

Required fields are shown with yellow backgrounds and asterisks.

Filing by Municipal Securities Rulemaking Board  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend Rule G-21, on Advertising by Brokers, Dealers and Municipal Securities Dealers, Rule G-40, on Advertising by Municipal Advisors, and Rule G-8, on Books and Records

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Pamela	Last Name * Ellis
Title * Associate General Counsel	
E-mail * pellis@msrb.org	
Telephone * (202) 838-1500	Fax <input type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,  
Municipal Securities Rulemaking Board  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 02/26/2019	Corporate Secretary
By Ronald W. Smith	<input type="text"/>
(Name *)	

rsmith@msrb.org, rsmith@msrb.org

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is filing with the Securities and Exchange Commission (the “Commission” or “SEC”) a proposed rule change (the “proposed rule change”) to amend MSRB Rule G-21, on advertising by brokers, dealers and municipal securities dealers, (“proposed amended Rule G-21”) and MSRB Rule G-40, on advertising by municipal advisors, (“proposed amended Rule G-40”) and MSRB Rule G-8, on books and records to be made by brokers, dealers, and municipal securities dealers and municipal advisors (“proposed amended Rule G-8”). The proposed rule change has been filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The effective date of the amendments to Rule G-21 and Rule G-40 will be announced in an MSRB Notice to be published on the MSRB’s website following the effectiveness of this proposed rule change. To provide brokers, dealers, municipal securities dealers and municipal advisors (collectively, “regulated entities”) with sufficient time to develop supervisory and compliance policies and procedures, the effective date to be announced will be no less than 30 days and no more than 180 days following publication of the MSRB Notice.<sup>5</sup> However, proposed amended Rule G-8 will become operative 30 days after this filing.

- (a) The text of the proposed rule change is attached as Exhibit 5. Text proposed to be added is underlined, and text proposed to be deleted is enclosed in brackets.
- (b) Not applicable.
- (c) Not applicable.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR-MSRB-2018-01). The amendments to Rule G-21 and new Rule G-40 were to become effective on February 7, 2019. However, to provide the industry with sufficient time to establish supervisory and compliance policies and procedures, the MSRB filed with the SEC for immediate effectiveness an extension of that effective date. The new effective date of the amendments to Rule G-21 and new Rule G-40 will be announced in an MSRB Notice to be published on the MSRB’s website. See File No. SR-MSRB-2019-01.

## 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board at its September 21, 2018 meeting. Questions concerning this filing may be directed to Pamela K. Ellis, Associate General Counsel at (202) 838-1500.

## 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

### (a) Purpose

The proposed rule change would amend Rule G-21 and Rule G-40 (the “advertising rules”) to exempt interactive content that is an advertisement and that would be posted or disseminated on an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal approve that advertisement prior to first use. The proposed rule change also would make a technical amendment to Rule G-8.

### I. Background

#### Interactive and Static Content

During the development of the recent amendments to Rule G-21 and new Rule G-40, the MSRB received requests for guidance regarding the applicability of those rules to the use of social media by brokers, dealers, and municipal securities dealers (collectively, “dealers”) and municipal advisors in connection with their municipal securities activities and municipal advisory activities. The MSRB committed to providing that guidance<sup>6</sup> before the effective date of the amendments to the advertising rules,<sup>7</sup> and developed draft guidance regarding the use of social media in the format of frequently asked questions (the “FAQs”).<sup>8</sup>

---

<sup>6</sup> Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018, available at <http://msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01%20MSRB%20Letter%20to%20SEC.ashx?>

<sup>7</sup> Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR-MSRB-2018-01).

<sup>8</sup> Concurrent with the submission of this proposed rule change, the MSRB filed the FAQs with the SEC for immediate effectiveness.

To receive the benefit of the expertise and experience of market stakeholders, the MSRB requested comment on the draft FAQs.<sup>9</sup> In response, commenters requested<sup>10</sup> that the MSRB adopt the concepts of interactive and static content posted or disseminated in an interactive electronic forum, including the corresponding exemption from the requirement of principal preapproval of interactive content, as provided in connection with FINRA Rule 2210<sup>11</sup> and the amendments thereto.<sup>12</sup> Commenters submitted that such guidance would facilitate the use of

---

<sup>9</sup> [MSRB Notice 2018-19 \(Aug. 14, 2018\)](#) (the “request for comment”).

<sup>10</sup> Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 14, 2018 (“BDA”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated September 17, 2018 at 4-5 (“NAMA”); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated September 14, 2018 at 2 (“SIFMA”); and Letter from Robert J. McCarthy, Director, Regulatory Policy, Wells Fargo Advisors, dated September 14, 2018 at 4 (“Wells Fargo”) available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2018/2018-19.aspx?c=1>.

<sup>11</sup> See, e.g., FINRA Rule 2210(b)(1)(D)(ii); FINRA Regulatory Notice 17-18 (Apr. 2017) at 1; and FINRA Regulatory Notice 11-39 (Aug. 2011) at 2. The references to FINRA materials set forth in this filing are identified for reference, and such reference is not intended to suggest that regulated entities that are not subject to the guidance issued by FINRA are responsible for compliance with that guidance. In addition, the MSRB does not intend for the guidance provided by this filing to modify or otherwise affect the guidance contained in any of the referenced materials published by FINRA.

<sup>12</sup> Previously, FINRA Rule 2210, FINRA’s rule for communications with the public, provided that the definition of a “public appearance” included an unscripted participation in an interactive electronic forum (e.g., a non-static real-time communication); nevertheless, such a “public appearance” did not require a registered principal to approve in advance the remarks made in that interactive electronic forum. However, those remarks would have to be supervised under National Association of Securities Dealers (NASD) Rule 3010. See FINRA Regulatory Notice 10-06 (Jan. 2010) at 4.

