pilot</b> <input type="checkbox"/>	<b>Extension of Time Period for Commission Action *</b> <input type="checkbox"/>	<b>Date Expires *</b> <input type="text"/>
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**Rule**

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

**Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010**

<b>Section 806(e)(1) *</b> <input type="checkbox"/>	<b>Section 806(e)(2) *</b> <input type="checkbox"/>
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**Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934**

**Section 3C(b)(2) \***

**Exhibit 2 Sent As Paper Document**

**Exhibit 3 Sent As Paper Document**

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend MSRB Rule G-27, on Dealer Supervision, to Adopt a New Residential Supervisory Location Classification

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Bri Last Name \* Joiner

Title \* Senior Director, Market Regulation

E-mail \* bjoiner@msrb.org

Telephone \* (202) 838-1500 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, Municipal Securities Rulemaking Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/10/2024 (Title \*)

By Ronald W. Smith Corporate Secretary  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

rsmith@msrb.org  
rg

Digitally signed by  
rsmith@msrb.org  
Date: 2024.05.10 13:15:18  
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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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MSRB-2024-04 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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MSRB-2024-04 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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MSRB-2024-04 Exhibit 5.docx

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board (“MSRB”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change consisting of an amendment to MSRB Rule G-27, on supervision, to adopt new Supplementary Material .04, on residential supervisory locations (“RSLs”), to allow certain brokers, dealers, and municipal securities dealers (“dealers”) that are members of a registered securities association (“FINRA-member dealers”)<sup>3</sup> to designate, as an RSL that is a non-branch location,<sup>4</sup> an associated person’s private residence where specified supervisory activities are conducted,<sup>5</sup> which would otherwise be classified as an office of municipal supervisory jurisdiction (“OMSJ”)<sup>6</sup> or a municipal branch office where certain supervisory activities are

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The MSRB notes that the Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association and will generally, as such, refer to FINRA specifically in the filing when intending to clarify specific regulatory obligations and/or applicable rule(s).

<sup>4</sup> Pursuant to MSRB Rule G-27(g)(ii)(A) a location is excluded from registration as a branch office — that is, it is deemed a non-branch location — in the following instances: (i) a location established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (ii) an associated person’s primary residence provided it is not held out to the public as an office and certain other conditions are satisfied; (iii) a location, other than a primary residence, that is used for municipal securities activities for less than 30 business days in any one calendar year and is not held out to the public as an office, and which satisfies certain of the conditions set forth in the primary residence exception; (iv) a location of convenience, where associated persons occasionally and exclusively by appointment meet with customers and is not held out to the public as an office; (v) a location used primarily for non-securities activities and from which the associated person(s) effects no more than 25 municipal securities transactions in any one calendar year; (vi) the floor of a registered national securities exchange; and (vii) a temporary location established in response to the implementation of a business continuity plan.

<sup>5</sup> Proposed Supplementary Material .04(a).

<sup>6</sup> Pursuant to MSRB Rule G-27(g)(i) a branch office is classified as an OMSJ if any one of the following enumerated activities occurs at the location: (i) order execution and/or market making; (ii) structuring of public offerings or private placements; (iii) maintaining custody of customers’ funds and/or municipal securities; (iv) final acceptance (approval) of new accounts on behalf of the member; (v) review and endorsement of customer orders, pursuant to subparagraph (c)(i)(G)(2); (vi) final approval of advertising for use by

conducted (“supervisory municipal branch office”),<sup>7</sup> if certain conditions are met (the “proposed rule change”). Dealers that are not members of a registered securities association (i.e., FINRA), including bank dealers,<sup>8</sup> would be ineligible from designating an associated person’s private residence as an RSL under the proposed rule change.

The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)<sup>9</sup> of the Exchange Act and Rule 19b-4(f)(6)<sup>10</sup> thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of June 1, 2024, for the proposed rule change to conform with FINRA’s Rule 3110.19 effective date.

(a) The text of the proposed rule change is included as Exhibit 5. Text proposed to be added is underlined.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The board of directors of the MSRB approved the proposed rule change at its January 24-25, 2024 meeting. Questions concerning this filing may be directed to Bri Joiner, Senior Director, Market Regulation, Frank Mazzarelli, Director, Market Regulation, or Justin Kramer, Assistant Director, Market Regulation at 202-838-1500.

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persons associated with the dealer, pursuant to MSRB Rule G-21(f); or (vii) responsibility for supervising the municipal securities activities of persons associated with the dealer at one or more other municipal branch offices of the dealer. An office that is designated an OMSJ must have a registered principal on-site and be inspected on an annual basis.

<sup>7</sup> Pursuant to MSRB Rule G-27(g)(ii)(B), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch branch locations of the dealer is considered to be a municipal branch office. A supervisory municipal branch office is generally deemed to be an office that supervises other non-branch locations.

<sup>8</sup> A bank dealer is defined under MSRB Rule D-8 as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank. The MSRB will consider at a later date whether or not to extend the ability to make RSL designations to bank dealers after giving due consideration to how to operationalize such an initiative.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

### 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### (a) Purpose

The proposed rule change is meant to more closely conform the MSRB’s dealer supervisory rule to FINRA’s recently approved supervisory requirements to help ensure a coordinated regulatory approach in the area of dealer supervision and to enable FINRA to more efficiently inspect those dealers that are subject to both self-regulatory organizations, as well as to promote regulatory consistency for dealers engaging in activities across asset classes. To that end, the MSRB is proposing to amend MSRB Rule G-27 to adopt new Supplementary Material .04, on residential supervisory locations, to allow dealers to designate an associated person’s private residences where specified supervisory activities are conducted as non-branch locations, if certain conditions are met. As such, these locations would not be subject to a dealer’s requirement to register, or notice file their locations<sup>11</sup> in the appropriate participating jurisdictions and/or with self-regulatory organizations. Additionally, designated RSLs would not be subject to an annual inspection of such offices or locations as required of OSMJs and branch office locations. The specific compliance obligations are addressed below.

#### *Background*

MSRB Rule G-27(d) outlines the MSRB’s current requirements for dealers to conduct internal inspections (i.e., office inspections) of their offices and locations. Currently, MSRB Rule G-27(d)(i)(A) requires dealers to inspect every OMSJ<sup>12</sup> and any supervisory municipal branch office<sup>13</sup> at least annually. MSRB Rules G-27(d)(i)(B) and G-27(d)(i)(C) require dealers to inspect every non-supervisory branch office<sup>14</sup> at least every three years, and every non-branch

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<sup>11</sup> The Uniform Branch Office Registration Form (Form BR) is the form used for branch office registration, notification, closing or withdrawal. Broker-Dealers must use Form BR to register or notice file their branch offices in the appropriate participating jurisdictions and/or with self-regulatory organizations (SROs). More specifically, firms must register each branch office with, among others, FINRA and states that require branch registration.

<sup>12</sup> See MSRB Rule G-27(g)(i).

<sup>13</sup> Pursuant to MSRB Rule G-27(g)(ii)(B), notwithstanding the exclusions in MSRB Rule G-27(ii)(A), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch branch locations of the dealer is considered to be a municipal branch office. A supervisory municipal branch location is generally deemed to be an office that supervises other non-branch locations.

<sup>14</sup> A non-supervisory branch office would generally be deemed a location that is not charged with supervising the municipal securities activities of persons associated with the dealer.

location on a regular periodic<sup>15</sup> schedule. FINRA and the Commission's Office of Compliance Inspections and Examinations (now the Division of Examinations) staff have previously issued joint guidance stating that office inspections must be conducted on-site at the office.<sup>16</sup>

The proposed rule change would amend MSRB Rule G-27 to adopt new Supplementary Material .04 that would treat an associated person's private residence where specified supervisory activities are conducted,<sup>17</sup> subject to certain safeguards and limitations, as a non-branch location (i.e., unregistered office). Because it would be treated as a non-branch location, the RSL would be subject to inspections on a regular periodic schedule instead of the annual inspection currently required for every OMSJ and supervisory municipal branch office. This proposed rule change would align with FINRA's recently adopted amendments to FINRA Rule 3110 creating an RSL designation.<sup>18</sup> The proposed rule change is designed to promote regulatory consistency for dealers that are both FINRA-member dealer and MSRB registrants, allowing limited relief from their inspection requirements under MSRB and FINRA rules under similar circumstances.<sup>19</sup>

### *Description of Proposed Rule Change*

#### **I. Conditions for Designation as a Residential Supervisory Location (Proposed Supplementary Material .04(a) of MSRB Rule G-27)**

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<sup>15</sup> While MSRB rules do not explicitly establish a specific timeframe for such regular periodic inspections, FINRA Rule 3110.13 sets out a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any red flags, and if a FINRA-member dealer establishes a longer periodic inspection schedule, such member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

<sup>16</sup> See FINRA Regulatory Notice 11-54, FINRA and the SEC Issue Joint Guidance on Effective Policies and Procedures for Broker-Dealer Branch Inspections, (November 30, 2011), available at <https://www.finra.org/sites/default/files/NoticeDocument/p125204.pdf>.

<sup>17</sup> See MSRB Rule G-27(g)(i)(D) through (G) and MSRB Rule G-27(g)(ii)(B).

<sup>18</sup> See Exchange Act Release No. 98980 (November 17, 2023), 88 FR 82447 (November 24, 2023) (File No. SR-FINRA-2023-006). See also FINRA Regulatory Notice 24-02, Branch Office Registration, Designation and Inspections, (January 23, 2024), available at [https://www.finra.org/sites/default/files/2024-01/Regulatory\\_Note\\_24-02.pdf](https://www.finra.org/sites/default/files/2024-01/Regulatory_Note_24-02.pdf).

<sup>19</sup> As previously noted, proposed MSRB Rule G-27 Supplementary Material .04 would be applicable only to dealers that are also FINRA-member dealers.

FINRA Rule 3110.19(a) lists conditions for a FINRA-member dealer to designate an office or location as an RSL.<sup>20</sup> Proposed Supplementary Material .04(a), on conditions for designation as a residential supervisory location, of MSRB Rule G-27 would mirror the conditions set forth in FINRA Rule 3110.19(a) for dealers to designate a location that is the associated person's private residence where specified supervisory activities are conducted as an RSL. Specifically, the conditions that must be met for designation as an RSL under proposed Supplementary Material .04(a) would include:

- (i) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;<sup>21</sup>
- (ii) the location is not held out to the public as an office;<sup>22</sup>
- (iii) the associated person does not meet with customers or prospective customers at the location;<sup>23</sup>
- (iv) any sales activity that takes place at the location complies with the conditions set forth under subparagraphs (g)(ii)(A)(2) or (3) of MSRB Rule G-27;<sup>24</sup>
- (v) neither customer funds nor securities are handled at that location;<sup>25</sup>
- (vi) the associated person is assigned to a designated branch office, in accordance with MSRB Rule G-27(g)(ii), on municipal branch office,<sup>26</sup> and such designated

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<sup>20</sup> While the MSRB does not define office, in FINRA's 2005 rulemaking initiative to establish a uniform definition of branch office, FINRA noted that the language of the uniform definition substantially mirrored the Commission's definition of "office" in its books and records rules under the Exchange Act. Exchange Act Rule 17a-3(g)(i), defines the term as any location where one or more associated persons regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security (17 CFR 240.17a-3). See NASD Notice to Members 05-67 (October 6, 2005), available at <https://www.finra.org/sites/default/files/NoticeDocument/p015121.pdf>.

