

2016-24

**Publication Date**  
September 30, 2016

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

**Notice Type**  
Request for Comment

**Comment Deadline**  
November 14, 2016

**Category**  
Professional  
Qualification

**Affected Rules**  
[Rule G-3](#)

## Request for Comment on Draft Provisions to Establish a Continuing Education Requirement for Municipal Advisors

### Overview

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to MSRB Rule G-3, on professional qualification requirements, to establish continuing education (CE) requirements for certain associated persons of a municipal advisor. The draft CE requirements would require municipal advisors to develop a CE program and require associated persons of municipal advisors who engage in municipal advisory activities or directly engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons to participate in CE training.

Comments should be submitted no later than November 14, 2016, and may be submitted in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. Generally, all comments will be made available for public inspection on the MSRB's website.<sup>1</sup>

Questions about this notice should be directed to Gail Marshall, Associate General Counsel or Bri Joiner, Manager, Professional Qualifications, at 202-838-1500.

<sup>1</sup> Comments generally are posted on the MSRB website without change. For example, personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.



Receive emails about MSRB regulatory notices.

## Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>2</sup> the MSRB is charged with setting professional standards and CE requirements for municipal advisors. Section 15B(b)(2)(A) of the Securities Exchange Act of 1934 (the “Act”) authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.<sup>3</sup> More specifically, in connection with such standards, the Act requires the MSRB to provide professional qualification standards and CE requirements for municipal advisors.<sup>4</sup>

On February 26, 2015, the Securities and Exchange Commission (SEC) approved amendments to MSRB Rule G-3, which established classification and qualification requirements for municipal advisor professionals.<sup>5</sup> The established registration classifications for municipal advisor professionals under Rule G-3 are: (a) municipal advisor representative and (b) municipal advisor principal.<sup>6</sup> As Rule G-3 provides, to qualify as a municipal advisor representative or municipal advisor principal, an individual must take and pass the Municipal Advisor Representative Qualification Examination (“Series 50”).<sup>7</sup>

Bearing in mind that many municipal advisor professionals are associated with brokers, dealers or municipal securities dealers (“dealers”), the draft amendments seek to establish robust CE requirements for municipal advisors while balancing the need to avoid unnecessary regulatory overlap with existing CE requirements for dealers.

---

<sup>2</sup> Pub. Law No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>4</sup> See 15B(b)(2)(L)(ii)-(iii) of the Act, 15 U.S.C. 78o-4(b)(2)(L)(ii)-(iii).

<sup>5</sup> See Exchange Act Release No. 74384 (Feb. 26, 2015), File No. SR-MSRB-2014-08 (Nov. 18, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> To provide time for an orderly transition to the new professional qualifications regime, associated persons engaged in municipal advisory activities have a one-year grace period, ending on September 12, 2017, to take and pass the Series 50 examination.

## Overview of the Continuing Education Requirements for Dealers

Dealers are currently required, pursuant to Rule G-3(i), to maintain a CE program for their “covered registered persons,”<sup>8</sup> designed to keep such persons informed of issues that affect their job responsibilities and of product and regulatory developments. Rule G-3(i) sets forth a two-pronged approach to CE requirements for dealers consisting of a Regulatory Element and a Firm Element.

The Regulatory Element prong is a computer-based training program developed by the Securities Industry/Regulatory Council on Continuing Education (“CE Council”), of which the MSRB is a member.<sup>9</sup> The Regulatory Element training is focused on compliance, regulatory, ethical and sales practice standards with the content derived from industry rules and regulations, as well as widely accepted standards and practices within the industry. Although the specific requirements of certain rules may differ among the MSRB and other self-regulatory organizations (SROs), the Regulatory Element training developed by the CE Council is based on standards and principles broadly applicable to all SROs. Rule G-3(i) requires covered registered persons to complete the Regulatory Element within 120 days of the second anniversary of their registration approval date and every three years thereafter.<sup>10</sup>

The Firm Element prong of the CE requirements provides that dealers must, at least annually, conduct a “needs analysis” whereby they evaluate and prioritize their municipal securities training needs, develop a written training

---

<sup>8</sup> Under Rule G-3(i)(ii)(A), a “covered registered person” is defined as “any person registered with a broker, dealer or municipal securities dealer and qualified as a representative or principal ... or as a general securities principal and who regularly engages in or supervises municipal securities activities.”

