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**Retrospective Rule
Review**



Stakeholders
Municipal Securities
Dealers

Notice Type
Informational Notice

Category
Fair Practice; Uniform
Practice

Affected Rules

[Rule G-12](#), [Rule G-20](#),
[Rule G-26](#), [Rule G-27](#),
[Rule G-35](#), [Rule G-38](#),
[Rule G-41](#), [Rule G-45](#)

MSRB Updates Rulebook with Nonsubstantive, Technical Amendments

Overview

The Municipal Securities Rulemaking Board (MSRB) is publishing this Notice to announce that it filed a proposed rule change with the U.S. Securities and Exchange Commission (SEC) to: amend certain MSRB rules to update cross-references to the rules of other self-regulatory organizations (SROs); delete certain sections of MSRB rules that are outdated or no longer relevant given the expiration or passing of time limitations set forth therein; and amend rules with grammatical or typographical errors.¹ The MSRB made the filing under Section 19(b)(3)(A)(iii)² of the Exchange Act of 1934 and Rule 19b-4(f)(6)³ thereunder, as a noncontroversial rule change that renders the proposal effective upon receipt by the SEC. The operative date of the proposed rule change will be June 3, 2019.

Questions about this Notice may be directed to Margaret Blake, Associate General Counsel, at 202-838-1500.

Background

In its retrospective review of certain of its rules, the MSRB identified several instances where cross references to the rules of other SROs are incorrect. In addition, the MSRB has identified two rule sections with date references that are outdated or no longer valid. Finally, the MSRB has identified several places where grammatical or typographical corrections are needed. The proposed rule change would make non-substantive changes to address these issues.

¹ [File No. SR-MSRB-2019-08](#).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(6).



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In 2012, the MSRB began 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 multiple rule changes or amendments based on themes such as regulatory consistency, efficiency and modernization. [Read more about the MSRB's retrospective rule review.](#)

Summary of the Proposed Amendments

The Financial Industry Regulatory Authority, Inc. (FINRA) is an SRO that provides regulatory oversight of brokers and dealers that conduct business in the United States. It was formed by the consolidation of the member regulation, enforcement and arbitration operations of the New York Stock Exchange, NYSE Regulation, Inc. and the National Association of Securities Dealers (NASD). Prior to this consolidation, NASD served as the predecessor SRO to FINRA. Prior to this consolidation, many of the MSRB's rules referred to the NASD, and some MSRB rules have not been updated to reflect the consolidation or the creation of the consolidated FINRA rulebook.⁴ The proposed rule amendments would update incorrect NASD rule references in the MSRB rulebook to the correct FINRA rule in relevant sections of the following rules:

- [MSRB Rule G-20](#), on gifts, gratuities, non-cash compensation and expenses of issuance;
- [MSRB Rule G-27](#), on supervision;
- [MSRB Rule G-35](#), on arbitration; and
- [MSRB Rule G-41](#), on anti-money laundering compliance programs.

In addition, the proposed rule amendments would eliminate outdated or unnecessary date references in [MSRB Rule G-38](#), on solicitation of municipal securities business, and [MSRB Rule G-45](#), on reporting of information on municipal fund securities.

The proposed amendments to Rule G-38 would delete subsection (c), which addresses transitional payments made for solicitation activities that occurred “on or prior to August 29, 2005,” and requires a filing to be made “by the last day of the month following the end of each calendar quarter during which payments for such solicitations are made or remain pending.” Because the MSRB has not received a Form G-38t filing for two years, the MSRB believes it is likely that payments for solicitations pursuant to subsection (c) are no

⁴ In some instances, a single NASD rule subsequently became multiple FINRA rules (e.g., NASD Rule 3010 became FINRA Rules 3110 and 3170). The proposed rule change only references those FINRA rules that are relevant to the particular MSRB rule being amended.

longer occurring or pending. As a result, the MSRB believes there is no longer a need for the requirements set forth in subsection (c).

The proposed amendments to Rule G-45 would delete subsection (e), which provides a transition provision for reporting related to the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (“ABLE program”). Rule G-45 requires reporting of information on Form G-45 to the MSRB of certain primary offerings of municipal fund securities. Subsection (e) indicates that for underwriters in primary offerings of an ABLE program, the first submissions due pursuant to the rule “will be for the reporting period ending June 30, 2018.” Because this deadline has passed, the proposed rule change would delete this provision, as it is no longer necessary for compliance with the rule.

Finally, the proposed rule change would fix typographical or grammatical errors by amending:

- [MSRB Rule G-12](#), on uniform practice, to delete unnecessary language from paragraph (h)(ii)(A) on close-out by seller; and
- [MSRB Rule G-26](#), on customer account transfers, to change the word “affect” to “effect” as it appears in Supplementary Material .02 Written Procedures.

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Text of Proposed Amendments*

Rule G-12: Uniform Practice

(a) – (g) No change.

(h) *Close-Out*.

(i) No change.