<sup>21</sup> Proposed Supplementary Material .04(a)(1), mirroring FINRA Rule 3110.19(a)(1).

<sup>22</sup> Proposed Supplementary Material .04(a)(2), mirroring FINRA Rule 3110.19(a)(2).

<sup>23</sup> Proposed Supplementary Material .04(a)(3), mirroring FINRA Rule 3110.19(a)(3).

<sup>24</sup> Proposed Supplementary Material .04(a)(4), mirroring FINRA Rule 3110.19(a)(4) with appropriate cross-reference changes to applicable MSRB rule provisions.

<sup>25</sup> Proposed Supplementary Material .04(a)(5), mirroring FINRA Rule 3110.19(a)(5).

<sup>26</sup> Branch office for purposes of this Supplementary Material is intended to be consistent with the term municipal branch office under MSRB Rule G-27(g)(ii)(A).

- branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;<sup>27</sup>
- (vii) the associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with MSRB Rule G-27;<sup>28</sup>
  - (viii) the associated person's electronic communications (e.g., e-mail) are made through the dealer's electronic system;<sup>29</sup>
  - (ix) (A) the dealer must have a recordkeeping system to make, maintain, and preserve such records required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable MSRB rules, and the dealer's own written supervisory procedures under MSRB Rule G-27; (B) such records are not physically or electronically maintained and preserved at the office or location;<sup>30</sup> and (C) the dealer has prompt access to such records;<sup>31</sup> and
  - (x) the dealer must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each RSL, which may include but are not limited to: (A) firm-wide electronic tools for recordkeeping, surveillance of e-mail and correspondence, electronic or other equally effective trade blotter review, regular activity-based sampling reviews, and tools for visual inspections; (B) tools specific to carrying out supervision of such RSL based on the activities of associated persons assigned to the location, products offered, and restrictions on the activity of the RSL; and (C) system security tools such as secure network connections and effective cybersecurity protocols.<sup>32</sup>

The MSRB believes that its proposed rule change with respect to the conditions for designation as an RSL recognizes modernization within the municipal securities market with respect to hybrid work arrangements while also balancing investor protection. In re-evaluating the current paradigm of the OMSJ and municipal branch office model, the MSRB believes that there are certain supervisory activities that can be conducted outside of an OMSJ or municipal branch office while also providing appropriate investor protection. The conditions set forth in

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<sup>27</sup> Proposed Supplementary Material .04(a)(6), mirroring FINRA Rule 3110.19(a)(6).

<sup>28</sup> Proposed Supplementary Material .04(a)(7), mirroring FINRA Rule 3110.19(a)(7) with appropriate cross-reference change to the applicable MSRB rule.

<sup>29</sup> Proposed Supplementary Material .04(a)(8), mirroring FINRA Rule 3110.19(a)(8).

<sup>30</sup> Under Regulation S-P, on privacy of consumer financial information, dealers are required to have policies and procedures addressing the protection of customer information and records. See 17 C.F.R. 248.30.

<sup>31</sup> Proposed Supplementary Material .04(a)(9), mirroring FINRA Rule 3110.19(a)(9) with appropriate cross-reference change to the applicable MSRB rule and minor non-substantive terminology changes for consistency with MSRB rule language.

<sup>32</sup> Proposed Supplementary Material .04(a)(10), mirroring FINRA Rule 3110.19(a)(10).

FINRA amended rules for designating an office or location as an RSL, which the MSRB has incorporated into the proposed rule change, are in furtherance of ensuring only certain supervisory activities are undertaken at such offices or locations.<sup>33</sup> Additionally, through outreach and engagement, the MSRB has learned from dealers about the significant technology advancements since the establishment of the current OMSJ and municipal branch office definitions, so the MSRB believes it is fitting for dealers to assess whether their technology tools are appropriate to supervise the types of risk that could be presented at an RSL.

The MSRB believes that adopting similar provisions to those of FINRA will allow dealers to elect to designate an associated person's private residence as an RSL while meeting their supervisory obligations under MSRB rules and allowing dealers the ability to comply with consistent regulations.

## **II. Dealer Ineligibility Criteria (Proposed Supplementary Material .04(b) of MSRB Rule G-27)**

FINRA Rule 3110.19(b) outlines the conditions that would render its member firms ineligible from designating an office as an RSL, which include, if the member firm: (i) is currently designated as a restricted firm under FINRA Rule 4111; (ii) is currently designated as a tapping firm under FINRA Rule 3170; (iii) is currently undergoing, or is required to undergo, a review under FINRA Rule 1017(a)(7) as a result of one or more associated persons at such location; (iv) receives a notice from FINRA, pursuant to FINRA Rule 9557, regarding capital compliance related matters under Rules 4110, 4120 and 4130, unless FINRA has otherwise permitted such activities in writing under its rules; (v) is or becomes suspended by FINRA; (vi) has been a FINRA member for less than 12 months; or (vii) is or has been found by the Commission or FINRA to be in violation of office inspection obligations under FINRA Rule 3110(c) within the past three years.

The MSRB believes that the aforementioned categories of ineligibility are events or activities that are more likely to raise investor protection concerns because they expressly account for dealers that pose higher risks and, therefore, should be ineligible to utilize the RSL designation. As such, proposed Supplementary Material .04(b), on dealer ineligibility criteria, of MSRB Rule G-27 would provide that a dealer is ineligible from designating an office or location as an RSL if the dealer is not a FINRA-member dealer or if it fails to satisfy the prescribed requirements relating to firm eligibility for such RSL designation under FINRA Rule 3110.19(b). The MSRB believes that maintaining regulatory consistency regarding RSL designations will provide dealers with clear guidance on how and when they are able to consider designating an office or location as an RSL.

## **III. Location Ineligibility Criteria (Proposed Supplementary Material .04(c) of MSRB Rule G-27)**

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<sup>33</sup> See supra note 18.

FINRA Rule 3110.19(c) lists the criteria that would render a particular office or location that is an associated person's private residence where specified supervisory activities are conducted ineligible from designation as an RSL. Proposed Supplementary Material .04(c), on location ineligibility criteria, of MSRB Rule G-27 would mirror the conditions set forth in FINRA Rule 3110.19(c) for ineligibility of particular offices or locations to be designated as an RSL. Specifically, the conditions that would make an office ineligible for the RSL designation under proposed Supplementary Material .04(c) would include if one or more persons at that office or location:

- (i) is a designated principal<sup>34</sup> who has less than one year of direct supervisory experience with the dealer, or with an affiliate or subsidiary of the dealer that is registered as a dealer or investment adviser;<sup>35</sup>
- (ii) is functioning as a principal for a limited period without being duly qualified under MSRB Rules G-3(b)(ii)(D), (b)(iv)(B)(4), or (c)(ii)(D);<sup>36</sup>
- (iii) is subject to a mandatory heightened supervisory plan under the rules of a registered securities association, the Commission, or state regulatory agency;<sup>37</sup>
- (iv) is statutorily disqualified as defined in Section 3(a)(39) of the Exchange Act, unless such disqualified person has been approved to associate with a dealer, without being subject to a mandatory heightened supervision plan, by a registered securities association;<sup>38</sup>
- (v) has an event in the prior three years that required a "yes" response to any item contained in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 (Uniform Application for Securities Industry Registration or Transfer), or similar form by a registered securities association;<sup>39</sup> or

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<sup>34</sup> MSRB Rule G-27(b)(ii)(C), on appropriate principals, outlines the functional role and responsibilities, under the Rule, that can be engaged in by a principal(s) (i.e., municipal securities principal, municipal securities sales principal, general securities principal or municipal fund securities limited principal) holding a supervisory designation.

<sup>35</sup> Proposed Supplementary Material .04(c)(1), mirroring FINRA Rule 3110.19(c)(1).

<sup>36</sup> Proposed Supplementary Material .04(c)(2), mirroring FINRA Rule 3110.19(c)(2) with appropriate cross-reference changes to applicable MSRB rule provisions.

<sup>37</sup> Proposed Supplementary Material .04(c)(3), mirroring FINRA Rule 3110.19(c)(3) with minor non-substantive terminology changes.

<sup>38</sup> Proposed Supplementary Material .04(c)(4), mirroring FINRA Rule 3110.19(c)(4) with non-substantive terminology changes.

<sup>39</sup> Proposed Supplementary Material .04(c)(5), mirroring FINRA Rule 3110.19(c)(5). The identified disclosures consist of Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4.

- (vi) has been notified in writing that such associated person is now subject to any Investigation or Proceeding as such terms are defined in the Explanation of Terms for the Form U4, by the Commission, a self-regulatory organization, or state securities commission (or agency or office performing like functions) (each, a “Regulator”) expressly alleging they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the MSRB or other self-regulatory organization, including FINRA. Notwithstanding, such office or location may be designated or redesignated as an RSL subject to the requirements of this Supplementary Material upon the earlier of: (i) the dealer’s receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.<sup>40</sup>

Allowing dealers to designate offices or locations as an RSL and, therefore, treat them as a non-branch location would make such RSL subject to inspections on a regular periodic schedule, rather than an annual inspection requirement required of OMSJs and other supervisory municipal branch offices. Additionally, these offices or locations would become unregistered offices. However, FINRA’s Central Registration Depository System provides access to information regarding offices and locations (registered and unregistered), and the affirmative requirement for FINRA-member dealers to provide a list of RSL designation information would ensure this information is readily accessible to regulators.<sup>41</sup> In previous regulatory notices,<sup>42</sup> it has been stated that the potential for significant regulatory problems exists when business is conducted at locations that are not subject to regular examination by the member. While the MSRB recognizes that on-site office inspections are only one factor in an overall reasonably designed supervisory system, the ineligibility criteria recognize the necessity for more direct oversight and frequency of examinations of some offices. Therefore, the proposed rule change outlined below aligns with FINRA’s amendments establishing location ineligibility. The MSRB believes that adopting similar provisions to those of FINRA will allow dealers to elect to designate RSLs while still meeting their supervisory obligations under MSRB rules.

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<sup>40</sup> Proposed Supplementary Material .04(c)(6) mirrors FINRA Rule 3110.19(c)(6), with non-substantive terminology changes.

<sup>41</sup> See Exchange Act Release No. 98980 (November 17, 2023) 88 FR 82447, 82452 (November 24, 2023) (File No. SR-FINRA-2023-006).