Effective in February 2013, FINRA amended FINRA Rule 2210 (the “2013 FINRA Rule 2210 amendments”). See FINRA Regulatory Notice 12-29 (Jun. 2012). The 2013 FINRA Rule 2210 amendments amended FINRA Rule 2210 so that unscripted appearances in interactive electronic forums now are considered retail communications. See FINRA Rule 2210(a)(5). Nevertheless, FINRA Rule 2210 provides that such retail communications would not have to be approved by a registered principal before their first use. However, under FINRA rules, those retail communications must be supervised and reviewed in the same manner as required for supervising and reviewing correspondence under FINRA Rule 3110. See FINRA Rule 2210(b)(1)(D)(ii).

social media by regulated entities in their municipal securities activities and municipal advisory activities.<sup>13</sup> The proposed rule change is responsive to those requests.

### Technical Amendment to Rule G-8

Rule G-27(e)(iii), on supervision, requires, in part, that each dealer retain correspondence of municipal securities representatives “relating to its municipal securities activities in accordance with Rule[s] G-8(a)(xx).” However, Rule G-8(a)(xx) omits a cross-reference to the correspondence that is required by Rule G-27(e)(iii) to be kept.<sup>14</sup> The proposed rule change would make a technical amendment to Rule G-8(a)(xx) to provide that cross-reference.

## II. Proposed amended Rule G-21

To facilitate municipal securities activities for dealers, as well as to promote regulatory consistency with the advertising or communications rules of other financial regulators, proposed amended Rule G-21(g) would exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement for municipal securities principal or general securities principal approval prior to first use as set forth in proposed amended Rule G-21(f). However, such interactive content would be subject to the other requirements, as relevant, of proposed amended Rule G-21.

Interactive content refers to content that is posted or disseminated for direct real-time interaction with the audience. Examples of interactive content include, but are not limited to, chats and messaging.<sup>15</sup> Interactive content, however, may become static content under certain circumstances, such as when interactive content is copied and then posted in a static forum.<sup>16</sup>

Static content, by contrast, is content that is posted or disseminated to an audience that does not include direct real-time interaction with that audience.<sup>17</sup> An example of static content

---

<sup>13</sup> BDA, NAMA at 4-5, SIFMA at 2, and Wells Fargo at 2-3.

<sup>14</sup> Rule G-8(a)(xx) provides that “each broker, dealer and municipal securities dealer shall maintain the records required under G-27(c) and G-27(d).”

<sup>15</sup> See FINRA Regulatory Notice 10-06 (Jan. 2010) at 4-5 (discussing interactive electronic content that allows for non-static real-time communications). The proposed rule change is aligned with FINRA’s guidance in this area.

<sup>16</sup> See FINRA Regulatory Notice 11-39 (Aug. 2011) at 5 (providing that interactive content could become static if the interactive content was copied and posted in a static forum). The proposed rule change is aligned with FINRA’s guidance in this area.

<sup>17</sup> See FINRA Regulatory Notice 10-06 (Jan. 2010) at 4-5 (providing that static content is content that remains posted until it is changed by the firm or individual who established the account). The proposed rule change is aligned with FINRA’s guidance in this area.

includes, but is not be limited to, social media posts.<sup>18</sup> Consistent with other types of advertisements, static content that is an advertisement would be subject to all applicable provisions of proposed amended Rule G-21, including proposed amended Rule G-21(f)'s requirement for approval by a municipal securities principal or general securities principal prior to first use.

Proposed amended Rule G-21(f) would no longer set forth the recordkeeping requirement for advertisements. Instead, such requirement would be set forth in proposed amended Rule G-21(h). By so doing, proposed amended Rule G-21(h) would apply recordkeeping requirements to all advertisements subject to proposed amended Rule G-21, including advertisements that include static or interactive content that are posted or disseminated in an interactive electronic forum.

To address the supervision and review of interactive content, proposed amended Rule G-21 would include Supplementary Material .04 (SM .04). SM .04 would provide that notwithstanding Rule G-21(g), a dealer must supervise and review interactive content in the same manner in which that dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

### III. Proposed amended Rule G-40

To facilitate municipal advisory activities for municipal advisors, as well as to promote regulatory consistency with the advertising or communications rules of other financial regulators, proposed amended Rule G-40(d), similar to proposed amended Rule G-21, would exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement for municipal advisor principal approval prior to first use as set forth in proposed amended Rule G-40(c). However, such interactive content would be subject to the other requirements, as relevant, of proposed amended Rule G-40.

Interactive content refers to content that is posted or disseminated for direct real-time interaction with the audience. Examples of interactive content include, but are not limited to, chats and messaging.<sup>19</sup> Interactive content, however, may become static content, under certain circumstances, such as when interactive content is copied and then posted in a static forum.<sup>20</sup>

Static content, by contrast, is content that is posted or disseminated to an audience that does not include direct interaction with that audience.<sup>21</sup> An example of static content includes,

---

<sup>18</sup> Id.

<sup>19</sup> See note 15.

<sup>20</sup> See note 16.

<sup>21</sup> See note 17.

but is not limited to, social media posts.<sup>22</sup> Consistent with other types of advertisements, static content that is an advertisement would be subject to all applicable provisions of proposed amended Rule G-40, including proposed amended Rule G-40(c)'s requirement for approval by a municipal advisor principal prior to first use.

Proposed amended Rule G-40(c) would no longer set forth the recordkeeping requirement for advertisements. Instead, such requirement would be set forth in proposed amended Rule G-40(e). By so doing, proposed amended Rule G-40(e) would apply recordkeeping requirements to all advertisements subject to proposed amended Rule G-40, including advertisements that include static or interactive content that are posted or disseminated in an interactive electronic forum.

To address the potential need to supervise and review interactive content, proposed amended Rule G-40 would include Supplementary Material .02 (SM .02). SM .02 would provide that notwithstanding Rule G-40(d), each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G-44(a), on supervisory system.

