

2019-04

Publication Date
February 5, 2019

**Retrospective Rule
Review**



Stakeholders

Municipal Securities
Dealers, Municipal
Advisors, Issuers,
Investors, General
Public

Notice Type

Informational Notice

Category

Professional
Qualification; Fair
Practice; Uniform
Practice; Market
Transparency;
Administration

Affected Rules

[Rule G-23](#), [Rule G-34](#),
[Rule G-29](#)

MSRB Identifies Priority Rules for Retrospective Review in 2019

Overview

The Municipal Securities Rulemaking Board (MSRB) Board of Directors (Board) recently prioritized an ongoing effort to review its rules and related interpretive guidance for brokers, dealers and municipal securities dealers (together, “dealers”) and municipal advisors. In 2012, the MSRB began a more formal process of revisiting its rules and their interpretations to help ensure that they continue to achieve their intended purposes and take into account the current state of the municipal securities market. This retrospective rule review has led to 13 rule changes or amendments based on themes such as regulatory consistency, efficiency and modernization.

[Read more about the MSRB’s past retrospective rule review activity.](#)

In October 2018, the Board identified the ongoing retrospective rule review efforts as a strategic priority for its current fiscal year and subsequently developed criteria to help identify priority rules or rule areas for review. The Board has now prioritized for retrospective review: MSRB Rule G-23, on activities of financial advisors, and a newly implemented requirement under MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements. In addition, the Board has approved the filing with the U.S. Securities and Exchange Commission (SEC) of proposals to eliminate MSRB Rule G-29, which requires dealers to maintain a copy of the MSRB rulebook in each office in which certain municipal securities activities are conducted, and to update certain outdated references in and make other technical corrections to MSRB rules.

Purpose of the Retrospective Rule Review

The goal of the retrospective rule review is to help ensure MSRB rules and interpretive guidance are effective in their principal goal of protecting investors, issuers and the public interest; not overly burdensome; clear; harmonized with the rules or other regulators, as appropriate; and reflective of current market practices. As part of the retrospective rule review, the MSRB will also make enhancements to the display of information on the MSRB website to facilitate easier access to relevant regulatory information and understanding of their compliance obligations by regulated persons.



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Prioritizing Rule Review Areas

The MSRB is sensitive to the fact that the municipal securities market has seen numerous changes in the regulatory landscape over the last few years, including but not limited to, the MSRB's adoption of rules creating a core regulatory framework for municipal advisors and new best-execution requirements and new mark-up disclosure obligations for dealers. The MSRB has learned from stakeholders that, while essential to protecting investors, municipal entities and obligated persons, these changes have required dealers and municipal advisors to devote increasingly more time to regulatory compliance efforts.

In an effort to conduct its retrospective rule review in a way designed to achieve the objectives of the initiative while obtaining critical feedback from stakeholders in a way that respects their competing priorities, the Board has determined to prioritize an initial set of rule areas for retrospective review. These priorities were identified through the application of a set of Board-developed criteria to MSRB rules. These criteria include:

- Whether the rule is clear and understandable or a subject of common stakeholder questions;
- Whether the rule is consistent with market practices and/or consistent with the relevant rules of other regulators or other requirements for the relevant regulated entity;
- Whether there is a continued need for the rule;
- Whether the rule has a substantial body of historical interpretive guidance;
- Whether commenters have previously expressed (whether in a formal comment letter or otherwise) a desire for the MSRB to reconsider a particular rule requirement;
- The age of the rule and the length of time since it was reviewed holistically;
- The level of relevant enforcement activity; and
- Whether the benefits of the rule are commensurate with its burdens.

After applying these and additional criteria to the MSRB rulebook, the MSRB has determined to prioritize the following areas for the next phase of its retrospective rule review.

Rule G-23, Activities of Financial Advisors. Rule G-23 establishes certain basic requirements applicable to a dealer acting as a financial advisor with respect to the issuance of municipal securities. Rule G-23 provides that for purposes of the rule, generally a financial advisory relationship shall be

deemed to exist when a dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities. The rule also requires each financial advisory relationship to be evidenced by a writing that meets certain minimum requirements specified in the rule. Additionally, unless an exception applies, Rule G-23 prohibits a dealer that has a financial advisory relationship with respect to the issuance of municipal securities from serving as underwriter or placement agent on the same issuance.

Rule G-23 predates the implementation of the statutory framework for federal regulation of municipal advisors and the related suite of municipal advisor rulemakings by the SEC and the MSRB. Now that the general framework for municipal advisor regulation is largely established, the MSRB believes it is appropriate to conduct a retrospective review of Rule G-23 to ensure that, among other things, the restrictions and requirements imposed upon dealers acting in a financial advisor capacity remain appropriate in light of the municipal advisor regulatory regime and that they are clearly delineated.

Rule G-34, CUSIP Numbers, New Issue, and Market Information

Requirements. Recent amendments to Rule G-34 extended to all municipal advisors, when advising on competitive transactions in municipal securities, a requirement to apply for CUSIP numbers within specified time frames. In the brief time since this requirement went into effect, numerous municipal advisors and their representatives have expressed to the MSRB questions regarding the need for this requirement and concerns about the burdens associated with it, based upon their experience with the requirement since it became effective. The MSRB believes that it is appropriate to solicit comments and to obtain any available data from all stakeholders concerning, among other things, whether the requirement addresses actual market harms; is appropriate to the role of the municipal advisor in some or all instances; imposes undue burdens on municipal advisors; and raises any considerations relating to competition among regulated entities.

Rule G-29, Availability of Board Rules. Rule G-29 requires each dealer to keep a copy of all MSRB rules in all offices in which certain municipal securities activities are conducted and to make those rules available for examination by customers promptly upon request. While a 1998 MSRB interpretive notice permits dealers to meet the requirements of Rule G-29 by a number of different means, including by having internet access in their offices, the MSRB believes it is appropriate to consider the continued need for such a rule in light of the current widespread availability of internet access for dealers and their customers alike.

In addition, the MSRB plans to conduct a technical review of the entire MSRB rulebook to, among other things, delete transitional provisions that are no longer in operation and update references to the National Association of Securities Dealers (NASD) to its successor organization, the Financial Industry Regulatory Authority (FINRA).

The MSRB will keep the public informed of upcoming retrospective rule review activities in a dedicated section of its website, [MSRB.org](https://www.msrb.org). It will also seek both formal and informal feedback from market participants, including through informal outreach to market participants and their representatives, as well as through leveraging existing MSRB communication efforts (*e.g.*, townhalls and conference engagements, etc.). The MSRB welcomes any feedback as to whether there are any additional MSRB rules not currently identified as a priority rule area that the MSRB should elevate to a priority for retrospective rule review. To the extent possible, the MSRB plans to time the publication of any concept proposals, requests for comment and/or other notices seeking stakeholder input on specific priority rule areas to be mindful of the time required to provide thoughtful comments.

Additionally, consistent with the MSRB's standard practice, and in order to begin streamlining the MSRB rule book and benefitting from the retrospective rule review as early as possible, in some instances, the MSRB may forego a formal request for comment on certain technical retrospective review initiatives—for example, by filing with the SEC technical amendments without first publishing an MSRB public request for comment (proposals filed with the SEC would, in any case, be subject to the SEC's own public comment process).

On an ongoing basis, stakeholders are welcome to comment on any aspect of the retrospective rule review initiative. Comments should be directed to Ronald Smith, MSRB Corporate Secretary, at rsmith@msrb.org.

February 5, 2019

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