MSRB
Municipal Securities Rulemaking Board

MSRB Notice

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Stakeholders
Municipal Securities Dealers, Investors, General Public

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Request for Comment

Comment Deadline
April 17, 2023

Category
Fair Practice

Affected Rules
Rule G-47, Rule D-15

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Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Overview

The Municipal Securities Rulemaking Board ("MSRB" or "Board") seeks comment on draft amendments to MSRB Rules G-47, on time of trade disclosure, and D-15, on sophisticated municipal market professionals. The draft amendments to Rule G-47 would: codify certain existing guidance into the text of Rule G-47; add new supplementary material to specify certain disclosures that may be material in specific scenarios; and make certain technical and clarifying amendments to the rule text. Additionally, the MSRB proposes to retire six pieces of related guidance and consolidate certain existing guidance regarding a broker, dealer or securities dealer's (individually and collectively, "dealers") disclosure obligations in connection with an inter-dealer transaction into one piece of guidance. Draft amendments to Rule D-15 would exempt investment advisers registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission") from having to make certain affirmations in order to qualify for status as a sophisticated municipal market professional ("SMMP") under MSRB rules.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information that they believe would be useful to the MSRB. Comments should be submitted no later than April 17, 2023 and may be submitted by clicking here or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, MSRB 1300 I Street, NW, Washington, DC

20005. All comments will be made available for public inspection on the MSRB's website.[1]

Background and Regulatory Justification

Consistent with the MSRB's strategic plan and as part of the constant care and keeping of the MSRB's rulebook, the MSRB strives to ensure that, among other things, the MSRB's rules and related guidance are effectively protecting investors, issuers and the public interest, reflective of current market practices, have not become overly burdensome, are harmonized with the rules of other regulators, as appropriate, and that there is no unconscious bias in the operation of the rule. To facilitate these goals, the MSRB engages in periodic retrospective reviews of particular rules. Additionally, the MSRB has initiated a long-term initiative to review the MSRB's catalogue of interpretive guidance and clarify, codify, amend and/or retire guidance that no longer achieves its intended purposes. The retrospective review of Rule G-47 and limited retrospective review of Rule D-15 stem from the MSRB's undertaking to review its body of interpretive guidance.

Rule G-47, which requires dealers to disclose to customers, at or prior to the time of trade, all material information known or available publicly through established industry sources, and Rule D-15, which defines the term SMMP, were approved by the SEC in March 2014.[2] The obligations now encompassed in Rule G-47 originally stemmed from guidance issued under Rule G-17, on fair dealing. While, at the time of the adoption of Rule G-47, the MSRB retired certain guidance that was codified into the Rule G-47 rule text, the MSRB believes that there may be additional related guidance that could benefit from being codified, consolidated or retired and that it would be prudent to conduct a retrospective review of the text of Rule G-47 at the same time. The MSRB is also seeking comment on draft amendments to Rule D-15 to address various stakeholder comments over the years. We believe that a retrospective rule review would allow for modernization of the rules, while simultaneously ensuring that they appropriately achieve their issuer and investor protection goals without placing undue compliance burdens on regulated entities.

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[1] Comments are generally posted on the MSRB's website without change. Personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[2] *See* Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014), (File No. SR-MSRB-2013-07).

Summary of Rule G-47 Draft Amendments

I. General Disclosure Duty

Rule G-47(a) sets forth the basic obligation for a dealer to disclose to customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market.[3] This basic obligation was drawn originally from a dealer's fair dealing obligation under Rule G-17 and importantly, encompasses two distinct disclosure obligations. First, it imposes on dealers an obligation to disclose all material information *known about the transaction*. Second, it imposes an obligation to disclose material information *about the security that is reasonably accessible to the market*. For example, in July 14, 2009 guidance, the MSRB reminded dealers that:

> [t]he scope of material information that dealers are obligated to disclose to their customers under Rule G-17 is not limited solely to the information made available through established industry sources. Dealers also must disclose material information they know about the securities even if such information is not then available from established industry sources. It is essential that dealers establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.[4]

Draft amendments to Rule G-47(a) would retain these standards but would clarify that the time of trade disclosure obligation does not require dealers to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding

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[3] Rule G-48(a), on transactions with sophisticated municipal market professionals, exempts dealers from time of trade disclosure obligations under Rule G-47 when the customer is a sophisticated municipal market professional.

[4] *See* Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009). For example, the MSRB has previously indicated that information that may be material to a transaction includes conversion costs for converting registered securities to bearer form. *See* Confirmation, Delivery and Reclamation of Interchangeable Securities (Aug. 10, 1988). *See* below discussion at Section III.c. regarding the MSRB's proposal to retire this 1988 guidance.

insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer. In the past, commenters have sought clarification regarding this point and the MSRB believes that it is reasonable to include such clarification in the rule text given that it is not the MSRB's intent to require dealers to violate dealer processes that may have been established to facilitate compliance with one obligation (*e.g.,* prohibitions on insider trading) in order to comply with Rule G-47.