#### IV. Interactive content and FINRA Rule 2210

Commenters requested, as noted above, that the MSRB address interactive content similar to how such content is addressed by FINRA, and proposed amended Rules G-21 and Rule G-40 are responsive to those requests. FINRA addresses interactive content in its communications rule, FINRA Rule 2210, and the structure of proposed amended Rules G-21 and G-40 is consistent with that rule. FINRA Rule 2210:

- exempts interactive content in retail communications posted on an online interactive electronic forum from the requirement of approval by a principal prior to first use;<sup>23</sup>
- requires that such interactive content (retail communications posted on an online interactive electronic forum) be supervised and reviewed in the same manner as correspondence under FINRA's supervision rule, Rule 3110;<sup>24</sup> and
- requires that records be kept regarding those retail communications posted on an online interactive electronic forum.<sup>25</sup>

---

<sup>22</sup> Id.

<sup>23</sup> See FINRA Rule 2210(b)(1)(D).

<sup>24</sup> Id.

<sup>25</sup> See FINRA Rule 2210(b)(4).

Proposed amended Rules G-21 and G-40, as FINRA Rule 2210, would:

- exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement of principal approval prior to first use;<sup>26</sup>
- require that records be kept relating to that interactive content;<sup>27</sup> and
- address the supervision and review of interactive content under applicable MSRB supervisory rules.

Specifically, for dealers, Rule G-27(e) requires that a dealer establish procedures for the review by a designated principal of incoming and outgoing written and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of the dealer. Consistent with FINRA Rule 2210(b)(1)(D), SM .04 would provide that a dealer must supervise and review interactive content in the same manner in which that broker, dealer, or municipal securities dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

For municipal advisors, Rule G-44(a) requires that the municipal advisor establish and implement a supervisory system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and Board rules. However, Rule G-44, unlike Rule G-21, does not have a specific element that addresses the supervision of correspondence. As the MSRB has recognized previously, the approach taken to Rule G-44 differs from the approach taken to Rule G-27.<sup>28</sup> Rule G-27 reflects evolving broker-dealer industry practices and many of Rule G-27's more prescriptive elements reflect the fact that many dealers, unlike municipal advisors, hold customer funds and securities for safekeeping.<sup>29</sup> Complete parallelism between Rules G-44 and Rule G-27 is not possible given that broker-dealers do not owe a fiduciary duty, and therefore, are subject to different standards of conduct.<sup>30</sup> Nevertheless, under Rule G-44, depending on the municipal advisor's municipal advisory activities, a municipal advisor's supervisory policies and procedures may include policies and procedures regarding the supervision and review of correspondence to achieve compliance with applicable securities laws and regulations, including MSRB rules.

Consistent with FINRA Rule 2210(b)(1)(D) and to reflect that the review of correspondence is generally conducted as a supervisory control by a municipal advisor, SM .02

---

<sup>26</sup> Proposed amended Rule G-21(g); proposed amended Rule G-40(d).

<sup>27</sup> Proposed amended Rule G-21(h); proposed amended Rule G-40(e).

<sup>28</sup> See SR-MSRB-2014-06 (July 24, 2014).

<sup>29</sup> Id.

<sup>30</sup> Id.

would provide each municipal advisor, shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G-44(a), on supervisory system. Thus, proposed amended Rules G-21 and G-40 and FINRA Rule 2210 would be consistent, to the extent practicable, in how interactive content would be addressed under their rules.

Although proposed amended Rules G-21 and G-40 and FINRA Rule 2210 would address interactive content in a consistent manner, to the extent practicable, given the nature of the MSRB's advertising rules and FINRA's communications rule, there are differences between proposed amended Rules G-21 and Rule G-40 and FINRA Rule 2210. Nevertheless, those are not substantive differences in how interactive content would be regulated.<sup>31</sup>

(b) Statutory Basis

Section 15B(b)(2) of the Exchange Act<sup>32</sup> provides that:

[t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act<sup>33</sup> provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in

---

<sup>31</sup> FINRA Rule 2210 divides communications into three categories and depending on the communication's category, may require that the communication be filed with FINRA either before or within a set time of first use. By contrast, Rules G-21 and G-40 do not require filing and review by the MSRB. The advertising rules focus, in part, on the advertisement type and the content and the standard of liability for that advertisement type.

<sup>32</sup> 15 U.S.C. 78o-4(b)(2).

<sup>33</sup> 15 U.S.C. 78o-4(b)(2)(C).

municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2)<sup>34</sup> and 15B(b)(2)(C)<sup>35</sup> of the Exchange Act. The proposed rule change would foster coordination with persons engaged in regulating transactions in municipal securities.

The proposed rule change would amend the advertising rules to exempt interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal, as applicable, approve that content prior to first use. Nonetheless, the advertising rules would continue to require that such interactive content comply with the other provisions of the advertising rules, including the content standards (and the requirement that advertisement not contain a false or misleading statement) and recordkeeping requirements of those rules. Thus, regulated entities would be able to provide such interactive content through an interactive electronic forum on terms that would be consistent with the regulations or guidance of FINRA, as noted under “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” to the extent practicable.<sup>36</sup>

Because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance published by FINRA, to the extent practicable, FINRA staff should be familiar with the standards for interactive content. In turn, that familiarity should foster efficient examinations by FINRA of the MSRB-regulated entities that FINRA is charged with examining. Further, a regulated entity that is dually registered as a broker or dealer with the SEC and/or is part of an organization that includes one or more SEC-registered broker-dealers (as many regulated entities are) may be able to more easily understand and develop consistent practices across business lines and therefore promote compliance with the proposed rule change. Nevertheless, a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation.

In addition, the proposed rule change would remove a regulatory impediment regarding the need for principal pre-approval of interactive content in the advertising rules. Nonetheless, the advertising rules still would require that such interactive content comply with the other provisions of the advertising rules including the content standards and recordkeeping requirements of those rules, and generally be subject to the regulated entity’s supervisory program. Accordingly, the proposed rule change would continue to require a regulated entity to

---

<sup>34</sup> 15 U.S.C. 78o-4(b)(2).

