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Stakeholders

Municipal Securities
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Approval Notice

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January 29, 2018

Category

Uniform Practice

Affected Rules

[Rule G-26](#)

SEC Approves Amendments to MSRB Rule G-26 on Customer Account Transfers

Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on July 27, 2017, to amend MSRB Rule G-26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers (collectively, “dealers”).¹ The amendments will be effective on January 29, 2018.

Background

The MSRB began an initiative to consider revisions to Rule G-26 as a result of a broader retrospective review of its uniform practice rules.² Rule G-26 requires dealers to cooperate in the transfer of customer accounts and specifies procedures for carrying out the transfer process. The MSRB adopted Rule G-26 in 1986 as part of an industry-wide initiative to create a uniform customer account transfer standard by applying a customer account transfer procedure to all dealers that are engaged in municipal securities activities.³ The uniform standard for all customer account transfers is largely driven by the National Securities Clearing Corporation’s (NSCC) Automated Customer Account Transfer Service (ACATS). The MSRB adopted Rule G-26 in conjunction with the adoption of similar rules by other

¹ See Securities Exchange Act of 1934 (“Exchange Act”) Release No. 81233 (July 27, 2017), File No. SR-MSRB-2017-03 (May 26, 2017).

² See, e.g., Exchange Act Release No. 78611 (Aug. 18, 2016), 81 FR 57960 (Aug. 24, 2016) (SR-MSRB-2016-07) (approving amendments to close-out procedures).

³ See Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR-MSRB-86-2) (proposing Rule G-26). See also Exchange Act Release Nos. 22663 (Nov. 27 1985) (SR-NYSE-85-17) (approving NYSE Rule 412); 22941 (Feb. 24, 1986) (SR-NASD-29) (approving NASD/FINRA Rule 11870).



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self-regulatory organizations (SROs)—New York Stock Exchange (NYSE) Rule 412 and Financial Industry Regulatory Authority (FINRA) Rule 11870.⁴ Those rules are not applicable to certain accounts at dealers, particularly municipal security-only accounts and accounts at bank dealers.⁵ Rule G-26 governs the municipal security-only customer account transfers performed by those dealers to ensure that all customer account transfers are subject to regulation that is consistent with the uniform industry standard. Thus, in order to maintain consistency and the uniform standard, the MSRB has, from time to time, modified the requirements of Rule G-26 to conform to certain provisions of the parallel customer account transfer rules of other SROs, as well as to enhancements made to the ACATS process by NSCC, that had relevance to municipal securities.

Summary of Rule Changes

The amendments to Rule G-26 will modernize the rule and promote a uniform customer account transfer standard for all dealers. By including certain provisions parallel to the customer account transfer rules of other SROs in amended Rule G-26, the transfer of customer securities account assets will be more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

Additional background material on, and a detailed description of the amendments to, Rule G-26 are included in the following:

- [SEC Approval Order](#) (July 27, 2017)
- [MSRB Response to Comments](#) (July 20, 2017)
- [MSRB Filing of Proposed Rule Change](#) (May 26, 2017)

Questions concerning this notice may be directed to Carl E. Tugberk, Assistant General Counsel, at 202-838-1500.

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⁴ In 2007, FINRA was created through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration operations of the NYSE. Current NYSE Rule 412 cross-references NASD/FINRA Rule 11870 for the purpose of incorporating it into the NYSE rulebook.

⁵ See Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR-MSRB-86-2) (“Currently certain municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, will not be covered by the standards governing the rest of the securities industry.”).

* * * * *

Text of Amendments*

Rule G-26: Customer Account Transfers

(a) *Definitions.* For purposes of this rule, the following terms have the following meanings:

(i) - (ii) No changes.

(iii) The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because it is:

(A) ~~it is~~ an issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities; ~~or~~

(B) ~~it is~~ a municipal fund security which the issuer requires to be held in an account carried by one or more specified brokers, dealers or municipal securities dealers that does not include the receiving party; or

(C) a proprietary product of the carrying party.

(iv) The term "participant in a registered clearing agency" shall mean a member of a registered clearing agency that is eligible to make use of the agency's automated customer securities account transfer capabilities.

(v) The term "registered clearing agency" shall be deemed to be a clearing agency as defined in, and registered in accordance with, the Exchange Act.

(vi) The term "safekeeping position" shall mean any security held by a carrying party in the name of the customer, including securities that are unendorsed or have a stock/bond power attached thereto.

(b) *Responsibility to Expedite Customer's Request.* When a customer whose municipal securities account is carried by a broker, dealer or municipal securities dealer (the "carrying party") wishes to transfer ~~its entire municipal securities account assets, in whole or in specifically designated part,~~ to another broker, dealer or municipal securities dealer (the "receiving party") and gives ~~written notice of that fact,~~ authorized instructions to the receiving party, ~~the receiving party and the carrying both party parties~~ must expedite and coordinate activities with respect to the transfer ~~as follows.~~

* Underlining indicates new language; strikethrough denotes deletions.

(c) Transfer Instructions.

(i) No change.