Additionally, draft amendments to Supplementary Material .01(d) would codify certain language from existing interpretive guidance reminding dealers that, while customers do not have a Rule G-47 obligation to dealers, purchasing dealers should obtain from a selling customer sufficient information about the securities that is not otherwise readily available in the market so that the dealer can accurately describe the securities when the dealer reintroduces them into the market. Codification of this language would permit the MSRB to retire the source guidance, discussed below.[5]

II. Definitions

Rule G-47(b)(ii) defines the term "material information" and explains that information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. A minor edit to this definition would delete the language "or significant" in order to streamline the definition. The MSRB does not believe that deletion of this language would materially alter the definition.

III. Codification and/or Retirement of Select Existing Interpretive Guidance

The MSRB proposes to codify certain substantive principles found in interpretive guidance in the MSRB rule book and/or retire certain guidance. In section a below, the MSRB proposes to retire one piece of guidance related to market discount, after codifying its substance

[5] *See* Rule G-17 interpretive guidance, dated April 30, 1986, pertaining to the description provided at or prior to the time of trade, discussed below under the section titled Related Initiatives, Consolidated Fair Dealing Guidance on Time of Trade Disclosure Obligations in Connection with Inter-Dealer Transactions.

into Rule G-47. In section b below, the MSRB proposes to codify, but not retire at this time, guidance pertaining to zero coupon bonds and stepped coupon bonds. In section c below, the MSRB proposes to retire, without codification, guidance pertaining to conversion costs and secondary market insurance. Finally, in section d below, the MSRB proposes to make one technical addition to an existing time of trade disclosure obligation already embodied in current Rule G-47.

a. Guidance to be Codified and Retired

The MSRB proposes to codify into Rule G-47 the key time of trade disclosure principles set forth in the below interpretive guidance. The MSRB would then retire the guidance and move it to the MSRB "Archived Guidance" webpage where it can continue to be accessed for historical reference. However, such guidance would no longer appear in the MSRB rulebook. The MSRB invites comment as to the appropriateness of retiring this guidance and/or as to whether any other aspects of the below guidance offer substantive guidance to dealers that is not immediately apparent from the face of the discussed rules.

Market Discount

In November 2016 Rule G-47 guidance, the MSRB stated that the fact that a municipal security bears market discount is material information that must be disclosed to a customer under Rule G-47 because absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the market discount is taxable as ordinary income. The MSRB now proposes to codify this substantive principle into Rule G-47 as new Supplementary Material .03(q).

b. Guidance to be Codified and Retained

Zero Coupon Bonds and Stepped Coupon Bonds

The MSRB proposes to codify time of trade disclosure guidance from the below guidance while retaining the original guidance in its rulebook.

In August 1982 Rule G-15 guidance pertaining to municipal securities with zero coupons or stripped coupons, the MSRB noted in regard to stripped or zero coupon municipal securities that "the

Board is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities so as to comply with the Board's fair practice rules. For example, although the details of the increases to the interest rates on 'stepped coupon' securities need not be provided on confirmations, such information is, of course, material information regarding the securities, and municipal securities dealers would be obliged to inform customers about this feature of the securities at or before the time of trade." The MSRB proposes to add the substance of this guidance to Rule G-47 as new supplementary material .03(t). This new provision would provide that a dealer should disclose any special characteristics of the securities and, with respect to stepped coupon securities, the details of the increases to the interest rates. The MSRB would retain the source guidance at this time as it also pertains to Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers and Rule G-12, on uniform practice.[6]

c. Guidance to be Retired at this Time

The MSRB proposes to retire the below guidance and archive them on the msrb.org website.

Conversion Costs

In August 1988 Rule G-15 guidance, the MSRB noted that transfer agents for some interchangeable securities charge fees for conversion of registered certificates to bearer form, which can be substantial and, in some cases, prohibitively expensive. The MSRB went on to state that dealers therefore should ascertain the amount of the fee prior to agreeing to deliver bearer certificates and that, if a dealer passes on the costs of converting registered securities to bearer form to its customer, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade. Additionally, the customer must agree to pay such fee. The MSRB does not believe that interchangeable securities are a common occurrence in the marketplace anymore. As a result, we believe that there is limited utility to this guidance and propose to retire it.

[6] However, the MSRB may revisit this guidance in the future in connection with a separate retrospective rule review of section (c) of Rule G-12.