<sup>42</sup> See NASD Notice To Members 88-11, Proposed Amendments to Article III, Section 27 of the NASD Rules of Fair Practice Regarding Supervision and the Definitions of "Office of Supervisory Jurisdiction" and "Branch Office," (February 8, 1988), available at <https://www.finra.org/rules-guidance/notices/88-11>.

**IV. Obligation to Provide List of RSLs to Registered Securities Association  
(Proposed Supplementary Material .04(d) of MSRB Rule G-27)**

Proposed Supplementary Material .04(d), on obligations to provide RSL list, of MSRB Rule G-27 would fully mirror the provisions of FINRA Rule 3110.19(d) and would require dealers electing to designate any office or location of the dealer as an RSL to provide a current list of all offices or locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format as required by the registered securities association (i.e., FINRA). The proposed amendments harmonize with FINRA's requirements to ensure greater regulatory certainty.

**V. Risk Assessment (Proposed Supplementary Material .04(e) of MSRB Rule G-27)**

FINRA Rule 3110.19(e) requires member firms, prior to designating an office or location as an RSL, to develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. Proposed Supplementary Material .04(e), on risk assessment, of MSRB Rule G-27 would mirror the provisions of FINRA Rule 3110.19(e). Specifically, a dealer would be required, prior to designating an office or location as an RSL, to develop a reasonable risk-based approach to designating such office or location as an RSL and conduct and document a risk assessment for the associated person(s) assigned to that office or location. In line with FINRA Rule 3110.19(e), proposed Supplementary Material .04(e) of MSRB Rule G-27 would list certain factors, among others, that dealers must consider in the risk assessment that include whether each associated person at such office or location is subject to:

- (i) customer complaints, taking into account the volume and nature of the complaints;<sup>43</sup>
- (ii) heightened supervision other than where such office or location is ineligible for RSL designation under paragraph (c)(3) of this Supplementary Material;<sup>44</sup>
- (iii) any failure to comply with the dealer's written supervisory procedures;<sup>45</sup>
- (iv) any recordkeeping violations;<sup>46</sup> and
- (v) any regulatory communications from a regulator indicating that the associated person at such office or location may have failed reasonably to supervise another person subject to their supervision, including but not limited to, subpoenas,

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<sup>43</sup> Proposed Supplementary Material .04(e)(1), mirroring FINRA Rule 3110.19(e)(1).

<sup>44</sup> Proposed Supplementary Material .04(e)(2), mirroring FINRA Rule 3110.19(e)(2).

<sup>45</sup> Proposed Supplementary Material .04(e)(3), mirroring FINRA Rule 3110.19(e)(3).

<sup>46</sup> Proposed Supplementary Material .04(e)(4), mirroring FINRA Rule 3110.19(e)(4).

preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations.<sup>47</sup>

Additionally, pursuant to the proposed rule change and mirroring FINRA Rule 3110.19(e), dealers designating an office as an RSL would be required to take into account any higher-risk activities that take place or a higher-risk associated person that is assigned to that office or location. Finally, under the proposed rule change, dealers would need to take into consideration any indicators of irregularities or misconduct (i.e., “red flags”) when designating an office or location as an RSL and review such red flags in determining whether it would be reasonable to maintain the RSL designation of such office or location. Dealers would also need to consider evidencing steps taken to address those red flags where appropriate.

The MSRB believes that aligning the proposed rule change with FINRA amended rules would create regulatory certainty for dealers.

#### (b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,<sup>48</sup> which provides that the MSRB’s rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

In accordance with Section 15B(b)(2)(C) of the Exchange Act,<sup>49</sup> the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the RSL designation is intended to provide a practical and balanced way for dealers to continue effectively meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable MSRB rules, which directly serves investor protection. The MSRB has noticed that there has been a shift towards adopting work from home models due to carryover from the conditions associated with the COVID-19 pandemic, and the criteria and conditions contained within the proposed rule change is designed

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<sup>47</sup> Proposed Supplementary Material .04(e)(5), mirroring FINRA Rule 3110.19(e)(5). The aforementioned regulatory communications could include but are not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations.

<sup>48</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>49</sup> 15 U.S.C. 78o-4(b)(2)(C).

to accommodate this shift while also mitigating any associated risks to investor protections. As such, the proposed rule change is designed to minimize risks by limiting which offices or locations can be considered an RSL while also setting conditions for dealers designating an office or location as an RSL. The robust nature of the criteria that must be satisfied and circumstances that would make a location ineligible for RSL designation serve an important role in preventing fraud and manipulative acts. For example, a location cannot be designated as an RSL if the principal of the location has less than one year of direct supervisory experience with the dealer or its affiliates or subsidiaries, which is in furtherance of the Exchange Act.<sup>50</sup> In the same vein, the terms of the proposed rule change would include important safeguards, such as requiring risk assessments in connection with the RSL designation, which furthers the prevention of manipulative acts and practices and the protection of investors, municipal entities, obligated persons and the public interest. Dealers are required to determine that their surveillance and technology tools are appropriate to supervise RSL designations in furtherance of preventing fraudulent and manipulative acts and practices.

By providing that such requirements for the use of the RSL designation are applicable to the municipal securities activities of dealers, in addition to other asset classes, the proposed rule change promotes just and equitable principles of trade by ensuring all FINRA-member dealers are subject to the same regulatory standard under both FINRA and MSRB rules. This regulatory consistency would allow FINRA-member dealers that are subject to FINRA and MSRB rules the ability to utilize the RSL designation in a manner that achieves compliance with both MSRB Rule G-27 and FINRA Rule 3110 without the burden or confusion of differing regulatory requirements. The MSRB believes that the market will benefit from similar supervisory requirements for municipal securities as well as corporate securities that are subject to FINRA rules. Additionally, the proposed rule change is intended to provide a practical and balanced way for dealers to continue to effectively meet their core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable MSRB rules, which directly serves investors, municipal entities, obligated persons and public interest protections. The MSRB believes that the proposed rule change would facilitate transactions in municipal securities and remove impediments to a free and open market because, by ensuring a consistent regulatory framework for which dealers can avail themselves of RSL designations, the proposed rule change would alleviate some of the operational challenges dealers would otherwise experience, which will allow them to more effectively allocate resources to the operations that facilitate transactions in municipal securities and municipal financial products.

Finally, aligning the proposed rule change with amended FINRA Rule 3110 and thereby making such requirements specifically applicable to FINRA-member dealers' municipal securities activities fosters cooperation between regulators because it creates as close as possible a uniform standard, with minimal distinction needed between the treatment of municipal securities and other asset classes, enabling FINRA and the Commission to more efficiently inspect FINRA-member dealers subject to the rules of both self-regulatory organizations.

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Id.

#### 4. Self-Regulatory Organization’s Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act<sup>51</sup> requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change and believes that the proposed rule change would not impose any unnecessary or inappropriate burden on competition, as the proposed rule change would align with the newly approved RSL designation under FINRA Rule 3110. In addition, the proposed rule change would be applied equally to all dealers that are FINRA-member dealers.<sup>52</sup> Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>53</sup>

In determining whether these standards have been met, the MSRB was guided by the MSRB’s Policy on the Use of Economic Analysis in MSRB Rulemaking.<sup>54</sup> In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed rule change. The proposed rule change would amend MSRB Rule G-27 to provide a mechanism for dealers to utilize the RSL designation under MSRB rules.<sup>55</sup> The proposed rule change is intended to align MSRB Rule G-27 with amended FINRA Rule 3110, which established the option to treat an associated person’s private residence where supervisory activities are conducted as a non-branch location, subject to safeguards and limitations. The MSRB also believes the proposed rule

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<sup>51</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>52</sup> As previously mentioned, the MSRB will consider amendments to MSRB Rule G-27 at a later date on whether the proposed rule change should be extended to other dealers under MSRB rules, such as bank dealers.

<sup>53</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>54</sup> See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>. In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities, but may also include any additional economic analysis that the MSRB believes may inform the rulemaking process based on the facts and circumstances.

<sup>55</sup> The proposed rule change would apply specifically to dealers that are also FINRA-member dealers.

change would be appropriate as some dealers' business model and work environment continue to evolve with ongoing technological advancements and the shift to remote working may have accelerated since the COVID-19 pandemic.<sup>56</sup>

## Benefits

The MSRB believes that the proposed rule change would benefit FINRA-member dealers by offering the option to treat an associated person's private residence where specified supervisory activities are conducted as a non-branch location, with the intention of minimizing harm to issuers and investors who benefit from the current supervisory framework. Specifically, the MSRB believes that the criteria for dealers to designate an associated person's private residence where specified supervisory activities are conducted as an RSL would sufficiently safeguard against potential harm. The proposed rule change would therefore lower costs for dealers that choose the RSL designation, including reduced time and expenses related to on-site office inspections, as well as reduced expenses for office leasing.<sup>57</sup>

In addition, even if dealers choose not to utilize the RSL designation, dealers would still benefit from the alignment of MSRB Rule G-27 with the recently amended FINRA Rule 3110. With an estimated 98% of MSRB-registered dealers subject to FINRA's supervision rules, a discrepancy between MSRB Rule G-27 and the existing analogous FINRA rules on supervision would create confusion, uncertainty and an unnecessary burden for dealers and result in a less efficient operation. By eliminating potential areas of inconsistency between MSRB and FINRA rules, dealers would have a lower compliance burden and an improved efficiency. A more efficient supervisory system for dealers may ultimately also benefit issuers and investors whom the rules are designed to protect, such as by ensuring dealers are able to focus time, attention and resources on matters related to effecting transactions in municipal securities and advancing a fair and efficient market. The MSRB expects the benefits to accumulate over time.

## Costs

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<sup>56</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, Securities Industry and Financial Markets Association, dated February 26, 2024, at 5 available at <https://www.msrb.org/sites/default/files/2024-02/SIFMA-Notice%202023-11.pdf>, and Letter from H. Deane Armstrong, CCO, Regional Brokers, Inc., dated February 26, 2024, at 1, available at <https://www.msrb.org/sites/default/files/2024-02/Regional-Brokers-Notice-2023-11.pdf>, responding to MSRB Notice 2023-11, Request for Information on Impacts of MSRB Rules on Small Firms (December 4, 2023), available at <https://www.msrb.org/sites/default/files/2023-12/2023-11.pdf>.

<sup>57</sup> While the MSRB cannot quantify the reduction in leased premises, the MSRB understands through its outreach and engagement with dealers that expenses from leasing office space have generally decreased since the start of the pandemic.