<sup>35</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>36</sup> See e.g., FINRA Rule 2210(b)(1)(D)(ii).

present a fair statement of the services, products, or municipal securities or municipal advisory services advertised, but would facilitate a method of communication through an interactive electronic forum. Thus, proposed amended Rules G-21 and G-40 would continue to protect investors, municipal entities, obligated persons and the public interest.<sup>37</sup>

#### **4. Self-Regulatory Organization's Statement on Burden on Competition**

Section 15B(b)(2)(C) of the Exchange Act<sup>38</sup> 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. In accordance with the MSRB's policy on the use of economic analysis, the MSRB has reviewed the proposed rule change.<sup>39</sup> Proposed amended Rules G-21 and G-40 would specify that interactive content that contains an advertisement and that is posted or disseminated in an interactive electronic forum would not be required to be approved in writing by a principal prior to first use, but still would be subject to recordkeeping requirements and the supervisory requirements of Rule G-27 or Rule G-44, as relevant. The MSRB believes the proposed amended Rules G-21 and G-40 are necessary and appropriate to clarify the requirements which would be consistent with the regulation and guidance provided by other regulators.

The need for proposed amended Rules G-21 and G-40 arises from MSRB's oversight of dealers' and municipal advisors' advertising activities. Since financial service professionals, investors, issuers, and other market participants are increasingly using interactive electronic forums as a part of their social media activities, the MSRB agrees with market participants that it is highly desirable to provide regulatory consistency, to the extent practicable, with the requirements associated with interactive and static content that contains advertisements provided by other financial regulators. Proposed amended Rules G-21 and G-40 are intended to reduce impediments to the use of interactive content that is an advertisement.

The MSRB has evaluated alternatives to proposed amended Rules G-21 and G-40. A reasonable regulatory alternative is to subject interactive content posted or disseminated in an interactive electronic forum that contains advertisements to the same requirements as all other advertisements, including advertisements that are posted or disseminated in static forums: namely, content that is an advertisement would require approval in writing from a principal prior to first use. However, the MSRB believes with increased interactive content postings in the marketplace, this alternative is not practical and is less preferable since this would not reflect recent changes in the social media environment and could add significant burden on dealers, municipal advisors and their associated compliance professionals.

---

<sup>37</sup> See SR-MSRB-2018-01 (Jan. 24, 2018).

<sup>38</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>39</sup> Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. For those rule changes which the MSRB seeks immediate effectiveness, the MSRB's policy on the use of economic analysis limits its applications and focuses exclusively on the burden of competition on regulated entities.

A reasonable baseline for evaluating the proposed rule change are the current requirements of Rule G-21 and Rule G-40. The main benefit of proposed amended Rules G-21 and G-40 for dealers and municipal advisors is the explicit elimination of the requirement of receiving prior approval for interactive content that is an advertisement and that will be posted or disseminated in an interactive electronic forum. Proposed amended Rule G-21 should reduce the burden placed on dealers, brokers and municipal securities dealers who presently must request approval to post or disseminate interactive content that is an advertisement on an interactive electronic forum. Proposed amended Rule G-40 should also reduce the potential burden on municipal advisors that otherwise would have to seek approval to distribute interactive advertising content on an interactive electronic forum when Rule G-40 becomes effective.<sup>40</sup>

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

As noted under “Statutory Basis,” a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation. That consistent regulation should improve competition among regulated entities.

In addition, the MSRB believes that proposed amended Rules G-21 and G-40 would clarify that dealer and municipal advisor responsibility regarding interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum that is consistent with the regulation and guidance provided by other regulators, to the extent practicable. Since dealers and municipal advisors would now be permitted to distribute advertisements on real-time electronic forums without prior principal approval, it is probable there would be a reduction in burden on dealers and an improvement in their operation efficiency. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or the reduction in burden, but proposed amended Rules G-21 and G-40 would eliminate the requirement that a principal pre-approve interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum, and therefore, should improve operation efficiency and capital formation.

Section 15B(b)(2)(L)(iv) of the Exchange Act<sup>41</sup> provides that MSRB rules may “not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.” The MSRB believes that

---

<sup>40</sup> Interactive content that contains an advertisement on interactive electronic forums would be subject to the recordkeeping requirements under Rule G-8 for both dealers and municipal advisors.

<sup>41</sup> 15 U.S.C. 78o-4(b)(2)(L)(iv).

proposed amended Rules G-21 and G-40 would not impose an unnecessary or inappropriate regulatory burden on small regulated entities, as the potential reduced burden on dealers and municipal advisors would be applicable to all regulated entities and should be proportionate to each regulated entity's use of interactive content that is an advertisement. The proposed rule change therefore should not affect the competition.

#### **5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received on the proposed rule change. Nevertheless, as discussed under "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change," the proposed rule change was undertaken in response to the comments that the MSRB received from its request for comment on the draft FAQs.<sup>42</sup>

#### **6. Extension of Time Period for Commission Action**

The MSRB does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Exchange Act.

#### **7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>43</sup> and Rule 19b-4(f)(6) thereunder.<sup>44</sup> The proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the MSRB provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change on February 15, 2019, which is at least five business days prior to the date of filing the proposed rule change, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Exchange Act.<sup>45</sup>

#### **8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

---

<sup>42</sup> See notes 6-13 and accompanying text.

<sup>43</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>44</sup> 17 CFR 240.19b-4(f)(6).

<sup>45</sup> 17 CFR 240.19b-4(f)(6)(iii).