(ii) If an account, or an instruction to transfer specifically designated account assets, includes any nontransferable assets, the carrying party and/or the receiving party must provide the customer with a list of the specific assets and request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. Such request shall provide the customer with the following alternative methods of disposition of nontransferable assets, if applicable:

(A) liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation (including a referral to the program disclosure or the registered representative for specific details regarding any such fees in the case of a nontransferable asset described in section (a)(iii)(B)), and that those fees may be deducted from the money balance due the customer and that any remaining balance will be distributed to the customer, including the method by which it will be so distributed; ~~or~~

(B) retention by the carrying party for the customer's benefit; ~~or~~

(C) transfer, physically and directly, in the customer's name to the customer; or

(D) in the case of a nontransferable asset described in section (a)(iii)(B), transfer to another broker, dealer or municipal securities dealer, if any, which the issuer has specified as being permitted to carry such asset.

(iii) If the customer has authorized liquidation or transfer of assets deemed to be nontransferable, the carrying party must distribute the resulting money balance to the customer or initiate the transfer within five (5) business days following receipt of the customer's disposition instructions.

(d) Transfer Procedures.

(i) Upon receipt from the customer of an ~~signed~~ authorized transfer instruction to receive such customer's municipal securities account assets, in whole or in specifically designated part, from the carrying party, the receiving party must immediately submit such instruction to the carrying party. The carrying party must, within ~~three~~ one business days following receipt of such instruction, validate and return the transfer instruction to the receiving party (with an attachment reflecting all positions and money balances as shown on its books) or take exception to the transfer instruction for reasons other than securities positions or money balance ~~differences~~ discrepancies and advise the receiving party of the exception taken.

(ii) ~~A carrying party may take exception to a transfer instruction only if:~~

- ~~(A) it has no record of the account on its books;~~
- ~~(B) the transfer instruction is incomplete; or~~
- ~~(C) the transfer instruction contains an improper signature.~~

~~(iii) The carrying party and the receiving party must promptly resolve any exceptions taken to the transfer instruction.~~

(e) Validation of Transfer Instructions.

~~(iv) Upon validation of an transfer instruction to transfer municipal securities account assets in whole, the carrying party must:~~

~~(A) "freeze" the account to be transferred, i.e., all open orders must be cancelled and no new orders may be taken; and~~

~~(B) Upon validation of an instruction to transfer municipal securities account assets, in whole or in specifically designated part, the carrying party must return the transfer instruction to the receiving party with an attachment indicating all municipal securities positions, safekeeping positions and any money balance to be transferred in the account as shown on the books of the carrying party. Except as hereinafter provided, the attachment must include a then-current market value for all assets in the account so indicated. If a then-current market value for an asset cannot be determined, the asset must be valued at original cost. However, delayed delivery assets, nontransferable assets, and assets in-transfer to the customer, need not be valued, although the "delayed delivery," "nontransferable," or "in-transfer" status of such assets, respectively, must be indicated on the attachment. A carrying party must provide the description set forth in ~~Rule~~ Rule G-12(c)(v)(E) with respect to any municipal security that has not been assigned a CUSIP number in an account it is to transfer.~~

~~(iii) A carrying party may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over municipal securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying party must transfer the municipal securities positions and/or money balance reflected on its books for the account.~~

~~(iv) A carrying party may take exception to a transfer instruction only if:~~

- ~~(A) it has no record of the account on its books;~~
- ~~(B) the transfer instruction is incomplete;~~

(C) the transfer instruction contains an improper signature;

(D) additional documentation is required (e.g., legal documents such as death or marriage certificate);

(E) the account is “flat” and reflects no transferable assets;

(F) the account number is invalid (i.e., the account number is not on the carrying party’s books); however, if the carrying party has changed the account number for purposes of internally reassigning the account, it is the responsibility of the carrying party to track the changed account number, and such reassigned account number shall not be considered invalid for purposes of fulfilling a transfer instruction;

(G) it is a duplicate request;

(H) it violates the receiving party’s credit policy;

(I) it contains unrecognized residual credit assets (the receiving party cannot identify the customer);

(J) the customer rescinds the instruction (e.g., the customer has submitted a written request to cancel the transfer);

(K) there is a mismatch of the Social Security Number/Tax ID (e.g., the number on the transfer instruction does not correspond to that on the carrying party’s records);

(L) the account title on the transfer instruction does not match that on the carrying party’s records;

(M) the account type on the transfer instruction does not correspond to that on the carrying party’s records;

(N) the transfer instruction is missing or contains an improper authorization (e.g., the transfer instruction requires an additional customer authorization or successor custodian’s acceptance authorization or custodial approval; or

(O) the customer has taken possession of the assets in the account (e.g., the municipal securities account assets in question have been transferred directly to the customer).

(v) If a carrying party takes exception to a transfer instruction because the account is “flat,” as provided in paragraph (iv)(E) above, the receiving party may re-submit the transfer instruction only if the most recent customer statement is attached.