Secondary Market Insurance

In March 1984 Rule G-17 guidance related to secondary market insurance, the MSRB reminded the industry that the fact that a security has been insured or arrangements for insurance have been initiated will affect the market price of the security and is material and must be disclosed to a customer at or before execution of a transaction in the security. In addition, the Board explained that it believes that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. While the first component of this guidance is already reflected in current Rule G-47 Supplementary Material .03(e), the latter portion pertaining to evidence of insurance was not codified into that same supplementary material because the MSRB believes that it is not common practice to require such evidence of insurance for effective transference. As a result, the MSRB proposes to retire the March 1984 Rule G-17 guidance at this time. The MSRB notes that this piece of guidance also speaks to the application of Rule G-13, on quotations, and Rule G-30, on fair pricing, to securities that are insured or otherwise have a credit enhancement feature. However, those statements simply restate the self-evident fact that those rules apply to such securities. As a result, the MSRB believes that the entirety of such guidance should be retired at this time but seeks comment below as to whether stakeholders believe that any portion of this guidance should be retained and/or codified.

d. Technical Addition(s)

Rule G-47 Supplementary Material .03(i) currently requires disclosure of the fact that a security prepays principal and the amount of unpaid principal that will be delivered on the transaction. The MSRB proposes a minor amendment to this section to offer “factor bonds” as an example of a type of bond that prepays principal, and therefore, could trigger the time of trade disclosure obligation. Factor bonds are bonds for which partial redemptions are processed by a proportional return of principal to each bondholder. Subsequent to the redemption, the factor must be applied to the face value in order to determine interest payments as well as the principal amount for each future transaction.

IV. Draft Amendments Regarding Specified Time of Trade Disclosure Obligations

The MSRB proposes to specify in Rule G-47 that the following information may be material and require time of trade disclosure to a customer.

a. Unavailability of Official Statement or Availability Only from the Underwriter

Securities that are exempt from the requirements of SEC Rule 15c2-12, such as those issued pursuant to the limited offering exemption set forth in SEC Rule 15c2-12(d)(1), are exempt from the obligation under that rule for the issuer or obligated person to review and provide to investors a copy of the official statement. The MSRB proposes to add new supplementary material to Rule G-47 providing that the fact that no official statement is available for a customer's security or is available only from the underwriter (as may be the case for securities that are exempt from the requirements of SEC Rule 15c2-12) may require disclosure under Rule G-47.[7]

b. Continuing Disclosures

The MSRB proposes to amend Rule G-47 to provide that whether an issuer is required to make continuing disclosures with respect to a customer's security that will be available to the customer may require disclosure under the rule. The MSRB believes that such information about the security may be material and is reasonably accessible to the market.[8]

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[7] Dealers may access the Electronic Municipal Market Access ("EMMA®") website to determine whether an official statement is available to investors or only available from the underwriter during a primary offering. The "Issue Details" page for a security issued pursuant to the limited offering exemption will indicate that an official statement is not available on EMMA and will indicate that this is pursuant to the "15c2-12 Exempt Limited Offering."

[8] For example, a review of the official statement or other information available on EMMA typically would indicate whether the issuer or obligated person has undertaken to provide continuing disclosures on the bonds. As another example, EMMA could be used to identify whether an offering was issued pursuant to the limited offering exemption under SEC Rule 15c2-12(d)(1)(i). Below, the MSRB seeks comment as to whether there may be circumstances under which the fact that continuing disclosures will or will not be available to a customer may not be reasonably accessible to the market.

c. Yield to Worst

Pursuant to Rule G-15(a)(i)(A)(5), for transactions that are effected on the basis of a yield to maturity, yield to a call date, or yield to a put date, the yield at which the transaction was effected must be disclosed on a customer's confirmation. In addition, if the computed yield required by Rule G-15 (generally, subject to exceptions, the lower of call or nominal maturity date) is different than the yield at which the transaction was effected, the computed yield also must be shown on the confirmation in addition to the yield at which the transaction was effected. While the MSRB appreciates that this information is disclosed on the customer confirmation on a typically after-the-fact basis, the MSRB proposes to specify that such information—sometimes referred to as the yield to worst—may be material and therefore also may require disclosure under Rule G-47.

Related Initiatives

1. Retagging of Time of Trade Disclosure Interpretive Guidance

The Board explained when adopting Rule G-47 that all interpretive guidance under Rule G-17 that speaks to time of trade disclosure obligations should be read to refer to Rule G-47 instead.[9] In order to better facilitate compliance with Rule G-47, the MSRB conducted an audit of all Rule G-17 guidance and, in enhancing the msrb.org website, has "retagged" all such guidance to ensure that all guidance that interprets a dealer's time of trade disclosure obligation is now tagged to Rule G-47.[10] As a result, dealers no longer have to consult the interpretive guidance behind both Rules G-17 and G-47 when looking for guidance related to their time of trade disclosure obligations.