Dealers would need to make a one-time revision to their policies and procedures in accordance with the proposed rule change, including accounting for a risk assessment, eligibility criteria and conditions, written supervisory procedures as well as an effective supervisory system. To clarify, the upfront costs to update policies and procedures and associated training are primarily applicable to dealers that elect to utilize the RSL designation, with such costs being proportionately higher for smaller than larger dealers. However, the MSRB believes the total upfront costs would still be manageable, with an estimated incremental amount of \$3,820 for the RSL designation, as shown in Table 1; therefore, the cost should not impose an onerous burden on these dealers that choose this option. The MSRB believes the estimated one-time upfront cost would be offset by the cumulative compliance cost savings as a result of the consistency between MSRB Rule G-27 and FINRA Rule 3110 over time, as well as the cumulative cost savings from the convenience of RSL designation if a dealer chooses this option.<sup>58</sup>

**Table 1. Estimate of Incremental Costs Based on 2024 Hourly Rates<sup>59</sup>**

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<sup>58</sup> For those dealers that opt for the RSL designation, the changes may impose additional costs on acquiring information technology compliance software and hardware upgrades to ensure adequate supervisory functions remotely. However, dealers likely already made these technology upgrades and incurred cost in establishing supervisory controls appropriate to support mandatory work-from-home orders and shift to hybrid work arrangements during the COVID-19 pandemic. Therefore, the MSRB believes the incremental costs for upgrading the information technology would be negligible.

<sup>59</sup> 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) (“Proposed Rule”). 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 (available at <https://fred.stlouisfed.org/series/ECIWAG>). The number of hours for each task is based on the MSRB’s internal estimate.

Cost Components	Hourly Rate	Number of Hours	Cost per Firm
Upfront Costs - RSL Classification			
a) Revision of Policies and Procedures	\$ 540	4.0	\$ 2,160
b) Outside Counsel Review	\$ 570	2.0	\$ 1,140
c) Training	\$ 520	1.0	\$ 520
<b>Subtotal</b>			<b>\$ 3,820</b>
Annual Ongoing Costs For Firms Choosing the RSL Classification			
Due Diligence and Continuing Education	\$ 520	3.0	\$ 1,560

The costs of annual ongoing compliance with the proposed rule change would likely be minor. For those dealers that transact in municipal securities only and choose the RSL designation in connection with discharging their supervisory activities, the MSRB estimates about \$1,560 annually per dealer to conduct the required risk assessment, submit a list of all locations designated as RSLs to FINRA on a quarterly basis and ensure that a dealer is in compliance with the eligibility requirements, including the office or location eligibility for the RSL designation.<sup>60</sup>

Finally, in response to comments received<sup>61</sup> as to dealers that have adopted a work-from-home model in response to the COVID-19 pandemic and utilized the previous relief granted by the MSRB,<sup>62</sup> if an associated person working from their private residence takes orders (i.e., “order entry”) that are then entered through a designated municipal branch office or an electronic system established by the dealer that is reviewable at the municipal branch office, such location would continue to be excluded from the definition of municipal branch office under MSRB Rule G-27(g)(ii)(A)(2)(g), provided that all other conditions are met, and therefore would not require an on-site principal or incur cost related to principal personnel. The MSRB does not believe that the proposed rule change would impose any unnecessary or inappropriate burden or impact on competition for these dealers because the proposed rule change would not lessen any flexibility or increase cost that existed pre-pandemic for such offices or locations that were already otherwise excluded from the definition of non-branch location due to the functional activities being carried out, for example, order entry and other back-office work. On the other hand, if an

<sup>60</sup> Dealers of various sizes may incur different amounts of ongoing costs. Therefore, the \$1,560 annually per firm represents an estimate for a mid-sized firm (“mid-sized” is defined by FINRA as a firm with 151-499 registered representatives). The MSRB does not believe the proposed rule change would impose costs on investors.

<sup>61</sup> See infra note 64.

<sup>62</sup> See Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020).

associated person is conducting order execution from their private residence, especially if only in municipal securities, such office or location would be burdened by needing the individual to be qualified as a principal by taking and passing the Municipal Securities Principal Qualification Examination and its activities supervised by another principal at a separate office or location. This may disproportionately affect smaller dealers that may have a higher proportion of these one-person private residences. However, these dealers do have the choice to revert to their pre-pandemic arrangement where order execution is conducted only at a municipal branch office, not at an associated person's private residence.

### **Effect on Competition, Efficiency, and Capital Formation**

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change is applicable to all FINRA-member dealers choosing to avail themselves of the RSL designation and is not expected to erode protection for investors and issuers. While upfront costs would be relatively higher for smaller-size dealers than larger-size dealers, the MSRB expects the total one-time upfront costs to be manageable for dealers that elect to utilize the RSL designation. The MSRB believes it is appropriate, in an environment with increased remote working personnel, to allow some residential offices or locations to be treated as non-branch locations. Since bank dealers are not covered in the proposed rule change for now, to the extent that some of those 18 bank dealers, as of 2023, would have chosen the RSL designation, had the option been available to them, such bank dealers may be disadvantaged in their competition with other dealers. The MSRB, however, believes this disadvantage would be minimal because the MSRB understands through its outreach and engagement with some bank dealers that bank dealers generally have fewer OMSJs and branch offices or locations than other dealers, so the use of the RSL designation may not be coveted for most bank dealers when weighing the called for processes and documentation requirements. The MSRB believes that the proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory consistency. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the benefits accumulated over time would outweigh the upfront costs of revising policies and procedures and the annual ongoing costs of ensuring compliance.

### **5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were not directly solicited on the proposed rule change.<sup>63</sup> However, the MSRB did receive comments referencing the proposed rule change in response to a request for information on the impact of MSRB rules on small firms (the "RFI").<sup>64</sup>

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<sup>63</sup> Comments received in response to FINRA's recently adopted amendments creating an RSL designation under FINRA Rule 3110.19 can be found at <https://www.sec.gov/comments/sr-finra-2023-006/srfinra2023006.htm>.

<sup>64</sup> See MSRB Notice 2023-11, Request for Information on Impacts of MSRB Rules on Small Firms (December 4, 2023) available at <https://www.msrb.org/sites/default/files/2023-12/2023-11.pdf>.

The Securities Industry and Financial Markets Association (“SIFMA”) stated in its response to the RFI that certain aspects of the use of home offices and remote supervision create a disproportionate burden on small firms.<sup>65</sup> Specifically, SIFMA stated that many firms utilized the temporary COVID-19 relief “under which entities were not required to designate the homes of employees working alone from home as offices.”<sup>66</sup> Furthermore, SIFMA requested guidance and relief that exempts a municipal branch office from being named as an OMSJ if the orders taken or placed by that person are entered through a designated municipal branch office or electronic system that is reviewable at the municipal branch office. SIFMA went on to request similar relief for municipal finance investment bankers working remotely, and that such locations in which structuring and underwriting activities occur be exempt from the OMSJ definition. Similarly, Regional Brokers, Inc. (“Regional Brokers”) expressed concern that with the COVID-19 relief ending, many home offices will be required to be designated as an OMSJ due to order taking or market making occurring at such offices.<sup>67</sup> As a result, Regional Brokers stated that one-person OMSJ’s would be burdened by needing the individual to be qualified as a principal whose activities would need to be supervised by another principal at a separate location.

The MSRB notes that primary residences in which orders are entered through a designated municipal branch office or an electronic system established by the dealer that is reviewable at the municipal branch office are excluded from the definition of municipal branch office, if other conditions are met and, as such, among other things, do not require an on-site principal.<sup>68</sup> In addition, the MSRB highlights that order execution, market making, and structuring are functional activities related to effecting a transaction in municipal securities that the proposed rule change does not seek to address or include within the RSL designation. FINRA also addressed similar comments in its filing regarding expanding the RSL designation to order execution and noted that the RSL designation is meant to carve out supervisory activities only

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<sup>65</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, Securities Industry and Financial Markets Association, dated February 26, 2024, at 5.

<sup>66</sup> Id. The MSRB notes that the COVID-19 relief, among other things, clarified, under MSRB Rule G-27(g)(ii)(A)(7) that a temporary location established in response to the implementation of a business continuity plan is not deemed a municipal branch office. Hence, the COVID relief did not create a new exemption with respect to the classification of locations.

<sup>67</sup> Letter from H. Deane Armstrong, CCO, Regional Brokers, Inc., dated February 26, 2024, at 1.

<sup>68</sup> MSRB Rule G-27(g)(ii)(A)(2)(g) outlines the requirements for the primary residence exclusion from the definition of a municipal branch office and MSRB Rule G-27(b)(iv) prescribes the locations in which there must be one or more appropriately registered principals.

and declined to expand its proposal to include other activities. As such, the MSRB reminds dealers that the proposed rule change is meant to ensure regulatory consistency in the area of supervision and to facilitate the enforcement thereof, so the MSRB would not be inclined at this point to consider additional amendments to MSRB Rule G-27 in this regard.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The MSRB has designated the proposed rule change as being immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>69</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>70</sup> The proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

In accordance with Rule 19b-4(f)(6),<sup>71</sup> the MSRB provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Exchange Act.<sup>72</sup>

The MSRB requests that the Commission waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii)<sup>73</sup> in order to align with the operative date of FINRA's recent amendments to FINRA Rule 3110 creating the RSL designation. As such the MSRB requests that the Commission designate the proposed rule change as operative on June 1, 2024.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

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<sup>69</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>70</sup> 17 CFR 240.19b-4(f)(6).

<sup>71</sup> Id.

<sup>72</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>73</sup> Id.

The proposed rule change is based on, and materially conforms with, the Commission's approval of FINRA's amendments to FINRA Rule 3110 with respect to Supplementary Material .19 thereof as filed in SR-FINRA-2023-006, with the changes described in Item 3 hereof.<sup>74</sup>

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Exchange Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervisions Act**

Not applicable.

**11. Exhibits**

Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 Text of Proposed Rule Change

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<sup>74</sup> See supra note 18.

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-MSRB-2024-04)  
 Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule G-27, on Dealer Supervision, to Adopt a New Residential Supervisory Location Classification

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_ the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of an amendment to MSRB Rule G-27, on supervision, to adopt new Supplementary Material .04, on residential supervisory locations (“RSLs”), to allow certain brokers, dealers, and municipal securities dealers (“dealers”) that are members of a registered securities association (“FINRA-member dealers”)<sup>3</sup> to designate, as an RSL that is a non-branch location,<sup>4</sup> an associated person’s

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The MSRB notes that the Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association and will generally, as such, refer to FINRA specifically in the filing when intending to clarify specific regulatory obligations and/or applicable rule(s).

<sup>4</sup> Pursuant to MSRB Rule G-27(g)(ii)(A) a location is excluded from registration as a branch office — that is, it is deemed a non-branch location — in the following instances: (i) a location established solely for customer service and/or back office type functions

private residence where specified supervisory activities are conducted,<sup>5</sup> which would otherwise be classified as an office of municipal supervisory jurisdiction (“OMSJ”)<sup>6</sup> or a municipal branch office where certain supervisory activities are conducted (“supervisory municipal branch office”),<sup>7</sup> if certain conditions are met (the “proposed rule change”). Dealers that are not members of a registered securities association (i.e., FINRA), including bank dealers,<sup>8</sup> would be

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where no sales activities are conducted and that is not held out to the public as a branch office; (ii) an associated person’s primary residence provided it is not held out to the public as an office and certain other conditions are satisfied; (iii) a location, other than a primary residence, that is used for municipal securities activities for less than 30 business days in any one calendar year and is not held out to the public as an office, and which satisfies certain of the conditions set forth in the primary residence exception; (iv) a location of convenience, where associated persons occasionally and exclusively by appointment meet with customers and is not held out to the public as an office; (v) a location used primarily for non-securities activities and from which the associated person(s) effects no more than 25 municipal securities transactions in any one calendar year; (vi) the floor of a registered national securities exchange; and (vii) a temporary location established in response to the implementation of a business continuity plan.