(vi) The carrying party and the receiving party must promptly resolve and reverse any nontransferable assets that were not properly identified during validation. In all cases, each party shall promptly update its records and bookkeeping systems and notify the customer of the action taken.

(vii) Upon receipt of the asset validation report, the receiving party shall designate any assets that are a product of a third party (e.g., municipal fund security) with which the receiving party does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying party, upon receipt of such designation, may treat such designated assets as nontransferable and refrain from transferring the designated assets.

(viii) After validation of the transfer instruction by the carrying party, a receiving party may reject a transfer of municipal securities account assets in whole only if the account is not in compliance with the receiving party's credit policies or minimum asset requirements. A receiving party, however, may only reject the entire account for such reasons; it may not reject only a portion of the account assets (e.g., the particular assets not in compliance with the party's credit policies or minimum asset requirement) while accepting the remainder.

(f) Completion of the Transfer.

(i) Within ~~four~~three business days following the validation of a transfer instruction, the carrying party must complete the transfer of the customer's municipal securities account assets to the receiving party. The receiving party and the carrying party must immediately establish fail-to-receive and fail-to-deliver contracts at the then-current market value as of the date of validation upon their respective books of account against the long/short positions in the customer's accounts that have not been physically delivered/received and the receiving party/carrying party must debit/credit the related money amount. Nontransferable assets and assets in-transfer to the customer are exempt from the requirement that fail-to-receive and fail-to-deliver contracts must be established for positions in a customer's securities account that have not been physically delivered. Zero value fail-to-receive and fail-to-deliver instructions shall be established for delayed delivery assets. The customer's account(s) shall thereupon be deemed transferred.

(vii) To the extent any assets in the account are not readily transferable, with or without penalties, such assets are not subject to the time frames required by the rule; and, if the customer has authorized liquidation of any nontransferable assets, the carrying member must distribute the resulting money balance to the customer within five business days following receipt of the customer's disposition instructions.

(g) Transfer of Residual Positions. Each party is required, for a minimum period of six (6) months after the transfer of municipal securities account assets in whole is completed, to transfer credit balances (both cash and securities) that occur in such transferred account assets within ten (10) business days after the credit balances accrue to the account.

(eh) *Fail Contracts Established.* Any fail contracts resulting from this account transfer procedure must be closed out in accordance with ~~¶~~Rule G-12(h).

(fi) *Prompt Resolution of Discrepancies.*

(i) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's municipal securities account assets must be resolved promptly.

(ii) The carrying party must promptly distribute to the receiving party any transferable assets that accrue to the account after the transfer of a customer's securities account assets has been effected.

(iii) When a party receives a claim notice relating to a municipal securities account transfer, the party must resolve the claim within five (5) business days from receipt of such claim or take exception to the claiming party by setting forth specific reasons for denying the claim.

(gj) *Exemptions.* The Board may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any dealer or any type of account, security or municipal security.

(hk) *Participant in a Registered Clearing Agency.*

(i) When both the carrying party and the receiving party are direct participants in a clearing agency registered with the Securities and Exchange Commission offering automated customer securities account asset transfer capabilities, the municipal securities account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished pursuant to the rules of and through such registered clearing agency with the exception of specifically designated municipal securities assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying party, indicating such intent and specifying the designated assets to be transferred. The parties must expedite all authorized municipal securities account asset transfers, whether through automated customer account transfer services (ACATS) or via other means permissible, and coordinate their activities with respect thereto.

(ii) When municipal securities account assets are transferred in whole and such registered clearing agency has the capability to transfer residual credit positions (both cash and municipal securities) that have accrued to an account after the account has been transferred (residual credit processing), such capability must be utilized for transferring residual credit positions from the carrying party to the receiving party.

(iii) When both the carrying party and the receiving party are participants in a registered clearing agency having automated customer securities account asset transfer capabilities with a facility permitting electronic transmittal of customer account asset transfer instructions, such facilities shall be used in accordance with the following:

(A) parties using such facilities shall execute an agreement specifying the rights, obligations and liabilities of all participants in or users of such facilities;

(B) customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;

(C) the transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving party that it has received a properly executed transfer instruction or other actual authority to receive the customer's municipal securities and funds;

(D) transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying party to respond to the transfer instruction as may be specified by this rule and the clearing agency; and

(E) non-standard ACATS processing and reclaim processing shall be transmitted through such facilities, if the facility permits.

(¶) *Forwarding of Copy of Form G-26 to Enforcement Authority on Request.* The carrying party shall forward a copy of each customer account transfer instruction issued pursuant to paragraph (c)(i) to the enforcement authority having jurisdiction over the carrying party member, at the request of such authority.

---Supplementary Material:

.01 Customer Authorization. For purposes of this rule, customer authorization pursuant to a transfer instruction could be the customer's actual signature, or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.

.02 Written Procedures. Municipal securities dealers must establish, maintain and enforce written procedures to affect and supervise the transfer of municipal securities account assets pursuant to this rule that are reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules.

.03 Transfer Fees. The party at whose instance a transfer of municipal securities is made shall pay all service charges of the transfer agent.