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[9] *See* MSRB Notice 2014-07, SEC Approves MSRB Rules G-47 on Time-of-Trade Disclosure Obligations, MSRB Rules D-15 and G-48 on Sophisticated Municipal Market Professionals, and Revisions to MSRB Rule G-19 on Suitability of Recommendations and Transactions (March 12, 2014).

[10] Interpretive guidance tagged to Rule G-47 can be found here: https://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-47. To the extent the guidance relates to a dealer's time of trade disclosure obligations and other fair dealing obligations, such guidance is "tagged" to both Rule G-17 and Rule G-47.

2. Time of Trade Disclosure Obligations with Respect to 529 Savings Plans

Currently, the interpretive guidance under Rule G-17 outlines dealers' time of trade disclosure obligations, including the out-of-state disclosure obligations and suitability obligations with respect to 529 savings plans.[11] At the time of adoption of Rule G-47, the MSRB elected not to codify the interpretive guidance under Rule G-17 that pertains to time of trade disclosure obligations in connection with 529 savings plans into Rule G-47. Instead, the MSRB noted that it may create a separate rule regarding time of trade disclosure obligations for 529 savings plans or a rule consolidating dealers' obligations related to 529 savings plans.[12] Specifically, the MSRB stated that until the MSRB adopts a rule specific to 529 savings plans, Rule G-47 and such interpretive guidance continues to apply to 529 savings plans.[13] Similarly, in the interest of addressing dealers' suitability obligations for 529 savings plans at a later time, the MSRB did not incorporate the suitability guidance[14] noted under Rule G-17 into revised Rule G-19, on suitability of recommendations and transactions. The MSRB is considering whether to propose a standalone time of trade disclosure rule for 529 savings plans, which would consolidate the prior interpretive guidance. Additionally, the MSRB is considering a restatement of the existing interpretive guidance regarding dealers' suitability obligations and other sales practice-related activities with respect to 529 savings plans. Below, the MSRB seeks comment relevant to potentially establishing a standalone time of trade disclosure rule that would codify the interpretive guidance under Rule G-17.[15]

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[11] *See* Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans (Aug. 7, 2006).

[12] *See supra* note 2.

[13] The MSRB previously stated, "[a]ll statements in the remaining MSRB interpretative guidance that refer to Rule G-17 in connection with the time-of-trade disclosure obligations should be read instead to refer to new Rule G-47." *See supra* note 9.

[14] The MSRB previously said, "[u]ntil the MSRB adopts a rule specific to 529 plans, MSRB Rule G-19 and the related interpretive guidance will continue to apply to 529 plans." *See supra* note 9.

[15] Since the adoption of Rule G-47, similar to 529 savings plans, interests in Achieving a Better Life Experience (ABLE) programs are also considered municipal securities under federal securities laws and are deemed municipal fund securities under MSRB rules. Consequently, similar to 529 savings plans, a new standalone rule would have general application to ABLE programs and dealers who sell interests in ABLE programs.

3. Consolidated Fair Dealing Guidance on Time of Trade Disclosure Obligations in Connection with Inter-Dealer Transactions

   Rule G-47 applies only in connection with customer transactions, not inter-dealer transactions. However, certain MSRB guidance discusses a dealer's fair dealing disclosure obligations in connection with inter-dealer transactions. The MSRB proposes to consolidate the substance of these pieces of guidance into a short standalone piece of guidance. This would permit the MSRB to retire any guidance that pertains to both customer disclosure obligations and inter-dealer disclosure obligations as the customer disclosure standards would be incorporated into Rule G-47 and the inter-dealer disclosure standards would be consolidated into the standalone piece. Specifically, after incorporating the relevant inter-dealer disclosure content into a consolidated piece of guidance, the MSRB proposes to retire:

   - Rule G-17 interpretive guidance, dated March 19, 1991, pertaining to securities that prepay principal;
   - Rule G-15 interpretive guidance, dated May 15, 1986, pertaining to the disclosure of pricing (calculating the dollar price of partially pre-refunded bonds);[16] and
   - Rule G-17 interpretive guidance, dated April 30, 1986, pertaining to the description provided at or prior to the time of trade.

The draft consolidated guidance is set forth further below.

If, informed in part by the comments received in response to this Request for Comment, the MSRB determines that a standalone time of trade disclosure rule for 529 savings plans may be appropriate, the MSRB would expect to publish a separate Request for Comment on such a draft rule.