<sup>9</sup> The CE Council is composed of up to 20 industry members from broker-dealers, representing a broad cross section of industry firms, and representatives from the MSRB and other SROs as well as liaisons from the SEC and the North American Securities Administrators Association. See <http://www.cecouncil.com>.

<sup>10</sup> Pursuant to MSRB Rule G-3(i)(i)(A)-(B), each registered person is required to complete the Regulatory Element initially within 120 days after the person’s second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Any registered person who has not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive by the Board until such time the requirements of the program have been satisfied.

plan consistent with that needs analysis and then document that the training was delivered to the covered registered persons. Training for covered registered persons must take into account the dealer's size, organizational structure, scope of business activities, and other factors.<sup>11</sup> The Firm Element prong is designed to enhance the securities knowledge, skill and professionalism of each dealer's covered registered persons based on the municipal securities products, services and strategies offered by the dealer. At a minimum, the training required by dealers under Rule G-3 should cover general investment features and associated risk factors, suitability and sales practice considerations and applicable regulatory requirements for the municipal securities products, services and strategies offered by the dealer.<sup>12</sup>

## Proposed Continuing Education Program Requirements for Municipal Advisors

The draft CE requirements for municipal advisors would be similar in design to the Firm Element prong for dealers. The MSRB believes a single-pronged CE program for municipal advisors would provide firms (both dealer and non-dealer municipal advisors) with the flexibility to implement a robust and meaningful CE program for those associated persons of the municipal advisor who are qualified as a municipal advisor representative or municipal advisor principal ("covered person").

Similar to the Firm Element requirements for dealers, municipal advisors would be required to annually complete a needs analysis that evaluates and prioritizes their applicable training needs, develop a written training plan and document that training was provided to covered persons. The training plan should be designed to be appropriate for the municipal advisor's business and, at a minimum, cover training on the applicable regulatory requirements and, specifically, a municipal advisor's fiduciary duty obligations. By developing a single-pronged approach, a municipal advisor would have the flexibility to develop training for its covered persons based on the firm's size, organizational structure, scope of business activities and other factors. For example, a municipal advisor that only provides advice to municipal entities

---

<sup>11</sup> *Supra* note 8.

<sup>12</sup> In 2014 the SEC approved amendments to the Firm Element that require dealers to provide municipal securities training to covered persons who are regularly engaged in municipal securities activities. The purpose of the amendment was to enhance the overall securities knowledge, skill and professionalism of associated persons primarily engaged in municipal securities activities. See Exchange Act Release No. 73368 (Oct. 15, 2014), File No. SR-MSRB-2014-05 (Jul. 22, 2014).

on swap transactions would be permitted to design its annual training plan based upon the rules and practices applicable to its limited business model and determine the manner in which such training should be delivered. In such cases, firms could, for example, determine the most effective method of fulfilling their training needs would be to have their covered persons attend an applicable seminar by subject matter experts or utilize an on-line training resource.

Importantly, the minimum requirements under draft amendments to Rule G-3 should not be seen as the sole subject matter for the training. The MSRB believes the minimum standard for training does not negate the need for municipal advisors to consider whether, based on their needs analysis, other training applicable to their municipal advisory activities is appropriate. The establishment of CE requirements for municipal advisors will ensure that all firms provide minimum levels of training to covered persons to ensure a standard of training that is appropriate in the public interest and for the protection of investors and municipal entities or obligated persons.