<sup>5</sup> Proposed Supplementary Material .04(a).

<sup>6</sup> Pursuant to MSRB Rule G-27(g)(i) a branch office is classified as an OMSJ if any one of the following enumerated activities occurs at the location: (i) order execution and/or market making; (ii) structuring of public offerings or private placements; (iii) maintaining custody of customers’ funds and/or municipal securities; (iv) final acceptance (approval) of new accounts on behalf of the member; (v) review and endorsement of customer orders, pursuant to subparagraph (c)(i)(G)(2); (vi) final approval of advertising for use by persons associated with the dealer, pursuant to MSRB Rule G-21(f); or (vii) responsibility for supervising the municipal securities activities of persons associated with the dealer at one or more other municipal branch offices of the dealer. An office that is designated an OMSJ must have a registered principal on-site and be inspected on an annual basis.

<sup>7</sup> Pursuant to MSRB Rule G-27(g)(ii)(B), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch branch locations of the dealer is considered to be a municipal branch office. A supervisory municipal branch office is generally deemed to be an office that supervises other non-branch locations.

<sup>8</sup> A bank dealer is defined under MSRB Rule D-8 as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank. The MSRB will

ineligible from designating an associated person's private residence as an RSL under the proposed rule change.

The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)<sup>9</sup> of the Exchange Act and Rule 19b-4(f)(6)<sup>10</sup> thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of June 1, 2024, for the proposed rule change to conform with FINRA's Rule 3110.19 effective date.

The text of the proposed rule change is available on the MSRB's website at <https://msrb.org/2024-SEC-Filings>, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

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consider at a later date whether or not to extend the ability to make RSL designations to bank dealers after giving due consideration to how to operationalize such an initiative.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

The proposed rule change is meant to more closely conform the MSRB's dealer supervisory rule to FINRA's recently approved supervisory requirements to help ensure a coordinated regulatory approach in the area of dealer supervision and to enable FINRA to more efficiently inspect those dealers that are subject to both self-regulatory organizations, as well as to promote regulatory consistency for dealers engaging in activities across asset classes. To that end, the MSRB is proposing to amend MSRB Rule G-27 to adopt new Supplementary Material .04, on residential supervisory locations, to allow dealers to designate an associated person's private residences where specified supervisory activities are conducted as non-branch locations, if certain conditions are met. As such, these locations would not be subject to a dealer's requirement to register, or notice file their locations<sup>11</sup> in the appropriate participating jurisdictions and/or with self-regulatory organizations. Additionally, designated RSLs would not be subject to an annual inspection of such offices or locations as required of OSMJs and branch office locations. The specific compliance obligations are addressed below.

### Background

MSRB Rule G-27(d) outlines the MSRB's current requirements for dealers to conduct internal inspections (i.e., office inspections) of their offices and locations. Currently, MSRB Rule G-27(d)(i)(A) requires dealers to inspect every OMSJ<sup>12</sup> and any supervisory municipal branch

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<sup>11</sup> The Uniform Branch Office Registration Form (Form BR) is the form used for branch office registration, notification, closing or withdrawal. Broker-Dealers must use Form BR to register or notice file their branch offices in the appropriate participating jurisdictions and/or with self-regulatory organizations (SROs). More specifically, firms must register each branch office with, among others, FINRA and states that require branch registration.

<sup>12</sup> See MSRB Rule G-27(g)(i).

office<sup>13</sup> at least annually. MSRB Rules G-27(d)(i)(B) and G-27(d)(i)(C) require dealers to inspect every non-supervisory branch office<sup>14</sup> at least every three years, and every non-branch location on a regular periodic<sup>15</sup> schedule. FINRA and the Commission's Office of Compliance Inspections and Examinations (now the Division of Examinations) staff have previously issued joint guidance stating that office inspections must be conducted on-site at the office.<sup>16</sup>

The proposed rule change would amend MSRB Rule G-27 to adopt new Supplementary Material .04 that would treat an associated person's private residence where specified supervisory activities are conducted,<sup>17</sup> subject to certain safeguards and limitations, as a non-branch location (i.e., unregistered office). Because it would be treated as a non-branch location, the RSL would be subject to inspections on a regular periodic schedule instead of the annual

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<sup>13</sup> Pursuant to MSRB Rule G-27(g)(ii)(B), notwithstanding the exclusions in MSRB Rule G-27(ii)(A), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch branch locations of the dealer is considered to be a municipal branch office. A supervisory municipal branch location is generally deemed to be an office that supervises other non-branch locations.

<sup>14</sup> A non-supervisory branch office would generally be deemed a location that is not charged with supervising the municipal securities activities of persons associated with the dealer.

<sup>15</sup> While MSRB rules do not explicitly establish a specific timeframe for such regular periodic inspections, FINRA Rule 3110.13 sets out a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any red flags, and if a FINRA-member dealer establishes a longer periodic inspection schedule, such member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

<sup>16</sup> See FINRA Regulatory Notice 11-54, FINRA and the SEC Issue Joint Guidance on Effective Policies and Procedures for Broker-Dealer Branch Inspections, (November 30, 2011), available at <https://www.finra.org/sites/default/files/NoticeDocument/p125204.pdf>.

<sup>17</sup> See MSRB Rule G-27(g)(i)(D) through (G) and MSRB Rule G-27(g)(ii)(B).

inspection currently required for every OMSJ and supervisory municipal branch office. This proposed rule change would align with FINRA's recently adopted amendments to FINRA Rule 3110 creating an RSL designation.<sup>18</sup> The proposed rule change is designed to promote regulatory consistency for dealers that are both FINRA-member dealer and MSRB registrants, allowing limited relief from their inspection requirements under MSRB and FINRA rules under similar circumstances.<sup>19</sup>

### Description of Proposed Rule Change

#### Conditions for Designation as a Residential Supervisory Location (Proposed Supplementary Material .04(a) of MSRB Rule G-27)

FINRA Rule 3110.19(a) lists conditions for a FINRA-member dealer to designate an office or location as an RSL.<sup>20</sup> Proposed Supplementary Material .04(a), on conditions for designation as a residential supervisory location, of MSRB Rule G-27 would mirror the conditions set forth in FINRA Rule 3110.19(a) for dealers to designate a location that is the

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<sup>18</sup> See Exchange Act Release No. 98980 (November 17, 2023), 88 FR 82447 (November 24, 2023) (File No. SR-FINRA-2023-006). See also FINRA Regulatory Notice 24-02, Branch Office Registration, Designation and Inspections, (January 23, 2024), available at [https://www.finra.org/sites/default/files/2024-01/Regulatory\\_Note\\_24-02.pdf](https://www.finra.org/sites/default/files/2024-01/Regulatory_Note_24-02.pdf).

<sup>19</sup> As previously noted, proposed MSRB Rule G-27 Supplementary Material .04 would be applicable only to dealers that are also FINRA-member dealers.

<sup>20</sup> While the MSRB does not define office, in FINRA's 2005 rulemaking initiative to establish a uniform definition of branch office, FINRA noted that the language of the uniform definition substantially mirrored the Commission's definition of "office" in its books and records rules under the Exchange Act. Exchange Act Rule 17a-3(g)(i), defines the term as any location where one or more associated persons regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security (17 CFR 240.17a-3). See NASD Notice to Members 05-67 (October 6, 2005), available at <https://www.finra.org/sites/default/files/NoticeDocument/p015121.pdf>.

associated person's private residence where specified supervisory activities are conducted as an RSL. Specifically, the conditions that must be met for designation as an RSL under proposed Supplementary Material .04(a) would include:

- (i) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;<sup>21</sup>
- (ii) the location is not held out to the public as an office;<sup>22</sup>
- (iii) the associated person does not meet with customers or prospective customers at the location;<sup>23</sup>
- (iv) any sales activity that takes place at the location complies with the conditions set forth under subparagraphs (g)(ii)(A)(2) or (3) of MSRB Rule G-27;<sup>24</sup>
- (v) neither customer funds nor securities are handled at that location;<sup>25</sup>
- (vi) the associated person is assigned to a designated branch office, in accordance with MSRB Rule G-27(g)(ii), on municipal branch office,<sup>26</sup> and such designated

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<sup>21</sup> Proposed Supplementary Material .04(a)(1), mirroring FINRA Rule 3110.19(a)(1).

<sup>22</sup> Proposed Supplementary Material .04(a)(2), mirroring FINRA Rule 3110.19(a)(2).

<sup>23</sup> Proposed Supplementary Material .04(a)(3), mirroring FINRA Rule 3110.19(a)(3).

<sup>24</sup> Proposed Supplementary Material .04(a)(4), mirroring FINRA Rule 3110.19(a)(4) with appropriate cross-reference changes to applicable MSRB rule provisions.

<sup>25</sup> Proposed Supplementary Material .04(a)(5), mirroring FINRA Rule 3110.19(a)(5).

<sup>26</sup> Branch office for purposes of this Supplementary Material is intended to be consistent with the term municipal branch office under MSRB Rule G-27(g)(ii)(A).

branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;<sup>27</sup>

- (vii) the associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with MSRB Rule G-27;<sup>28</sup>
- (viii) the associated person's electronic communications (e.g., e-mail) are made through the dealer's electronic system;<sup>29</sup>
- (ix) (A) the dealer must have a recordkeeping system to make, maintain, and preserve such records required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable MSRB rules, and the dealer's own written supervisory procedures under MSRB Rule G-27; (B) such records are not physically or electronically maintained and preserved at the office or location;<sup>30</sup> and (C) the dealer has prompt access to such records;<sup>31</sup> and
- (x) the dealer must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each RSL, which may include but are not limited to: (A) firm-wide electronic tools for recordkeeping,

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<sup>27</sup> Proposed Supplementary Material .04(a)(6), mirroring FINRA Rule 3110.19(a)(6).

<sup>28</sup> Proposed Supplementary Material .04(a)(7), mirroring FINRA Rule 3110.19(a)(7) with appropriate cross-reference change to the applicable MSRB rule.

<sup>29</sup> Proposed Supplementary Material .04(a)(8), mirroring FINRA Rule 3110.19(a)(8).

<sup>30</sup> Under Regulation S-P, on privacy of consumer financial information, dealers are required to have policies and procedures addressing the protection of customer information and records. See 17 C.F.R. 248.30.