Proposed amended Rules G-21 and G-40 are similar to FINRA Rule 2210. Material changes between those rules and FINRA Rule 2210 are discussed above.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-\_\_\_\_\_ ; File No. SR-MSRB-2019-05)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule G-21, on Advertising by Brokers, Dealers and Municipal Securities Dealers, Rule G-40, on Advertising by Municipal Advisors, and Rule G-8, on Books and Records

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_ the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change (the “proposed rule change”) to amend MSRB Rule G-21, on advertising by brokers, dealers and municipal securities dealers, (“proposed amended Rule G-21”) and MSRB Rule G-40, on advertising by municipal advisors, (“proposed amended Rule G-40”) to exempt interactive content that is an advertisement and that would be posted or disseminated on an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal approve that advertisement prior to first use. The proposed rule change would also make a technical amendment to Rule G-8, on books and records to be made

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

by brokers, dealers, and municipal securities dealers and municipal advisors (“proposed amended Rule G-8”). The proposed rule change has been filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The effective date of the amendments to Rule G-21 and Rule G-40 will be announced in an MSRB Notice to be published on the MSRB’s website following the effectiveness of this proposed rule change. To provide brokers, dealers, municipal securities dealers and municipal advisors (collectively, “regulated entities”) with sufficient time to develop supervisory and compliance policies and procedures, the effective date to be announced will be no less than 30 days and no more than 180 days following publication of the MSRB Notice.<sup>5</sup> However, proposed amended Rule G-8 will become operative 30 days after the date of filing.

The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

---

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR-MSRB-2018-01). The amendments to Rule G-21 and new Rule G-40 were to become effective on February 7, 2019. However, to provide the industry with sufficient time to establish supervisory and compliance policies and procedures, the MSRB filed with the SEC for immediate effectiveness an extension of that effective date. The new effective date of the amendments to Rule G-21 and new Rule G-40 will be announced in an MSRB Notice to be published on the MSRB’s website. See File No. SR-MSRB-2019-01.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend Rule G-21 and Rule G-40 (the “advertising rules”) to exempt interactive content that is an advertisement and that would be posted or disseminated on an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal approve that advertisement prior to first use. The proposed rule change also would make a technical amendment to Rule G-8.

Background

Interactive and Static Content

During the development of the recent amendments to Rule G-21 and new Rule G-40, the MSRB received requests for guidance regarding the applicability of those rules to the use of social media by brokers, dealers, and municipal securities dealers (collectively, “dealers”) and municipal advisors in connection with their municipal securities activities and municipal advisory activities. The MSRB committed to providing that guidance<sup>6</sup> before the effective date

---

<sup>6</sup> Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018, available at <http://msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01%20MSRB%20Letter%20to%20SEC.ashx?>

of the amendments to the advertising rules,<sup>7</sup> and developed draft guidance regarding the use of social media in the format of frequently asked questions (the “FAQs”).<sup>8</sup>

To receive the benefit of the expertise and experience of market stakeholders, the MSRB requested comment on the draft FAQs.<sup>9</sup> In response, commenters requested<sup>10</sup> that the MSRB adopt the concepts of interactive and static content posted or disseminated in an interactive electronic forum, including the corresponding exemption from the requirement of principal preapproval of interactive content, as provided in connection with FINRA Rule 2210<sup>11</sup> and the amendments thereto.<sup>12</sup> Commenters submitted that such guidance would facilitate the use of

---

<sup>7</sup> Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR-MSRB-2018-01).

<sup>8</sup> Concurrent with the submission of this proposed rule change, the MSRB filed the FAQs with the SEC for immediate effectiveness.

<sup>9</sup> [MSRB Notice 2018-19 \(Aug. 14, 2018\)](#) (the “request for comment”).

<sup>10</sup> Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 14, 2018 (“BDA”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated September 17, 2018 at 4-5 (“NAMA”); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated September 14, 2018 at 2 (“SIFMA”); and Letter from Robert J. McCarthy, Director, Regulatory Policy, Wells Fargo Advisors, dated September 14, 2018 at 4 (“Wells Fargo”) available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2018/2018-19.aspx?c=1>.

<sup>11</sup> See, e.g., FINRA Rule 2210(b)(1)(D)(ii); FINRA Regulatory Notice 17-18 (Apr. 2017) at 1; and FINRA Regulatory Notice 11-39 (Aug. 2011) at 2. The references to FINRA materials set forth in this filing are identified for reference, and such reference is not intended to suggest that regulated entities that are not subject to the guidance issued by FINRA are responsible for compliance with that guidance. In addition, the MSRB does not intend for the guidance provided by this filing to modify or otherwise affect the guidance contained in any of the referenced materials published by FINRA.

<sup>12</sup> Previously, FINRA Rule 2210, FINRA’s rule for communications with the public, provided that the definition of a “public appearance” included an unscripted participation in an interactive electronic forum (e.g., a non-static real-time communication); nevertheless, such a “public appearance” did not require a registered principal to approve

social media by regulated entities in their municipal securities activities and municipal advisory activities.<sup>13</sup> The proposed rule change is responsive to those requests.

#### Technical Amendment to Rule G-8

Rule G-27(e)(iii), on supervision, requires, in part, that each dealer retain correspondence of municipal securities representatives “relating to its municipal securities activities in accordance with Rule[s] G-8(a)(xx).” However, Rule G-8(a)(xx) omits a cross-reference to the correspondence that is required by Rule G-27(e)(iii) to be kept.<sup>14</sup> The proposed rule change would make a technical amendment to Rule G-8(a)(xx) to provide that cross-reference.

#### Proposed amended Rule G-21

To facilitate municipal securities activities for dealers, as well as to promote regulatory consistency with the advertising or communications rules of other financial regulators, proposed amended Rule G-21(g) would exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement for municipal

---

in advance the remarks made in that interactive electronic forum. However, those remarks would have to be supervised under National Association of Securities Dealers (NASD) Rule 3010. See FINRA Regulatory Notice 10-06 (Jan. 2010) at 4.

Effective in February 2013, FINRA amended FINRA Rule 2210 (the “2013 FINRA Rule 2210 amendments”). See FINRA Regulatory Notice 12-29 (Jun. 2012). The 2013 FINRA Rule 2210 amendments amended FINRA Rule 2210 so that unscripted appearances in interactive electronic forums now are considered retail communications. See FINRA Rule 2210(a)(5). Nevertheless, FINRA Rule 2210 provides that such retail communications would not have to be approved by a registered principal before their first use. However, under FINRA rules, those retail communications must be supervised and reviewed in the same manner as required for supervising and reviewing correspondence under FINRA Rule 3110. See FINRA Rule 2210(b)(1)(D)(ii).