(ii) *Close-Out by Seller*. If a seller makes good delivery according to the terms of the transaction and the requirements of this rule and the purchaser rejects delivery, the seller may close out the transaction in accordance with the following procedures:

(A) *Notice of Close-Out*. If the seller elects to close out a transaction in accordance with this paragraph (ii), the seller shall at any time not later than

* Underlining indicates new language; strikethrough denotes deletions.

the close of business on the first business day following receipt by the seller of notice of the rejection, notify the purchaser via an inter-dealer communication system of the registered clearing agency through which the transaction was compared ~~of the purchaser's intention to close out the transaction~~ of the seller's intention to close out the transaction.

(1) No change.

(ii)(B) – (iv) No change.

(i) – (j) No change.

Rule G-20: Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance

(a) No change.

(b) *Definitions.*

(i) – (iii) No change.

(iv) "Offeror" means, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including, but not limited to, the issuer's financial advisor, municipal advisor, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under FINRA Rules 5110, 2320, or ~~2341~~ NASD Rule 2830 in connection with any securities held as assets of or underlying such municipal fund securities.

(v) – (vii) No change.

(c) – (g) No change.

Rule G-26: Customer Account Transfers

(a) – (l) No change.

Supplementary Material

.01 – No change.

.02 **Written Procedures.** Municipal securities dealers must establish, maintain and enforce written procedures to ~~affect~~ effect 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 No change.

Rule G-27: Supervision

(a) – (f) No change.

(g) *Definitions.*

(i) – (v) No change.

(vi) "Disciplinary history" means a finding of violation by a registered person in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following rules (or comparable foreign provision): Sections 15(b)(4)(E) and 15(c) of the Act; Section 17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; FINRA Rules 2010, 2020, 2111, 2150, 2121, 3110 (failure to supervise only), 5210 and 5230; NASD Rules 2110, 2120, 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330;MSRB Rules G-19, G-30, and G-37(b) and (c).

Rule G-35: Arbitration

Arbitration Involving Bank Dealers.

As of January 1, 1998, every bank dealer (as defined in rule D-8) shall be subject to the Financial Industry Regulatory Authority's (FINRA) Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes, as appropriate, Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD") for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. For purposes of this rule, each bank dealer shall be subject to, and shall abide by, FINRA's~~the NASD's~~ Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes, as appropriate, including any amendments thereto, as if the bank dealer were a "member" of FINRA~~the NASD~~.

Rule G-38: Solicitation of Municipal Securities Business

(a) *Prohibited Payments.* ~~Subject to section (c) of this rule, n~~ No broker, dealer or municipal securities dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or

municipal securities dealer.

(b) No change.

~~(c) *Transitional Payments.*~~

~~(i) A broker, dealer or municipal securities dealer may make payments to a person other than an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer if such payment is made with respect solely to solicitation activities undertaken by such person on or prior to the effective date of this rule pursuant to a Consultant Agreement under former Rule G-38, but only if:~~

~~(A) such person has not solicited municipal securities business from any issuer on behalf of the broker, dealer or municipal securities dealer at any time after the effective date of this rule; and~~

~~(B) the broker, dealer or municipal securities dealer sends to the Board, by the last day of the month following the end of each calendar quarter during which payments to such person are made or remain pending, Form G-38t, setting forth, in the prescribed format, the information required to be disclosed to the Board pursuant to section (c) of former Rule G-38; provided that each item of municipal securities business for which payment remains pending (together with a specific dollar amount or objective formula for determining the specific dollar amount of the pending payment) must be listed on the first quarterly Form G-38t due after the effective date of this rule and on each subsequent quarterly Form G-38t until such quarter in which payment is finally made. The broker, dealer or municipal securities dealer shall send two copies of Form G-38t to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending. The Board shall make public a copy of each Form G-38t received from any broker, dealer or municipal securities dealer.~~

~~(ii) For purposes of this section (c), the term "effective date of this rule" means August 29, 2005, and the term "former Rule G-38" means Rule G-38 of the Board in effect on the day prior to the effective date of this rule.~~

Rule G-41: Anti-Money Laundering Compliance Program

Every broker, dealer or municipal securities dealer shall establish and implement an anti-money laundering compliance program reasonably designed to achieve and monitor ongoing compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. 5311, et seq. ("BSA"), and the regulations thereunder. A broker, dealer or municipal securities dealer that establishes and implements an anti-money laundering compliance program that is in

compliance with the rules, regulations or requirements governing the establishment and maintenance of anti-money laundering programs of the registered securities association of which the broker, dealer or municipal securities dealer is a member (*e.g.*, FINRA Rule 3310~~NASD Rule 3011~~) or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act (*e.g.*, 12 C.F.R. 21.21 (OCC); 12 C.F.R. 208.63 (FRB); 12 C.F.R. 326.8 (FDIC)) or, if applicable, the Office of Thrift Supervision (12 C.F.R. 563.177) will be deemed to be in compliance with Section 5318(h)(1) of the BSA and the regulations promulgated thereunder for purposes of this Rule.

Rule G-45: Reporting of Information on Municipal Fund Securities

(a) – (d) No change.

~~(e) Transition Provision for ABLE Programs. Notwithstanding section (a), the first submissions due under the rule by underwriters of primary offerings of interests in programs established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (an “ABLE program”), will be for the reporting period ending June 30, 2018.~~