<sup>31</sup> Proposed Supplementary Material .04(a)(9), mirroring FINRA Rule 3110.19(a)(9) with appropriate cross-reference change to the applicable MSRB rule and minor non-substantive terminology changes for consistency with MSRB rule language.

surveillance of e-mail and correspondence, electronic or other equally effective trade blotter review, regular activity-based sampling reviews, and tools for visual inspections; (B) tools specific to carrying out supervision of such RSL based on the activities of associated persons assigned to the location, products offered, and restrictions on the activity of the RSL; and (C) system security tools such as secure network connections and effective cybersecurity protocols.<sup>32</sup>

The MSRB believes that its proposed rule change with respect to the conditions for designation as an RSL recognizes modernization within the municipal securities market with respect to hybrid work arrangements while also balancing investor protection. In re-evaluating the current paradigm of the OMSJ and municipal branch office model, the MSRB believes that there are certain supervisory activities that can be conducted outside of an OMSJ or municipal branch office while also providing appropriate investor protection. The conditions set forth in FINRA amended rules for designating an office or location as an RSL, which the MSRB has incorporated into the proposed rule change, are in furtherance of ensuring only certain supervisory activities are undertaken at such offices or locations.<sup>33</sup> Additionally, through outreach and engagement, the MSRB has learned from dealers about the significant technology advancements since the establishment of the current OMSJ and municipal branch office definitions, so the MSRB believes it is fitting for dealers to assess whether their technology tools are appropriate to supervise the types of risk that could be presented at an RSL.

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<sup>32</sup> Proposed Supplementary Material .04(a)(10), mirroring FINRA Rule 3110.19(a)(10).

<sup>33</sup> See supra note 18.

The MSRB believes that adopting similar provisions to those of FINRA will allow dealers to elect to designate an associated person's private residence as an RSL while meeting their supervisory obligations under MSRB rules and allowing dealers the ability to comply with consistent regulations.

Dealer Ineligibility Criteria (Proposed Supplementary Material .04(b) of MSRB Rule G-27)

FINRA Rule 3110.19(b) outlines the conditions that would render its member firms ineligible from designating an office as an RSL, which include, if the member firm: (i) is currently designated as a restricted firm under FINRA Rule 4111; (ii) is currently designated as a tapping firm under FINRA Rule 3170; (iii) is currently undergoing, or is required to undergo, a review under FINRA Rule 1017(a)(7) as a result of one or more associated persons at such location; (iv) receives a notice from FINRA, pursuant to FINRA Rule 9557, regarding capital compliance related matters under Rules 4110, 4120 and 4130, unless FINRA has otherwise permitted such activities in writing under its rules; (v) is or becomes suspended by FINRA; (vi) has been a FINRA member for less than 12 months; or (vii) is or has been found by the Commission or FINRA to be in violation of office inspection obligations under FINRA Rule 3110(c) within the past three years.

The MSRB believes that the aforementioned categories of ineligibility are events or activities that are more likely to raise investor protection concerns because they expressly account for dealers that pose higher risks and, therefore, should be ineligible to utilize the RSL designation. As such, proposed Supplementary Material .04(b), on dealer ineligibility criteria, of MSRB Rule G-27 would provide that a dealer is ineligible from designating an office or location as an RSL if the dealer is not a FINRA-member dealer or if it fails to satisfy the prescribed

requirements relating to firm eligibility for such RSL designation under FINRA Rule 3110.19(b). The MSRB believes that maintaining regulatory consistency regarding RSL designations will provide dealers with clear guidance on how and when they are able to consider designating an office or location as an RSL.

Location Ineligibility Criteria (Proposed Supplementary Material .04(c) of MSRB Rule G-27)

FINRA Rule 3110.19(c) lists the criteria that would render a particular office or location that is an associated person's private residence where specified supervisory activities are conducted ineligible from designation as an RSL. Proposed Supplementary Material .04(c), on location ineligibility criteria, of MSRB Rule G-27 would mirror the conditions set forth in FINRA Rule 3110.19(c) for ineligibility of particular offices or locations to be designated as an RSL. Specifically, the conditions that would make an office ineligible for the RSL designation under proposed Supplementary Material .04(c) would include if one or more persons at that office or location:

- (i) is a designated principal<sup>34</sup> who has less than one year of direct supervisory experience with the dealer, or with an affiliate or subsidiary of the dealer that is registered as a dealer or investment adviser;<sup>35</sup>

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<sup>34</sup> MSRB Rule G-27(b)(ii)(C), on appropriate principals, outlines the functional role and responsibilities, under the Rule, that can be engaged in by a principal(s) (i.e., municipal securities principal, municipal securities sales principal, general securities principal or municipal fund securities limited principal) holding a supervisory designation.

<sup>35</sup> Proposed Supplementary Material .04(c)(1), mirroring FINRA Rule 3110.19(c)(1).

- (ii) is functioning as a principal for a limited period without being duly qualified under MSRB Rules G-3(b)(ii)(D), (b)(iv)(B)(4), or (c)(ii)(D);<sup>36</sup>
- (iii) is subject to a mandatory heightened supervisory plan under the rules of a registered securities association, the Commission, or state regulatory agency;<sup>37</sup>
- (iv) is statutorily disqualified as defined in Section 3(a)(39) of the Exchange Act, unless such disqualified person has been approved to associate with a dealer, without being subject to a mandatory heightened supervision plan, by a registered securities association;<sup>38</sup>
- (v) has an event in the prior three years that required a “yes” response to any item contained in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 (Uniform Application for Securities Industry Registration or Transfer), or similar form by a registered securities association;<sup>39</sup> or
- (vi) has been notified in writing that such associated person is now subject to any Investigation or Proceeding as such terms are defined in the Explanation of Terms for the Form U4, by the Commission, a self-regulatory organization, or state securities commission (or agency or office performing like functions) (each, a

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<sup>36</sup> Proposed Supplementary Material .04(c)(2), mirroring FINRA Rule 3110.19(c)(2) with appropriate cross-reference changes to applicable MSRB rule provisions.

<sup>37</sup> Proposed Supplementary Material .04(c)(3), mirroring FINRA Rule 3110.19(c)(3) with minor non-substantive terminology changes.

<sup>38</sup> Proposed Supplementary Material .04(c)(4), mirroring FINRA Rule 3110.19(c)(4) with non-substantive terminology changes.

<sup>39</sup> Proposed Supplementary Material .04(c)(5), mirroring FINRA Rule 3110.19(c)(5). The identified disclosures consist of Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4.

“Regulator”) expressly alleging they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the MSRB or other self-regulatory organization, including FINRA. Notwithstanding, such office or location may be designated or redesignated as an RSL subject to the requirements of this Supplementary Material upon the earlier of: (i) the dealer’s receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.<sup>40</sup>

Allowing dealers to designate offices or locations as an RSL and, therefore, treat them as a non-branch location would make such RSL subject to inspections on a regular periodic schedule, rather than an annual inspection requirement required of OMSJs and other supervisory municipal branch offices. Additionally, these offices or locations would become unregistered offices. However, FINRA’s Central Registration Depository System provides access to information regarding offices and locations (registered and unregistered), and the affirmative requirement for FINRA-member dealers to provide a list of RSL designation information would

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<sup>40</sup> Proposed Supplementary Material .04(c)(6) mirrors FINRA Rule 3110.19(c)(6), with non-substantive terminology changes.

ensure this information is readily accessible to regulators.<sup>41</sup> In previous regulatory notices,<sup>42</sup> it has been stated that the potential for significant regulatory problems exists when business is conducted at locations that are not subject to regular examination by the member. While the MSRB recognizes that on-site office inspections are only one factor in an overall reasonably designed supervisory system, the ineligibility criteria recognize the necessity for more direct oversight and frequency of examinations of some offices. Therefore, the proposed rule change outlined below aligns with FINRA's amendments establishing location ineligibility. The MSRB believes that adopting similar provisions to those of FINRA will allow dealers to elect to designate RSLs while still meeting their supervisory obligations under MSRB rules.

Obligation to Provide List of RSLs to Registered Securities Association (Proposed Supplementary Material .04(d) of MSRB Rule G-27)

Proposed Supplementary Material .04(d), on obligations to provide RSL list, of MSRB Rule G-27 would fully mirror the provisions of FINRA Rule 3110.19(d) and would require dealers electing to designate any office or location of the dealer as an RSL to provide a current list of all offices or locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format as required by the registered securities association (i.e., FINRA). The proposed amendments harmonize with FINRA's requirements to ensure greater regulatory certainty.

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<sup>41</sup> See Exchange Act Release No. 98980 (November 17, 2023) 88 FR 82447, 82452 (November 24, 2023) (File No. SR-FINRA-2023-006).

<sup>42</sup> See NASD Notice To Members 88-11, Proposed Amendments to Article III, Section 27 of the NASD Rules of Fair Practice Regarding Supervision and the Definitions of "Office of Supervisory Jurisdiction" and "Branch Office," (February 8, 1988), available at <https://www.finra.org/rules-guidance/notices/88-11>.

Risk Assessment (Proposed Supplementary Material .04(e) of MSRB Rule G-27)

FINRA Rule 3110.19(e) requires member firms, prior to designating an office or location as an RSL, to develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. Proposed Supplementary Material .04(e), on risk assessment, of MSRB Rule G-27 would mirror the provisions of FINRA Rule 3110.19(e). Specifically, a dealer would be required, prior to designating an office or location as an RSL, to develop a reasonable risk-based approach to designating such office or location as an RSL and conduct and document a risk assessment for the associated person(s) assigned to that office or location. In line with FINRA Rule 3110.19(e), proposed Supplementary Material .04(e) of MSRB Rule G-27 would list certain factors, among others, that dealers must consider in the risk assessment that include whether each associated person at such office or location is subject to:

- (i) customer complaints, taking into account the volume and nature of the complaints;<sup>43</sup>
- (ii) heightened supervision other than where such office or location is ineligible for RSL designation under paragraph (c)(3) of this Supplementary Material;<sup>44</sup>
- (iii) any failure to comply with the dealer's written supervisory procedures;<sup>45</sup>
- (iv) any recordkeeping violations;<sup>46</sup> and

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<sup>43</sup> Proposed Supplementary Material .04(e)(1), mirroring FINRA Rule 3110.19(e)(1).

<sup>44</sup> Proposed Supplementary Material .04(e)(2), mirroring FINRA Rule 3110.19(e)(2).

<sup>45</sup> Proposed Supplementary Material .04(e)(3), mirroring FINRA Rule 3110.19(e)(3).

<sup>46</sup> Proposed Supplementary Material .04(e)(4), mirroring FINRA Rule 3110.19(e)(4).

- (v) any regulatory communications from a regulator indicating that the associated person at such office or location may have failed reasonably to supervise another person subject to their supervision, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations.<sup>47</sup>

Additionally, pursuant to the proposed rule change and mirroring FINRA Rule 3110.19(e), dealers designating an office as an RSL would be required to take into account any higher-risk activities that take place or a higher-risk associated person that is assigned to that office or location. Finally, under the proposed rule change, dealers would need to take into consideration any indicators of irregularities or misconduct (i.e., “red flags”) when designating an office or location as an RSL and review such red flags in determining whether it would be reasonable to maintain the RSL designation of such office or location. Dealers would also need to consider evidencing steps taken to address those red flags where appropriate.