[16] The MSRB notes that this Rule G-15 guidance also pertains to the application of Rule G-12(c), Rule G-15(a) and Rule G-30 to the fact pattern described in the guidance. However, the MSRB does not believe that the substantive principles espoused in those portions of the guidance state any principles that are not also expressed elsewhere in the rule book. For example, the Rule G-12(c) and G-15(a) related substance of this guidance is noted in MSRB Rule G-12 guidance, dated August 15, 1989, pertaining to confirmation requirements for partially refunded securities, while the Rule G-30 related principles are currently codified into the text of Rule G-30, Supplementary Material .02(b)(vii)(B).

Summary Of Rule D-15 Draft Amendments

I. Rule D-15 Generally

Rule D-15 defines the term SMMP which is used in Rule G-48, on transactions with sophisticated municipal market professionals. Rule G-48 generally provides for modified dealer regulatory obligations under certain MSRB rules when dealing with SMMPs. Per Rule D-15, an SMMP is defined by three essential requirements: the nature of the customer; a determination of sophistication by the dealer; and an affirmation by the customer, as specified in the rule. Currently, Rule D-15 provides that the three categories of customers that may qualify as an SMMP pursuant to the "nature of the customer" requirement are: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person or entity with total assets of at least $50 million.

II. Attestation Exception for SEC-Registered Investment Advisers

As noted above, in order to qualify as an SMMP under Rule D-15, an SMMP must, among other things, meet the affirmation requirement set forth in the rule. Specifically, the customer must affirmatively indicate that it: (1) is exercising independent judgment in evaluating: (A) the recommendations of the dealer; (B) the quality of execution of the customer's transactions by the dealer; and (C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and (2) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

The MSRB proposes to exempt investment advisers registered with the Commission from having to make such affirmations in order to qualify for SMMP status under Rule D-15. These investment advisers generally maintain over $100 million in regulatory assets under management and owe a fiduciary duty to their clients. The MSRB understands that these investment advisers are typically very sophisticated and, as a result, some market participants have

questioned whether the burdens associated with obtaining an attestation from these professionals is sufficiently outweighed by the protections afforded to them. The MSRB is sensitive to the cost-benefit analysis associated with the application of its rules and seeks comment below as to whether the MSRB should remove the attestation requirement for Commission-registered investment advisers to qualify as SMMPs.

Economic Analysis

Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (the "Exchange Act") requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Board carefully considers the costs and benefits of new and amended rules. Accordingly, the Board's policy on economic analysis in rulemaking states that, prior to proceeding with rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted would, in its judgement, meet that need.[17] The MSRB does not believe that the proposed changes to MSRB Rule G-47, on time of trade disclosure and definitional Rule D-15, on sophisticated municipal market professionals, would result in any burden on competition in accordance with the purposes of the Exchange Act. The MSRB seeks comment on the economic effects of amending MSRB Rules G-47 and D-15.

A. The Need for Amended Rules G-47 and D-15

The purpose of this Request for Comment is to address the MSRB's ongoing retrospective rule review. As part of the MSRB's ongoing retrospective rule review initiatives, the MSRB has also been examining published interpretive guidance.

The draft amendments to Rule G-47 and Rule D-15 are intended to improve the municipal securities market's operational efficiency and promote regulatory certainty by streamlining requirements and providing dealers with a clearer understanding of regulatory obligations that are incorporated into rule text from the current interpretive guidance. In addition, the draft amendments to Rule G-47 and Rule D-15 are intended to benefit dealers by reducing a burden through clarification of the existing rule requirements and

[17] *See* 15 U.S.C. 78o-4(b)(2)(C). *See* also an explanation of the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking. Available at: Policy on the Use of Economic Analysis in MSRB Rulemaking | MSRB.

eliminating unnecessary compliance time and paperwork.

There are twelve specific proposals with regard to Rules G-47 and D-15:

1. Clarifying the time of trade disclosure obligation that dealers, based on a dealer's policies and procedures regarding insider trading, do not need to disclose material information that is intentionally withheld from registered representatives who are engaged in sales with customers.

2. Revising Supplementary Material .01(d) to specify that, while customers do not have a Rule G-47 obligation to dealers, purchasing dealers should obtain from a selling customer sufficient information about the securities so that the dealer can accurately describe the securities when the dealer reintroduces them into the market.

3. Streamlining the description of the term "material information."

4. Codifying guidance on market discount, and zero coupon bonds and stepped coupon bonds into the substance of Rule G-47 and retiring the market discount guidance.

5. Retiring Rule G-15 guidance on costs associated with converting registered certificates to bearer form and Rule G-17 guidance related to the attachment of evidence of insurance to securities as such practices are no longer common in the marketplace.

6. Amending Rule G-47 Supplementary Material .03 to offer "factor bonds" as an example of a type of bond that prepays principal.