<sup>13</sup> BDA, NAMA at 4-5, SIFMA at 2, and Wells Fargo at 2-3.

<sup>14</sup> Rule G-8(a)(xx) provides that “each broker, dealer and municipal securities dealer shall maintain the records required under G-27(c) and G-27(d).”

securities principal or general securities principal approval prior to first use as set forth in proposed amended Rule G-21(f). However, such interactive content would be subject to the other requirements, as relevant, of proposed amended Rule G-21.

Interactive content refers to content that is posted or disseminated for direct real-time interaction with the audience. Examples of interactive content include, but are not limited to, chats and messaging.<sup>15</sup> Interactive content, however, may become static content under certain circumstances, such as when interactive content is copied and then posted in a static forum.<sup>16</sup>

Static content, by contrast, is content that is posted or disseminated to an audience that does not include direct real-time interaction with that audience.<sup>17</sup> An example of static content includes, but is not be limited to, social media posts.<sup>18</sup> Consistent with other types of advertisements, static content that is an advertisement would be subject to all applicable provisions of proposed amended Rule G-21, including proposed amended Rule G-21(f)'s requirement for approval by a municipal securities principal or general securities principal prior to first use.

Proposed amended Rule G-21(f) would no longer set forth the recordkeeping requirement for advertisements. Instead, such requirement would be set forth in proposed amended Rule G-

---

<sup>15</sup> See FINRA Regulatory Notice 10-06 (Jan. 2010) at 4-5 (discussing interactive electronic content that allows for non-static real-time communications). The proposed rule change is aligned with FINRA's guidance in this area.

<sup>16</sup> See FINRA Regulatory Notice 11-39 (Aug. 2011) at 5 (providing that interactive content could become static if the interactive content was copied and posted in a static forum). The proposed rule change is aligned with FINRA's guidance in this area.

<sup>17</sup> See FINRA Regulatory Notice 10-06 (Jan. 2010) at 4-5 (providing that static content is content that remains posted until it is changed by the firm or individual who established the account). The proposed rule change is aligned with FINRA's guidance in this area.

<sup>18</sup> Id.

21(h). By so doing, proposed amended Rule G-21(h) would apply recordkeeping requirements to all advertisements subject to proposed amended Rule G-21, including advertisements that include static or interactive content that are posted or disseminated in an interactive electronic forum.

To address the supervision and review of interactive content, proposed amended Rule G-21 would include Supplementary Material .04 (SM .04). SM .04 would provide that notwithstanding Rule G-21(g), a dealer must supervise and review interactive content in the same manner in which that dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

#### Proposed amended Rule G-40

To facilitate municipal advisory activities for municipal advisors, as well as to promote regulatory consistency with the advertising or communications rules of other financial regulators, proposed amended Rule G-40(d), similar to proposed amended Rule G-21, would exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement for municipal advisor principal approval prior to first use as set forth in proposed amended Rule G-40(c). However, such interactive content would be subject to the other requirements, as relevant, of proposed amended Rule G-40.

Interactive content refers to content that is posted or disseminated for direct real-time interaction with the audience. Examples of interactive content include, but are not limited to, chats and messaging.<sup>19</sup> Interactive content, however, may become static content, under certain circumstances, such as when interactive content is copied and then posted in a static forum.<sup>20</sup>

---

<sup>19</sup> See note 15.

<sup>20</sup> See note 16.

Static content, by contrast, is content that is posted or disseminated to an audience that does not include direct interaction with that audience.<sup>21</sup> An example of static content includes, but is not limited to, social media posts.<sup>22</sup> Consistent with other types of advertisements, static content that is an advertisement would be subject to all applicable provisions of proposed amended Rule G-40, including proposed amended Rule G-40(c)'s requirement for approval by a municipal advisor principal prior to first use.

Proposed amended Rule G-40(c) would no longer set forth the recordkeeping requirement for advertisements. Instead, such requirement would be set forth in proposed amended Rule G-40(e). By so doing, proposed amended Rule G-40(e) would apply recordkeeping requirements to all advertisements subject to proposed amended Rule G-40, including advertisements that include static or interactive content that are posted or disseminated in an interactive electronic forum.

To address the potential need to supervise and review interactive content, proposed amended Rule G-40 would include Supplementary Material .02 (SM .02). SM .02 would provide that notwithstanding Rule G-40(d), each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G-44(a), on supervisory system.

#### Interactive content and FINRA Rule 2210

---

<sup>21</sup> See note 17.

<sup>22</sup> Id.

Commenters requested, as noted above, that the MSRB address interactive content similar to how such content is addressed by FINRA, and proposed amended Rules G-21 and Rule G-40 are responsive to those requests. FINRA addresses interactive content in its communications rule, FINRA Rule 2210, and the structure of proposed amended Rules G-21 and G-40 is consistent with that rule. FINRA Rule 2210:

- exempts interactive content in retail communications posted on an online interactive electronic forum from the requirement of approval by a principal prior to first use;<sup>23</sup>
- requires that such interactive content (retail communications posted on an online interactive electronic forum) be supervised and reviewed in the same manner as correspondence under FINRA’s supervision rule, Rule 3110;<sup>24</sup> and
- requires that records be kept regarding those retail communications posted on an online interactive electronic forum.<sup>25</sup>

Proposed amended Rules G-21 and G-40, as FINRA Rule 2210, would:

- exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement of principal approval prior to first use;<sup>26</sup>
- require that records be kept relating to that interactive content;<sup>27</sup> and

---

<sup>23</sup> See FINRA Rule 2210(b)(1)(D).

<sup>24</sup> Id.