The MSRB believes that aligning the proposed rule change with FINRA amended rules would create regulatory certainty for dealers.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,<sup>48</sup> which provides that the MSRB’s rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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<sup>47</sup> Proposed Supplementary Material .04(e)(5), mirroring FINRA Rule 3110.19(e)(5). The aforementioned regulatory communications could include but are not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations.

<sup>48</sup> 15 U.S.C. 78o-4(b)(2)(C).

of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

In accordance with Section 15B(b)(2)(C) of the Exchange Act,<sup>49</sup> the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the RSL designation is intended to provide a practical and balanced way for dealers to continue effectively meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable MSRB rules, which directly serves investor protection. The MSRB has noticed that there has been a shift towards adopting work from home models due to carryover from the conditions associated with the COVID-19 pandemic, and the criteria and conditions contained within the proposed rule change is designed to accommodate this shift while also mitigating any associated risks to investor protections. As such, the proposed rule change is designed to minimize risks by limiting which offices or locations can be considered an RSL while also setting conditions for dealers designating an office or location as an RSL. The robust nature of the criteria that must be satisfied and circumstances that would make a location ineligible for RSL designation serve an important role in preventing fraud and manipulative acts. For example, a location cannot be designated as an

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<sup>49</sup> 15 U.S.C. 78o-4(b)(2)(C).

RSL if the principal of the location has less than one year of direct supervisory experience with the dealer or its affiliates or subsidiaries, which is in furtherance of the Exchange Act.<sup>50</sup> In the same vein, the terms of the proposed rule change would include important safeguards, such as requiring risk assessments in connection with the RSL designation, which furthers the prevention of manipulative acts and practices and the protection of investors, municipal entities, obligated persons and the public interest. Dealers are required to determine that their surveillance and technology tools are appropriate to supervise RSL designations in furtherance of preventing fraudulent and manipulative acts and practices.

By providing that such requirements for the use of the RSL designation are applicable to the municipal securities activities of dealers, in addition to other asset classes, the proposed rule change promotes just and equitable principles of trade by ensuring all FINRA-member dealers are subject to the same regulatory standard under both FINRA and MSRB rules. This regulatory consistency would allow FINRA-member dealers that are subject to FINRA and MSRB rules the ability to utilize the RSL designation in a manner that achieves compliance with both MSRB Rule G-27 and FINRA Rule 3110 without the burden or confusion of differing regulatory requirements. The MSRB believes that the market will benefit from similar supervisory requirements for municipal securities as well as corporate securities that are subject to FINRA rules. Additionally, the proposed rule change is intended to provide a practical and balanced way for dealers to continue to effectively meet their core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with

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Id.

applicable MSRB rules, which directly serves investors, municipal entities, obligated persons and public interest protections. The MSRB believes that the proposed rule change would facilitate transactions in municipal securities and remove impediments to a free and open market because, by ensuring a consistent regulatory framework for which dealers can avail themselves of RSL designations, the proposed rule change would alleviate some of the operational challenges dealers would otherwise experience, which will allow them to more effectively allocate resources to the operations that facilitate transactions in municipal securities and municipal financial products.

Finally, aligning the proposed rule change with amended FINRA Rule 3110 and thereby making such requirements specifically applicable to FINRA-member dealers' municipal securities activities fosters cooperation between regulators because it creates as close as possible a uniform standard, with minimal distinction needed between the treatment of municipal securities and other asset classes, enabling FINRA and the Commission to more efficiently inspect FINRA-member dealers subject to the rules of both self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act<sup>51</sup> requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change and believes that the proposed rule change would not impose any unnecessary or inappropriate burden on competition, as the proposed rule change would align with the newly approved RSL designation under FINRA Rule 3110. In addition, the proposed rule change would

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<sup>51</sup> 15 U.S.C. 78o-4(b)(2)(C).

be applied equally to all dealers that are FINRA-member dealers.<sup>52</sup> Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>53</sup>

In determining whether these standards have been met, the MSRB was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.<sup>54</sup> In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed rule change. The proposed rule change would amend MSRB Rule G-27 to provide a mechanism for dealers to utilize the RSL designation under MSRB rules.<sup>55</sup> The proposed rule change is intended to align MSRB Rule G-27 with amended FINRA Rule 3110, which established the option to treat an associated person's private residence where supervisory activities are conducted as a non-branch location, subject to safeguards and limitations. The MSRB also believes the proposed rule change would be appropriate as some dealers' business model and work environment continue to

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<sup>52</sup> As previously mentioned, the MSRB will consider amendments to MSRB Rule G-27 at a later date on whether the proposed rule change should be extended to other dealers under MSRB rules, such as bank dealers.

<sup>53</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>54</sup> See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>. In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities, but may also include any additional economic analysis that the MSRB believes may inform the rulemaking process based on the facts and circumstances.

<sup>55</sup> The proposed rule change would apply specifically to dealers that are also FINRA-member dealers.

evolve with ongoing technological advancements and the shift to remote working may have accelerated since the COVID-19 pandemic.<sup>56</sup>

### Benefits

The MSRB believes that the proposed rule change would benefit FINRA-member dealers by offering the option to treat an associated person's private residence where specified supervisory activities are conducted as a non-branch location, with the intention of minimizing harm to issuers and investors who benefit from the current supervisory framework. Specifically, the MSRB believes that the criteria for dealers to designate an associated person's private residence where specified supervisory activities are conducted as an RSL would sufficiently safeguard against potential harm. The proposed rule change would therefore lower costs for dealers that choose the RSL designation, including reduced time and expenses related to on-site office inspections, as well as reduced expenses for office leasing.<sup>57</sup>

In addition, even if dealers choose not to utilize the RSL designation, dealers would still benefit from the alignment of MSRB Rule G-27 with the recently amended FINRA Rule 3110. With an estimated 98% of MSRB-registered dealers subject to FINRA's supervision rules, a

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<sup>56</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, Securities Industry and Financial Markets Association, dated February 26, 2024, at 5 available at <https://www.msrb.org/sites/default/files/2024-02/SIFMA-Notice%202023-11.pdf>, and Letter from H. Deane Armstrong, CCO, Regional Brokers, Inc., dated February 26, 2024, at 1, available at <https://www.msrb.org/sites/default/files/2024-02/Regional-Brokers-Notice-2023-11.pdf>, responding to MSRB Notice 2023-11, Request for Information on Impacts of MSRB Rules on Small Firms (December 4, 2023), available at <https://www.msrb.org/sites/default/files/2023-12/2023-11.pdf>.

<sup>57</sup> While the MSRB cannot quantify the reduction in leased premises, the MSRB understands through its outreach and engagement with dealers that expenses from leasing office space have generally decreased since the start of the pandemic.

discrepancy between MSRB Rule G-27 and the existing analogous FINRA rules on supervision would create confusion, uncertainty and an unnecessary burden for dealers and result in a less efficient operation. By eliminating potential areas of inconsistency between MSRB and FINRA rules, dealers would have a lower compliance burden and an improved efficiency. A more efficient supervisory system for dealers may ultimately also benefit issuers and investors whom the rules are designed to protect, such as by ensuring dealers are able to focus time, attention and resources on matters related to effecting transactions in municipal securities and advancing a fair and efficient market. The MSRB expects the benefits to accumulate over time.

### Costs

Dealers would need to make a one-time revision to their policies and procedures in accordance with the proposed rule change, including accounting for a risk assessment, eligibility criteria and conditions, written supervisory procedures as well as an effective supervisory system. To clarify, the upfront costs to update policies and procedures and associated training are primarily applicable to dealers that elect to utilize the RSL designation, with such costs being proportionately higher for smaller than larger dealers. However, the MSRB believes the total upfront costs would still be manageable, with an estimated incremental amount of \$3,820 for the RSL designation, as shown in Table 1; therefore, the cost should not impose an onerous burden on these dealers that choose this option. The MSRB believes the estimated one-time upfront cost would be offset by the cumulative compliance cost savings as a result of the consistency between MSRB Rule G-27 and FINRA Rule 3110 over time, as well as the cumulative cost savings from the convenience of RSL designation if a dealer chooses this option.<sup>58</sup>

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<sup>58</sup> For those dealers that opt for the RSL designation, the changes may impose additional costs on acquiring information technology compliance software and hardware upgrades to ensure adequate supervisory functions remotely. However, dealers likely already made

Table 1. Estimate of Incremental Costs Based on 2024 Hourly Rates<sup>59</sup>

Cost Components	Hourly Rate	Number of Hours	Cost per Firm
Upfront Costs - RSL Classification			
a) Revision of Policies and Procedures	\$ 540	4.0	\$ 2,160
b) Outside Counsel Review	\$ 570	2.0	\$ 1,140
c) Training	\$ 520	1.0	\$ 520
<b>Subtotal</b>			<b>\$ 3,820</b>
Annual Ongoing Costs For Firms Choosing the RSL Classification			
Due Diligence and Continuing Education	\$ 520	3.0	\$ 1,560

The costs of annual ongoing compliance with the proposed rule change would likely be minor. For those dealers that transact in municipal securities only and choose the RSL designation in connection with discharging their supervisory activities, the MSRB estimates about \$1,560 annually per dealer to conduct the required risk assessment, submit a list of all

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these technology upgrades and incurred cost in establishing supervisory controls appropriate to support mandatory work-from-home orders and shift to hybrid work arrangements during the COVID-19 pandemic. Therefore, the MSRB believes the incremental costs for upgrading the information technology would be negligible.

<sup>59</sup> The hourly rates data is gathered from the Commission’s filing on “Amendments Regarding the Definition of “Exchange” and “Alternative Trading Systems (ATs) 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) (“Proposed Rule”). 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 (available at <https://fred.stlouisfed.org/series/ECIWAG>). The number of hours for each task is based on the MSRB’s internal estimate.

locations designated as RSLs to FINRA on a quarterly basis and ensure that a dealer is in compliance with the eligibility requirements, including the office or location eligibility for the RSL designation.<sup>60</sup>

Finally, in response to comments received<sup>61</sup> as to dealers that have adopted a work-from-home model in response to the COVID-19 pandemic and utilized the previous relief granted by the MSRB,<sup>62</sup> if an associated person working from their private residence takes orders (i.e., “order entry”) that are then entered through a designated municipal branch office or an electronic system established by the dealer that is reviewable at the municipal branch office, such location would continue to be excluded from the definition of municipal branch office under MSRB Rule G-27(g)(ii)(A)(2)(g), provided that all other conditions are met, and therefore would not require an on-site principal or incur cost related to principal personnel. The MSRB does not believe that the proposed rule change would impose any unnecessary or inappropriate burden or impact on competition for these dealers because the proposed rule change would not lessen any flexibility or increase cost that existed pre-pandemic for such offices or locations that were already otherwise excluded from the definition of non-branch location due to the functional activities being carried out, for example, order entry and other back-office work. On the other hand, if an associated person is conducting order execution from their private residence, especially if only in municipal securities, such office or location would be burdened by needing the individual to be

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<sup>60</sup> Dealers of various sizes may incur different amounts of ongoing costs. Therefore, the \$1,560 annually per firm represents an estimate for a mid-sized firm (“mid-sized” is defined by FINRA as a firm with 151-499 registered representatives). The MSRB does not believe the proposed rule change would impose costs on investors.