In an effort to reduce regulatory overlap for dealer-municipal advisor firms, draft amendments to Rule G-3 to establish CE requirements for municipal advisors would recognize that a dealer-municipal advisor firm could deliver certain training that would meet both the needs analysis for the dealer activity as well as the needs analysis for the municipal advisor activity, so long as the dually registered firm:

- Completes a separate needs analysis for both its municipal advisory activities as a municipal advisor and its municipal securities activities as a dealer;
- Develops a separate written training plan for both the municipal advisory and dealer activities based on each applicable needs analysis;
- Delivers training that is consistent with the written training plans of both the municipal advisor and dealer; and
- Maintains records documenting that such covered persons completed the applicable training.

## Economic Analysis

### 1. The need for CE requirements for municipal advisor professionals and how draft amendments to MSRB Rule G-3 will meet that need.

As noted above, Section 15B of the Act requires the MSRB to provide CE requirements for municipal advisor professionals.<sup>13</sup> The MSRB believes that CE standards would keep municipal advisor professionals informed of issues and regulatory developments that affect their job responsibilities and, thereby, would help to protect investors and municipal entities.

### 2. Relevant baselines against which the likely economic impact of elements of the draft amendments should be considered.

The Act requires that the MSRB provide CE requirements for municipal advisor professionals. In addition, municipal advisor professionals are required to take and pass an examination in order to demonstrate their professional qualifications and to understand and comply with several rules specific to municipal advisory activities including, but not limited to Rule G-3, Rule G-42 and Rule G-44.

### 3. Identifying and evaluating reasonable alternative regulatory approaches.

The MSRB recognizes that there are alternatives to the single-pronged approach to CE program requirements for municipal advisors. For example, the MSRB could have proposed a mandatory regulatory element, overseen and administered by an SRO in addition to the proposed training requirement. At this juncture, the MSRB believes that the need can be addressed without a Regulatory Element. Alternatively, the MSRB could have proposed a more prescriptive CE requirement. At this time, the MSRB does not believe that such a proposal is necessary.

### 4. Assessing the benefits and costs of the draft amendments.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the rule with the draft amendments fully implemented against the context of the economic baseline discussed above. The MSRB is seeking, as part of this request for comment, data (qualitative or

---

<sup>13</sup> *Supra* 15B(b)(2)(L)(ii)-(iii) of the Act, 15 U.S.C. 78o-4(b)(2)(L)(ii)-(iii).

quantitative) relevant to evaluation of the costs and benefits of the proposed amendments.

Preliminarily, the MSRB has evaluated the benefits and costs associated with the draft proposal as follows:

### **Benefits**

CE requirements for municipal advisors -- like other professional qualification standards- promote compliance with applicable laws and regulations and are necessary for the protection of investors, municipal entities and obligated persons. Such requirements may reduce the risk that issuers will receive advice that results in harm and may also reduce the overall cost of borrowing. In addition, CE requirements may contribute to a more competitive market for municipal advisory services.

### **Costs**

The MSRB recognizes that firms may incur programmatic costs, including those associated with conducting a needs analysis, developing and delivering content and maintaining records. However, the MSRB believes that these costs would be relatively small. In addition, the MSRB is proposing to provide firms with significant flexibility to develop training based on their size, organizational structure, and scope of business activities. Because the requirement to conduct CE is a part of the baseline, the MSRB believes that these costs are already incorporated in baseline. The MSRB understands that some small municipal advisory firms may not employ full-time staff to develop and implement CE training. However, the MSRB believes that the proposal provides sufficient flexibility regarding how the requirement is met and that third parties, including the MSRB, may develop course content that would be available to small firms at relatively low cost.

The SEC also acknowledged in its final registration rule that CE requirements would impose certain costs on firms, but concluded that those costs would be unlikely to harm the competitiveness of the market.<sup>14</sup>

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

The MSRB believes that this draft proposal will improve efficiency and capital formation by promoting compliance with existing regulations and ensuring that municipal entities have access to qualified municipal advisors. The MSRB believes that this proposal will not impose any burden on competition that is

---

<sup>14</sup> See Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67467 (Nov. 12, 2013).

not necessary or appropriate in furtherance of the purposes of the Act and may have a positive impact on competition by further promoting merit-based factors in the selection of municipal advisors. As noted above, even if costs associated with this proposal cause some firms to exit or consolidate with others, the MSRB supports the SEC's conclusion that this will not materially impact competition.