7. Adding new draft supplementary material regarding continuing disclosures.

8. Adding new draft supplementary material regarding official statements.

9. Adding new draft supplementary material regarding yield to worst disclosure.

10. Retagging all time of trade disclosure interpretive guidance under Rule G-17 to Rule G-47.

11. Consolidating certain fair dealing statements applicable to a dealer's time of trade disclosure obligations with respect to inter-dealer transactions and retiring the source guidance.

12. Exempting investment advisers registered with the Commission from the affirmation requirement set forth in Rule D-15.

B. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of draft amendments to Rules G-47 and D-15, a baseline or baselines must be established as a point of reference to compare the expected state with the draft amendments. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state. For the purposes of this Request for Comment, the baseline is current Rule G-47 and Rule D-15.

C. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB's policy on economic analysis in rulemaking addresses the need to consider reasonable potential alternative regulatory approaches, when applicable. Under this policy, only reasonable regulatory alternatives should be considered and evaluated.

One alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission. The MSRB considered both state-registered and Commission-registered investment advisers in the interest of providing equal regulatory burdens. However, the MSRB deemed this alternative to be inferior to the one proposed in this Request for Comment. It is the MSRB's understanding that investment advisers registered with the Commission are typically much larger than state-registered advisers.[18]

Another alternative the MSRB considered was for Rule G-47 to pivot to an entirely principles-based approach when determining what information is considered material and therefore must be disclosed to customers at or before the time of trade. An entirely principles-based

[18] *See* SEC Office of Investor Education and Advocacy, "Investor Bulletin: Transition of Mid-Sized Investment Advisers from Federal to State Registration," December 2011.

approach would provide an overarching objective for the dealer to use in determining whether specific information should be provided at the time of trade. The MSRB determined this alternative to be inferior as dealers currently rely on the list of fifteen specific scenarios contained in Rule G-47 Supplementary Material .03 to assist them in their compliance efforts. While the draft amendments to Rule G-47 would still provide dealers with the latitude to make a judgement on what is material while offering specific examples, the alternative would defeat the original purpose of creating Rule G-47 in 2014 to consolidate the previously issued guidance into rule language without substantively changing the existing obligations.

D. Assessing the benefits and costs of the proposed changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change when the rule change proposal is fully implemented against the context of the economic baselines. The MSRB is currently unable to quantify the economic effects of the draft amendments to Rule G-47 and Rule D-15 in totality because not all of the information necessary to provide a reasonable estimate is available. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with the draft amendments to Rules G-47 and D-15, the MSRB has considered these costs and benefits primarily in qualitative terms and believes the aggregate costs to dealers are relatively minor and benefits should accrue to dealers and investors over time and therefore exceed costs. The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the draft amendments.

Benefits

The draft amendments to Rule G-47 and Rule D-15 would provide several benefits for dealers. First, the MSRB believes that the draft rule changes would streamline the process for dealers to understand what disclosures must be disclosed to an investor at the time of trade, and thus would reduce the burden on regulated entities. Additionally, the MSRB believes the proposed codification of the disclosures specified in the three newly specified supplementary material paragraphs (continuing disclosures by an issuer, unavailability of an official statement and the yield to worst) as part of Rule G-47 would benefit investors by helping to ensure that such information that is easily and readily accessible to dealers is disclosed to investors. Furthermore, consolidating certain pieces of interpretive guidance and

retiring six pieces of interpretive guidance will streamline the rulebook by consolidating existing guidance into the text of the rulebook and facilitate compliance by reducing the number of sources a dealer must review when complying with the rule. Finally, the draft amendments to Rule G-47 and Rule D-15 would benefit dealers by reducing a burden through clarification of the existing rule and eliminating unnecessary compliance time and paperwork. These include a clarification that the time of trade disclosure obligation in Rule G-47 does not require dealers, based on a dealer's policies and procedures regarding insider trading, to disclose material information to their customers that is intentionally withheld, as well as an attestation exception for SEC-registered investment advisers to qualify as an SMMP under Rule D-15.