<sup>61</sup> See infra note 64.

<sup>62</sup> See Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020).

qualified as a principal by taking and passing the Municipal Securities Principal Qualification Examination and its activities supervised by another principal at a separate office or location. This may disproportionately affect smaller dealers that may have a higher proportion of these one-person private residences. However, these dealers do have the choice to revert to their pre-pandemic arrangement where order execution is conducted only at a municipal branch office, not at an associated person's private residence.

#### Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change is applicable to all FINRA-member dealers choosing to avail themselves of the RSL designation and is not expected to erode protection for investors and issuers. While upfront costs would be relatively higher for smaller-size dealers than larger-size dealers, the MSRB expects the total one-time upfront costs to be manageable for dealers that elect to utilize the RSL designation. The MSRB believes it is appropriate, in an environment with increased remote working personnel, to allow some residential offices or locations to be treated as non-branch locations. Since bank dealers are not covered in the proposed rule change for now, to the extent that some of those 18 bank dealers, as of 2023, would have chosen the RSL designation, had the option been available to them, such bank dealers may be disadvantaged in their competition with other dealers. The MSRB, however, believes this disadvantage would be minimal because the MSRB understands through its outreach and engagement with some bank dealers that bank dealers generally have fewer OMSJs and branch offices or locations than other dealers, so the use of the RSL designation may not be coveted for most bank dealers when weighing the called for processes and documentation requirements. The MSRB believes that the proposed rule change would improve the municipal

securities market's operational efficiency and promote regulatory consistency. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the benefits accumulated over time would outweigh the upfront costs of revising policies and procedures and the annual ongoing costs of ensuring compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not directly solicited on the proposed rule change.<sup>63</sup> However, the MSRB did receive comments referencing the proposed rule change in response to a request for information on the impact of MSRB rules on small firms (the "RFI").<sup>64</sup>

The Securities Industry and Financial Markets Association ("SIFMA") stated in its response to the RFI that certain aspects of the use of home offices and remote supervision create a disproportionate burden on small firms.<sup>65</sup> Specifically, SIFMA stated that many firms utilized the temporary COVID-19 relief "under which entities were not required to designate the homes of employees working alone from home as offices."<sup>66</sup> Furthermore, SIFMA requested guidance

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<sup>63</sup> Comments received in response to FINRA's recently adopted amendments creating an RSL designation under FINRA Rule 3110.19 can be found at <https://www.sec.gov/comments/sr-finra-2023-006/srfinra2023006.htm>.

<sup>64</sup> See MSRB Notice 2023-11, Request for Information on Impacts of MSRB Rules on Small Firms (December 4, 2023) available at <https://www.msrb.org/sites/default/files/2023-12/2023-11.pdf>.

<sup>65</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, Securities Industry and Financial Markets Association, dated February 26, 2024, at 5.

<sup>66</sup> Id. The MSRB notes that the COVID-19 relief, among other things, clarified, under MSRB Rule G-27(g)(ii)(A)(7) that a temporary location established in response to the implementation of a business continuity plan is not deemed a municipal branch office. Hence, the COVID relief did not create a new exemption with respect to the classification of locations.

and relief that exempts a municipal branch office from being named as an OMSJ if the orders taken or placed by that person are entered through a designated municipal branch office or electronic system that is reviewable at the municipal branch office. SIFMA went on to request similar relief for municipal finance investment bankers working remotely, and that such locations in which structuring and underwriting activities occur be exempt from the OMSJ definition. Similarly, Regional Brokers, Inc. (“Regional Brokers”) expressed concern that with the COVID-19 relief ending, many home offices will be required to be designated as an OMSJ due to order taking or market making occurring at such offices.<sup>67</sup> As a result, Regional Brokers stated that one-person OMSJ’s would be burdened by needing the individual to be qualified as a principal whose activities would need to be supervised by another principal at a separate location.

The MSRB notes that primary residences in which orders are entered through a designated municipal branch office or an electronic system established by the dealer that is reviewable at the municipal branch office are excluded from the definition of municipal branch office, if other conditions are met and, as such, among other things, do not require an on-site principal.<sup>68</sup> In addition, the MSRB highlights that order execution, market making, and structuring are functional activities related to effecting a transaction in municipal securities that the proposed rule change does not seek to address or include within the RSL designation. FINRA

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<sup>67</sup> Letter from H. Deane Armstrong, CCO, Regional Brokers, Inc., dated February 26, 2024, at 1.

<sup>68</sup> MSRB Rule G-27(g)(ii)(A)(2)(g) outlines the requirements for the primary residence exclusion from the definition of a municipal branch office and MSRB Rule G-27(b)(iv) prescribes the locations in which there must be one or more appropriately registered principals.

also addressed similar comments in its filing regarding expanding the RSL designation to order execution and noted that the RSL designation is meant to carve out supervisory activities only and declined to expand its proposal to include other activities. As such, the MSRB reminds dealers that the proposed rule change is meant to ensure regulatory consistency in the area of supervision and to facilitate the enforcement thereof, so the MSRB would not be inclined at this point to consider additional amendments to MSRB Rule G-27 in this regard.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>69</sup> and Rule 19b-4(f)(6)<sup>70</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>69</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>70</sup> 17 CFR 240.19b-4(f)(6).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2024-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2024-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2024-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.<sup>71</sup>

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<sup>71</sup> 17 CFR 200.30-3(a)(12).

Sherry R. Haywood  
Assistant Secretary

**Rule G-27: Supervision**

(a) - (g) No Change.

**Supplementary Material**

.01 - .03 No Change.

**.04 Residential Supervisory Locations****(a) Conditions for Designation as a Residential Supervisory Location.**

Notwithstanding any other provisions of section (g) of Rule G-27 and subject to paragraphs (b) through (d) of this Supplementary Material, a location that is the associated person's private residence where supervisory activities are conducted, as prescribed in paragraphs (g)(i)(D) through (G) or paragraph (g)(ii)(B) of Rule G-27, shall be considered for those activities a Residential Supervisory Location ("RSL") that is a non-branch location, provided that:

- (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;
- (2) the location is not held out to the public as an office;
- (3) the associated person does not meet with customers or prospective customers at the location;
- (4) any sales activity that takes place at the location complies with the conditions set forth under subparagraphs (g)(ii)(A)(2) or (3) of Rule G-27;
- (5) neither customer funds nor securities are handled at that location;
- (6) the associated person is assigned to a designated branch office, in accordance with Rule G-27(g)(ii), on municipal branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;
- (7) the associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with Rule G-27;
- (8) the associated person's electronic communications (e.g., e-mail) are made through the dealer's electronic system;
- (9) (A) the dealer must have a recordkeeping system to make, maintain, and preserve such records required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable Board rules, and the dealer's own written supervisory procedures under Rule G-27;

(B) such records are not physically or electronically maintained and preserved at the office or location; and

(C) the dealer has prompt access to such records; and

(10) the dealer must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each RSL. These tools may include but are not limited to:

(A) firm-wide tools such as electronic recordkeeping systems; electronic surveillance of e-mail and correspondence; electronic or other equally effective trade blotter review; regular activity-based sampling reviews; and tools for visual inspections;

(B) tools specific to carrying out supervision of such RSL based on the activities of associated persons assigned to the location, products offered, or restrictions on the activity of the RSL; and

(C) system tools such as secure network connections and effective cybersecurity protocols.

**(b) Dealer Ineligibility Criteria.** A dealer shall not be eligible to designate an office or location as an RSL, in accordance with this Supplementary Material, if the dealer (1) is not a member of a registered securities association or (2) fails to satisfy the prescribed requirements of such registered securities association relating to its member firms' eligibility for such RSL designation.

**(c) Location Ineligibility Criteria.** An office or location shall not be eligible for designation as an RSL in accordance with this Supplementary Material if one or more associated persons at such office or location:

(1) is a designated principal who has less than one year of direct supervisory experience with the dealer, or an affiliate or subsidiary of the dealer that is registered as a dealer or investment adviser;

(2) is functioning as a principal for a limited period in accordance with subparagraphs (b)(ii)(D), (b)(iv)(B)(4) or (c)(ii)(D) of Rule G-3;

(3) is subject to a mandatory heightened supervisory plan under the rules of a registered securities association, the Securities and Exchange Commission, or state regulatory agency;

(4) is statutorily disqualified as defined in Section 3(a)(39) of the Act, unless such disqualified person has been approved to associate with a dealer, without being subject to a mandatory heightened supervisory plan, by a registered securities association;

(5) has an event in the prior three years that required a “yes” response to any item contained in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 (Uniform Application for Securities Industry Registration or Transfer), or similar form by a registered securities association; or

(6) has been notified in writing that such associated person is now subject to any Investigation or Proceeding, as such terms are defined in the Explanation of Terms for the Form U4, by the Securities and Exchange Commission, a self-regulatory organization, or state securities commission (or agency or office performing like functions) (each, a “Regulator”) expressly alleging they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the Board or other self-regulatory organization, including FINRA. Notwithstanding, such office or location may be designated or redesignated as an RSL subject to the requirements of this Supplementary Material upon the earlier of: (i) the dealer’s receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.

**(d) Obligation to Provide RSL List to Registered Securities Association.** Each dealer that elects to designate any office or location of the dealer as an RSL pursuant to this Supplementary Material shall provide to the registered securities association of which it is a member a current list of all locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format (e.g., through an electronic process or such other process) as required by such registered securities association.

**(e) Risk Assessment.** Subject to the requirements of this Supplementary Material, prior to designating an office or location as an RSL, the dealer must develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person(s) assigned to that office or location. The assessment must document the factors considered, including among others, whether each associated person at such office or location is now subject to:

- (1) customer complaints, taking into account the volume and nature of the complaints;
- (2) heightened supervision other than where such office or location is ineligible for RSL designation under paragraph (c)(3) of this Supplementary Material;
- (3) any failure to comply with the dealer’s written supervisory procedures;
- (4) any recordkeeping violations; and

(5) any regulatory communications from a Regulator indicating that the associated person at such office or location may have failed reasonably to supervise another person subject to their supervision, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations.

The dealer must take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Consistent with its obligation under Rule G-27(b), the dealer’s supervisory system must take into consideration any indicators of irregularities or misconduct (i.e., “red flags”) when designating an office or location as an RSL.

Red flags should also be reviewed in determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of this Supplementary Material and the dealer should consider evidencing steps taken to address those red flags where appropriate.

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