<sup>25</sup> See FINRA Rule 2210(b)(4).

<sup>26</sup> Proposed amended Rule G-21(g); proposed amended Rule G-40(d).

<sup>27</sup> Proposed amended Rule G-21(h); proposed amended Rule G-40(e).

- address the supervision and review of interactive content under applicable MSRB supervisory rules.

Specifically, for dealers, Rule G-27(e) requires that a dealer establish procedures for the review by a designated principal of incoming and outgoing written and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of the dealer. Consistent with FINRA Rule 2210(b)(1)(D), SM .04 would provide that a dealer must supervise and review interactive content in the same manner in which that broker, dealer, or municipal securities dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

For municipal advisors, Rule G-44(a) requires that the municipal advisor establish and implement a supervisory system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and Board rules. However, Rule G-44, unlike Rule G-21, does not have a specific element that addresses the supervision of correspondence. As the MSRB has recognized previously, the approach taken to Rule G-44 differs from the approach taken to Rule G-27.<sup>28</sup> Rule G-27 reflects evolving broker-dealer industry practices and many of Rule G-27's more prescriptive elements reflect the fact that many dealers, unlike municipal advisors, hold customer funds and securities for safekeeping.<sup>29</sup> Complete parallelism between Rules G-44 and Rule G-27 is not possible given that broker-dealers do not owe a fiduciary duty, and therefore, are subject to different standards of conduct.<sup>30</sup> Nevertheless, under Rule G-44,

---

<sup>28</sup> See SR-MSRB-2014-06 (July 24, 2014).

<sup>29</sup> Id.

<sup>30</sup> Id.

depending on the municipal advisor's municipal advisory activities, a municipal advisor's supervisory policies and procedures may include policies and procedures regarding the supervision and review of correspondence to achieve compliance with applicable securities laws and regulations, including MSRB rules.

Consistent with FINRA Rule 2210(b)(1)(D) and to reflect that the review of correspondence is generally conducted as a supervisory control by a municipal advisor, SM .02 would provide each municipal advisor, shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G-44(a), on supervisory system. Thus, proposed amended Rules G-21 and G-40 and FINRA Rule 2210 would be consistent, to the extent practicable, in how interactive content would be addressed under their rules.

Although proposed amended Rules G-21 and G-40 and FINRA Rule 2210 would address interactive content in a consistent manner, to the extent practicable, given the nature of the MSRB's advertising rules and FINRA's communications rule, there are differences between proposed amended Rules G-21 and Rule G-40 and FINRA Rule 2210. Nevertheless, those are not substantive differences in how interactive content would be regulated.<sup>31</sup>

---

<sup>31</sup> FINRA Rule 2210 divides communications into three categories and depending on the communication's category, may require that the communication be filed with FINRA either before or within a set time of first use. By contrast, Rules G-21 and G-40 do not require filing and review by the MSRB. The advertising rules focus, in part, on the advertisement type and the content and the standard of liability for that advertisement type.

## 2. Statutory Basis

Section 15B(b)(2) of the Exchange Act<sup>32</sup> provides that:

[t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act<sup>33</sup> provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2)<sup>34</sup> and 15B(b)(2)(C)<sup>35</sup> of the Exchange Act. The proposed rule change would foster coordination with persons engaged in regulating transactions in municipal securities.

The proposed rule change would amend the advertising rules to exempt interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal, as applicable, approve that content prior to first use.

---

<sup>32</sup> 15 U.S.C. 78o-4(b)(2).

<sup>33</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>34</sup> 15 U.S.C. 78o-4(b)(2).

<sup>35</sup> 15 U.S.C. 78o-4(b)(2)(C).

Nonetheless, the advertising rules would continue to require that such interactive content comply with the other provisions of the advertising rules, including the content standards (and the requirement that advertisement not contain a false or misleading statement) and recordkeeping requirements of those rules. Thus, regulated entities would be able to provide such interactive content through an interactive electronic forum on terms that would be consistent with the regulations or guidance of FINRA, as noted under “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” to the extent practicable.<sup>36</sup>

Because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance published by FINRA, to the extent practicable, FINRA staff should be familiar with the standards for interactive content. In turn, that familiarity should foster efficient examinations by FINRA of the MSRB-regulated entities that FINRA is charged with examining. Further, a regulated entity that is dually registered as a broker or dealer with the SEC and/or is part of an organization that includes one or more SEC-registered broker-dealers (as many regulated entities are) may be able to more easily understand and develop consistent practices across business lines and therefore promote compliance with the proposed rule change. Nevertheless, a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation.

---

<sup>36</sup> See e.g., FINRA Rule 2210(b)(1)(D)(ii).

In addition, the proposed rule change would remove a regulatory impediment regarding the need for principal pre-approval of interactive content in the advertising rules. Nonetheless, the advertising rules still would require that such interactive content comply with the other provisions of the advertising rules including the content standards and recordkeeping requirements of those rules, and generally be subject to the regulated entity's supervisory program. Accordingly, the proposed rule change would continue to require a regulated entity to present a fair statement of the services, products, or municipal securities or municipal advisory services advertised, but would facilitate a method of communication through an interactive electronic forum. Thus, proposed amended Rules G-21 and G-40 would continue to protect investors, municipal entities, obligated persons and the public interest.<sup>37</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act<sup>38</sup> 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. In accordance with the MSRB's policy on the use of economic analysis, the MSRB has reviewed the proposed rule change.<sup>39</sup> Proposed amended Rules G-21 and G-40 would specify that interactive content that contains an advertisement and that is posted or disseminated in an interactive electronic forum would not be required to be approved in writing by a principal prior to first use, but still would be subject to recordkeeping requirements and the supervisory

---

<sup>37</sup> See SR-MSRB-2018-01 (Jan. 24, 2018).