Costs

The MSRB acknowledges that dealers could incur costs as a result of the proposed actions, relative to the baseline state (current state). These costs include the one-time upfront costs related to setting up and/or revising related policies and procedures and ongoing costs such as compliance costs associated with maintaining and updating relevant disclosures. This could especially be true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47. However, because the MSRB is not modifying the obligation to disclose material information, only specifying certain information and circumstances that could be material, dealers may already have these specific disclosures built into their existing time-of-trade disclosure processes. The MSRB believes that dealers would not incur any costs from changes such as codifying existing interpretive guidance into Rule G-47, since dealers are presumably already in compliance with the existing interpretive guidance and MSRB rules. The MSRB believes that dealers may also have additional costs associated with recordkeeping in relation to the disclosure requirements. Overall, the MSRB believes the aggregate upfront and ongoing costs relative to the baseline would be minor, and the expected aggregate benefits to investors and dealers accumulated over time should exceed the total costs.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the draft amendments to Rule G-47 and Rule D-15 would neither impose a burden on competition nor hinder capital formation. The draft amendments would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing dealers with a clearer understanding of regulatory obligations that are incorporated into rule text. Although the benefits to investors discussed above would require dealers to incur some additional costs, at present, the MSRB is

unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for all market participants would outweigh the upfront costs of revising policies and procedures as well as the ongoing compliance costs by dealers. The MSRB does not expect that the draft amendments to Rule G-47 and Rule D-15 would impose a burden on competition for dealers, as the upfront costs are expected to be relatively minor for all dealers while the ongoing costs are expected to be proportionate to the size and trading activities of each dealer.

Questions

Rule G-47

1. Are there any other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified? Are there any other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03?

2. Is there any other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic?

3. Are there situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of?

4. Are the technical clarifications set forth above helpful and do they alleviate potential sources of confusion?

5. Are the draft amendments regarding specified time of trade disclosure obligations reasonably accessible to the market?

6. Do commenters agree that evidence of insurance generally is not required to be attached to a security for effective transfer?

7. Are there any aspects of the guidance that the MSRB proposes to retire that should be retained in any way (*e.g.,* through codification, consolidation or by retaining such guidance in its current form)? If so, please specify.

Burdens and Impact

8. Would the obligations specified in the newly proposed draft supplementary material result in a disproportionate and/or undue burden for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft amendments? Please offer suggestions.

9. Are any of these burdens unique to minority and women-owned business enterprise ("MWBE"), veteran-owned business enterprise ("VBE") or other special designation firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

10. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

11. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms? If so, do commenters have any specific recommendations to alleviate these impacts while still promoting the objectives of Rule G-47? Please offer suggestions.

Time of Trade Disclosure Obligations Regarding 529 Savings Plans

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

2. Explain how the current business practices (*i.e.,* check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, *etc.*).

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

Rule D-15

1. Do commenters agree with the MSRB's proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement? Should this exemption also extend to state-registered investment advisers? Why or why not?

2. Does the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement remove any unnecessary burdens for dealers while still striking the right balance of protection for issuers and investors?

3. Would the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms? What about access to business opportunities? Would it alleviate any such disproportionate or unique burdens or provide greater access to business opportunities for small dealers?

4. Prior to 2012, assets of at least $100 million (specifically invested in municipal securities in the aggregate in a customer's portfolio and/or under management) were required for a customer to be treated as an SMMP.[19] This $100 million threshold was subsequently lowered to $50 million in assets. Are there any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in

[19] *See* Release No. 34-67064 (May 25, 2012) (*2, FN 7 and *7, FN 12), 77 FR 32704 (June 1, 2012) (File No. SR-MSRB-2012-05); *see also* MSRB Notice 2012-27: Securities and Exchange Commission Approves Revised MSRB Definition of Sophisticated Municipal Market Professional (May 29, 2012).

assets for certain categories of customers? For example, unlike customers who are natural persons, many municipal entities likely would meet the threshold of $50 million in assets. Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (*e.g.,* $50 million specifically invested in municipal securities)?

5. The required affirmations under Rule D-15 aligns with FINRA's under FINRA Rule 2111 related to suitability, but also provides clear disclosure to SMMPs of the other modified dealer obligations under MSRB rules to provide clear disclosures to SMMPs and to obtain affirmative statements from SMMPs that they can, for example, exercise independent judgement in performing the evaluations related to fair pricing, suitability and the other modified dealer obligations. Do commenters feel that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (*e.g.,* FINRA Rule 2111(b)) given the differences between the markets and respective rule sets?

Other

1. While the MSRB proposes to retire the guidance above related to secondary market insurance, would there be value in an educational resource for market participants regarding such bonds? For example, continuing disclosures may not be provided for some bonds that are secondarily insured if, for example, a new CUSIP is obtained on such bonds and the issuer/obligated person is unaware of the new CUSIP number.

2. Are there specific enhancements to EMMA that the MSRB could consider to help investors identify continuing disclosure information that may be relevant to secondarily insured bonds? If so, please describe them and identify any challenges of which the MSRB should be aware.

3. A dealer is not obligated to provide an SMMP relevant Rule G-47 disclosures, which includes disclosure regarding securities sold below the minimum denominations and the potential adverse effect on liquidity of a position below the minimum denomination. Would it provide greater certainty if a dealer's

modified obligations under Rule G-48 specifically identified the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers?