## Questions

The MSRB seeks public comment on all aspects of this proposal and specifically requests comment concerning the following questions. The MSRB welcomes information regarding the potential to quantify the likely benefits and costs of the draft amendments. The MSRB requests comment on any competitive or anticompetitive effects, as well as efficiency and capital formation effects of the draft amendments on any market participants. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views, assumptions or issues raised in this request for comment.

- Are there other relevant baselines that the MSRB should consider when evaluating the economic impact of the proposal?
- Do the proposed requirements meet the goal of promoting understanding and compliance of existing MSRB regulations?
- Are there other reasonable regulatory alternatives that the MSRB should consider?
- How likely is it that third-parties will develop CE content that small firms will be able to purchase rather than developing their own content?
- Are there data or studies relevant to the evaluation of the benefits and costs of the proposal that the MSRB should consider?
- In addition to fiduciary duty obligations are there other obligations that should be included, as required, as part of the minimum standards of training?
- In reducing regulatory overlap for dually registered firms, should the MSRB consider other alternatives to the draft CE requirements for municipal advisors?
- Does your firm currently provide your municipal advisor professionals with continuing education regarding the applicable regulatory obligations?
- Do the draft CE requirements for municipal advisors strike an appropriate balance between a principles-based and a prescriptive approach for the development of a CE program? If not, explain why and in what areas the draft CE requirements should be more principles-based or prescriptive.



- Do the draft CE requirements for municipal advisors appropriately accommodate for small and single-person municipal advisors? If not, describe how the draft CE requirements can be modified to be more appropriately accommodating.
- Would the draft CE requirements have the anticipated benefits of protecting municipal entities, investors and the public interest?
- Would the draft CE requirements have an effect on conduct that is required for compliance with any other MSRB rule?

September 30, 2016

\* \* \* \* \*

## Text of Draft Amendments\*

### Rule G-3: Professional Qualification Requirements

No broker, dealer, municipal securities dealer, municipal advisor or person who is a municipal securities representative, municipal securities sales limited representative, limited representative - investment company and variable contracts products, municipal securities principal, municipal fund securities limited principal, municipal securities sales principal, municipal advisor representative or municipal advisor principal (as hereafter defined) shall be qualified for purposes of Rule G-2 unless such broker, dealer, municipal securities dealer, municipal advisor or person meets the requirements of this rule.

(a) – (h) No changes.

#### (i) *Continuing Education Requirements*

(i) *Continuing Education Requirements for Brokers, Dealers, and Municipal Securities Dealers*—This section ~~(i)~~ prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with a registered securities association with respect to a person associated with a member of such association, or the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to a person associated with any other broker, dealer or municipal securities dealer ("the appropriate enforcement authority"). The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

#### ~~(i)~~(A) *Regulatory Element*

~~(A)~~(1) *Requirements*—No broker, dealer or municipal securities dealer shall permit any registered person to continue to, and no registered person shall continue to,

---

\* Underlining indicates new language; strikethrough denotes deletions.

perform duties as a registered person, unless such person has complied with the requirements of section (i) hereof.

Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Board. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this section ~~(i)~~ (A). The content of the Regulatory Element shall be determined by the Board for each registration category of persons subject to the rule.

~~(B)~~(2) *Failure to Complete*—Unless otherwise determined by the Board, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this section shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of this rule. The appropriate enforcement authority may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

~~(C)~~(3) *Disciplinary Actions*—Unless otherwise determined by the appropriate enforcement authority, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

~~(1)~~(a) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

~~(2)~~(b) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, the appropriate enforcement authority or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

~~(3)~~(c) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency, the appropriate enforcement authority or securities self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of ~~(1)~~ (a) above, or the completion of the sanction or the disciplinary action becomes final, in the case of ~~(2)~~ (b) or ~~(3)~~ (c) above. The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of this section ~~(i)~~ (A).