<sup>38</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>39</sup> Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. For those rule changes which the MSRB seeks immediate effectiveness, the MSRB's policy on the use of economic analysis limits its applications and focuses exclusively on the burden of competition on regulated entities.

requirements of Rule G-27 or Rule G-44, as relevant. The MSRB believes the proposed amended Rules G-21 and G-40 are necessary and appropriate to clarify the requirements which would be consistent with the regulation and guidance provided by other regulators.

The need for proposed amended Rules G-21 and G-40 arises from MSRB's oversight of dealers' and municipal advisors' advertising activities. Since financial service professionals, investors, issuers, and other market participants are increasingly using interactive electronic forums as a part of their social media activities, the MSRB agrees with market participants that it is highly desirable to provide regulatory consistency, to the extent practicable, with the requirements associated with interactive and static content that contains advertisements provided by other financial regulators. Proposed amended Rules G-21 and G-40 are intended to reduce impediments to the use of interactive content that is an advertisement.

The MSRB has evaluated alternatives to proposed amended Rules G-21 and G-40. A reasonable regulatory alternative is to subject interactive content posted or disseminated in an interactive electronic forum that contains advertisements to the same requirements as all other advertisements, including advertisements that are posted or disseminated in static forums: namely, content that is an advertisement would require approval in writing from a principal prior to first use. However, the MSRB believes with increased interactive content postings in the marketplace, this alternative is not practical and is less preferable since this would not reflect recent changes in the social media environment and could add significant burden on dealers, municipal advisors and their associated compliance professionals.

A reasonable baseline for evaluating the proposed rule change are the current requirements of Rule G-21 and Rule G-40. The main benefit of proposed amended Rules G-21 and G-40 for dealers and municipal advisors is the explicit elimination of the requirement of

receiving prior approval for interactive content that is an advertisement and that will be posted or disseminated in an interactive electronic forum. Proposed amended Rule G-21 should reduce the burden placed on dealers, brokers and municipal securities dealers who presently must request approval to post or disseminate interactive content that is an advertisement on an interactive electronic forum. Proposed amended Rule G-40 should also reduce the potential burden on municipal advisors that otherwise would have to seek approval to distribute interactive advertising content on an interactive electronic forum when Rule G-40 becomes effective.<sup>40</sup>

Effect on Competition, Efficiency and Capital Formation

As noted under “Statutory Basis,” a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation. That consistent regulation should improve competition among regulated entities.

In addition, the MSRB believes that proposed amended Rules G-21 and G-40 would clarify that dealer and municipal advisor responsibility regarding interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum that is consistent with the regulation and guidance provided by other regulators, to the extent practicable. Since dealers and municipal advisors would now be permitted to distribute advertisements on real-time electronic forums without prior principal approval, it is probable

---

<sup>40</sup> Interactive content that contains an advertisement on interactive electronic forums would be subject to the recordkeeping requirements under Rule G-8 for both dealers and municipal advisors.

there would be a reduction in burden on dealers and an improvement in their operation efficiency. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or the reduction in burden, but proposed amended Rules G-21 and G-40 would eliminate the requirement that a principal pre-approve interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum, and therefore, should improve operation efficiency and capital formation.

Section 15B(b)(2)(L)(iv) of the Exchange Act<sup>41</sup> provides that MSRB rules may “not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.” The MSRB believes that proposed amended Rules G-21 and G-40 would not impose an unnecessary or inappropriate regulatory burden on small regulated entities, as the potential reduced burden on dealers and municipal advisors would be applicable to all regulated entities and should be proportionate to each regulated entity’s use of interactive content that is an advertisement. The proposed rule change therefore should not affect the competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change. Nevertheless, as discussed under “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” the proposed rule change was undertaken in

---

<sup>41</sup> 15 U.S.C. 78o-4(b)(2)(L)(iv).

response to the comments that the MSRB received from its request for comment on the draft FAQs.<sup>42</sup>

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>43</sup> and Rule 19b-4(f)(6) thereunder.<sup>44</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2019-05 on the subject line.

---

<sup>42</sup> See notes 6-13 and accompanying text.

<sup>43</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>44</sup> 17 CFR 240.19b-4(f)(6).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2019-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2019-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.<sup>45</sup>

Secretary

---

<sup>45</sup> 17 CFR 200.30-3(a)(12).

**Rule G-21: Advertising by Brokers, Dealers or Municipal Securities Dealers**

(a) – (e) No changes.

(f) *Approval by Principal.* Each advertisement subject to the requirements of this rule must be approved in writing by a municipal securities principal or general securities principal prior to first use. [Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all such advertisements.]

**(g) Interactive Content.** Notwithstanding the requirement of section (f), interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum is exempt from the requirement to be approved in writing by a municipal securities principal or general securities principal prior to first use.

**(h) Records.** Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all advertisements.

**Supplementary Material**

**.01-.03** No changes.

**.04 Supervision of Interactive Content.** Notwithstanding Rule G-21(g), each broker, dealer and municipal securities dealer must supervise and review interactive content in the same manner in which that broker, dealer, or municipal securities dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

\* \* \*

**Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers and Municipal Advisors**

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xix) No changes.

(xx) *Records Concerning Compliance with Rule G-27.* Each broker, dealer and municipal securities dealer shall maintain the records required under G-27(c), [and] G-27(d) and G-27(e).

(xxi) - (xxvi) No changes.

(b)- (h) No changes.

\* \* \*

**Rule G-40: Advertising by Municipal Advisors**

(a)-(b) No changes.

(c) Approval by Principal. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal advisor principal, as defined in Rule G-3(e)(i), prior to first use. [Each municipal advisor shall make and keep current in a separate file records of all such advertisements.]

(d) **Interactive Content.** Notwithstanding the requirement of section (c), interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum is exempt from the requirement to be approved in writing by a municipal advisor principal prior to first use.

(e) **Records.** Each municipal advisor shall make and keep current in a separate file records of all advertisements.

**Supplementary Material**

.01 No changes.

.02 **Supervision of Interactive Content.** Notwithstanding Rule G-40(d), each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G-44(a), on supervisory system.