Questions about this notice should be directed to Saliha Olgun, Interim Chief Regulatory Officer, or Justin Kramer, Assistant Director, Market Regulation, at 202-838-1500.

February 16, 2023

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Text of Proposed Amendments*

Rule G-47: Time of Trade Disclosure

(a)(i) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market

(ii) Notwithstanding section (a)(i) above, material information is not required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

(b) Definitions.

(i) No change.

(ii) "Material information": Information is considered to be material if there is a substantial likelihood that the information would be considered important ~~or significant~~ by a reasonable investor in making an investment decision.

(iii) No change.

* Underlining indicates new language; strikethrough denotes deletions.

Supplementary Material

.01 **Manner and Scope of Disclosure.**

a. - c. No change.

d. Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material. Customers do not owe any obligations under Rule G-47 to purchasing dealers. However, a municipal securities professional buying securities from a customer should obtain sufficient information about the securities that is not otherwise readily available to the market so that it can accurately describe the securities when the dealer reintroduces them into the market.

.02. No change.

.03 Disclosure Obligations in Specific Scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

a. - h. No change.

i. **Bonds that prepay principal.** The fact that the security prepays principal (e.g., factor bonds) and the amount of unpaid principal that will be delivered on the transaction.

j. - o. No change.

p. **Whether the Issuer is Required to Make Continuing Disclosures.** Whether the issuer is required to make continuing disclosures with respect to the security that will be available to the customer.

q. **Market Discount.** The fact that a municipal security bears market discount and that all or a portion of the investor's investment return represented by accretion of the market discount might be taxable as ordinary income.

r. **Unavailability of an Official Statement.** The fact that no official statement is available or only available from the underwriter.

s. **Yield to Worst.** The computed yield required by Rule G-15(a)(i)(A)(5)(c) if different than the yield at which the transaction was effected.

t. **Zero coupon bonds or stepped coupon bonds.** The special characteristics of zero coupon bonds or stepped coupon bonds and, with respect to stepped coupon securities, the details of the increases to the interest rates.

Rule D-15: "Sophisticated Municipal Market Professional"

The term "sophisticated municipal market professional" or "SMMP" is defined by three essential requirements: the nature of the customer; a determination of sophistication by the broker, dealer or municipal securities dealer ("dealer"); and an affirmation by the customer; as specified below.

(a) - (b) No change.

(c) Customer Affirmation. ~~The customer must affirmatively indicate that it:~~

(1) The customer must affirmatively indicate that it:

~~(1)~~(A) is exercising independent judgment in evaluating:

~~(A)~~(i) the recommendations of the dealer;

~~(B)~~(ii) the quality of execution of the customer's transactions by the dealer; and

~~(C)~~(iii) the transaction price for non-recommended secondary market agency transactions as to which ~~(i)~~(1) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and ~~(ii)~~(2) the dealer does not exercise discretion as to how or when the transactions are executed; and

~~(2)~~(B) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

(2) Exception for Commission-registered investment advisers. The affirmation described in this section (c) is not required for investment advisers registered with the Commission under Section 203 of the Investment Advisers Act of 1940.

Consolidated Interpretive Guidance

Time of Trade Disclosures in Inter-Dealer Transactions

For inter-dealer transactions, there is no specific requirement for brokers, dealers or municipal securities dealers (individually and collectively, "dealers") to disclose all material facts to another dealer at time of trade. A selling dealer is not generally charged with the responsibility to ensure that the purchasing dealer knows all relevant features of the securities being offered for sale. The selling dealer may rely, at least to a reasonable extent, on the fact that the purchasing dealer is also a professional and will satisfy their need for information prior to entering into a contract for the securities.

The items of information that professionals in an inter-dealer transaction must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary

adequately to describe the security that is the subject of the contract. As a general matter, these items of information do not encompass all material facts, but should be sufficient to distinguish the security from other similar issues. The Board has interpreted Rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry. The rule also prohibits dealers from knowingly misdescribing securities to another dealer. As a result, it is possible that non-disclosure of an unusual feature might constitute an unfair practice and thus become a violation of Rule G-17 even in an inter-dealer transaction.

For example, with respect to bonds that prepay principal, non-disclosure of the fact that a bond prepays principal could be a violation of Rule G-17. This would be especially true if the information about the prepayment feature is not accessible to the market and is intentionally withheld by the selling dealer. Whether or not non-disclosure constitutes an unfair practice in a specific case would depend upon the individual facts of the case. However, to avoid trade disputes and settlement delays in inter-dealer transactions, it generally is in dealers' interest to reach specific agreement on the existence of any prepayment feature and the amount of unpaid principal that will be delivered.