~~(D)~~(4) Any registered person who has terminated association with a broker, dealer or municipal securities dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a broker, dealer or municipal securities dealer shall participate in the Regulatory Element at such intervals that apply (second registration anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

~~(E)~~(5) Any former registered person who becomes reassociated in a registered capacity with a broker, dealer or municipal securities dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety (second registration anniversary and every three years thereafter), based on the most recent registration date.

~~(F)~~(6) *Definition of registered person*—For purposes of this section, the term "registered person" means any person registered with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal securities sales principal or financial and operations principal pursuant to this rule.

~~(G)~~(7) *Delivery of the Regulatory Element*. The continuing education Regulatory Element program will be administered through Web-based delivery or such other technological manner and format as specified by the Board.

#### ~~(ii)~~(B) *Firm Element*

~~(A)~~(1) *Persons Subject to the Firm Element*—The requirements of this section shall apply to any person registered with a broker, dealer or municipal securities dealer and qualified as a representative or principal in accordance with this rule or as a general securities principal and who regularly engages in or supervises municipal securities activities (collectively, "covered registered persons").

#### ~~(B)~~(2) *Standards for the Firm Element*

~~(1)~~(a) Each broker, dealer and municipal securities dealer must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each broker, dealer and municipal securities dealer shall at least

annually evaluate and prioritize its training needs, develop a written training plan, and conduct training annually on municipal securities for covered registered persons. The plan must take into consideration the broker, dealer and municipal securities dealer's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.

~~(2)~~(b) Minimum Standards for Training Programs—Programs used to implement a broker, dealer or municipal securities dealer's training plan must be appropriate for the business of the broker, dealer or municipal securities dealer and, at a minimum must cover the following matters concerning municipal securities products, services and strategies offered by the broker, dealer or municipal securities dealer:

~~(a)~~(i) General investment features and associated risk factors;

~~(b)~~(ii) Suitability and sales practice considerations;

~~(c)~~(iii) Applicable regulatory requirements.

~~(3)~~(c) Administration of Continuing Education Program—A broker, dealer or municipal securities dealer must administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

~~(C)~~(3) Participation in the Firm Element—Covered registered persons included in a broker, dealer or municipal securities dealer's plan must participate in continuing education programs as required by the broker, dealer or municipal securities dealer.

~~(D)~~(4) Specific Training Requirements—The appropriate enforcement authority may require a broker, dealer or municipal securities dealer, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas the appropriate enforcement authority deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

(ii) Continuing Education Requirements for Municipal Advisors

(A) Persons Subject to Continuing Education Requirements—The requirements of this section shall apply to any person qualified as a representative or principal with a municipal advisor in accordance with this rule (collectively, "covered persons").

(B) Standards for Continuing Education Requirements

(1) Each municipal advisor must maintain a continuing and current education program for its covered registered persons to enhance their municipal advisory activities knowledge, skill, and professionalism. At a minimum, each municipal advisor shall at least annually evaluate and prioritize its training needs, develop a written training plan, and conduct training annually on municipal advisory activities for covered persons. The plan must take into consideration the municipal advisor's size, organizational structure, and scope of business municipal advisory activities, as well as regulatory developments.

(2) Minimum Standards for Training Programs—Programs used to implement a municipal advisor's training plan must be appropriate for the business of the municipal advisor and, at a minimum must cover the following matters concerning municipal advisory activities, services and strategies offered by the municipal advisor:

(a) Fiduciary duty obligations of municipal advisors; and

(b) Applicable regulatory requirements.

(3) Administration of Continuing Education Program—A municipal advisor must administer its continuing education program in accordance with its annual evaluation and written training plan and must maintain records documenting the content of the programs and completion of the programs by covered persons.

(C) Participation in the Continuing Education Program—Covered persons included in a municipal advisor's plan must participate in continuing education programs as required by the municipal advisor.

(D) Specific Training Requirements—The appropriate enforcement authority may require a municipal advisor, individually or as part of a larger group, to provide specific training to its covered persons in such areas the appropriate enforcement authority deems appropriate. Such a requirement may stipulate the class of covered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

## Supplementary Material

.01 - .02 No change.