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[Rule G-10](#)  
[Rule G-8](#)  
[Rule G-9](#)  
[Rule G-32](#)

## SEC Approves Extension of MSRB’s Customer Complaint and Related Recordkeeping Rules to Municipal Advisors and the Modernization of Those Rules

### Overview

On January 13, 2017, the Municipal Securities Rulemaking Board (MSRB) received approval from the U.S. Securities and Exchange Commission (SEC) of a proposed rule change consisting of: (i) amendments to MSRB Rule G-10, on delivery of investor brochure; Rule G-8, on books and records to be made by brokers, dealers, and municipal securities dealers and municipal advisors; and Rule G-9, on preservation of records; and (ii) an MSRB notice regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings (amendments).<sup>1</sup> The adoption of the amendments represents another milestone in the MSRB’s development of a comprehensive regulatory framework for municipal advisors in the exercise of the rulemaking granted to the MSRB by the Dodd-Frank Wall Street Reform Act (the “Dodd-Frank Act”).<sup>2</sup> In addition, the adoption of the amendments furthers the MSRB’s mandate to protect investors, municipal entities, obligated persons and the public interest by modernizing the MSRB’s customer complaint and related recordkeeping rules.

The amendments will become effective on October 13, 2017, approximately nine months from the date of SEC approval.

Questions about this notice may be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.



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<sup>1</sup> Exchange Act Release No 79801 (Jan. 13, 2017).

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

## Background

In developing the amendments to Rules G-10, G-8 and G-9, the MSRB sought to create requirements that would be consistent with the mandates under the Dodd-Frank Act to protect municipal entities and obligated persons as well as to be responsive to market participants that recommended that the MSRB update its customer complaint rules.<sup>3</sup> After filing the amendments with the SEC, the MSRB carefully considered all comments submitted, as reflected in a number of revisions to rule text, as well as the extension of the effective date, that were responsive to or derivative of comments received. The MSRB believes that market participants enhanced the development of the amendments by their participation, and is appreciative of their engagement in the development of the amendments.

## Summary of Rule Changes

In summary, the amendments extend the MSRB's customer complaint and related recordkeeping rules to municipal advisors and modernizes those rules. As discussed below, the amendments: (i) extend the MSRB's customer complaint recordkeeping requirements to all municipal advisors (*i.e.*, non-solicitor and solicitor municipal advisors) as well as align those recordkeeping requirements more closely with the customer complaint recordkeeping requirements of other financial regulators, (ii) require that all regulated entities retain their customer or municipal advisory client<sup>4</sup> complaint records for six years, (iii) overhaul Rule G-10 so that the rule more closely focuses on customer and municipal advisory client education and protection as well as align that rule with the customer education and protection rules of other financial regulators, and (iv) extend the MSRB's guidance under Rule G-32, Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (Nov. 20, 1998) (the "1998 Notice"), to municipal advisors.

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<sup>3</sup> In 2012, the MSRB initiated a review of its rules and related interpretive guidance for brokers, dealers and municipal securities dealers (collectively, "dealers") and municipal advisors (municipal advisors, together with dealers, "regulated entities"). MSRB Notice 2012-63, Request for Comment on MSRB Rules and Interpretive Guidance (Dec. 18, 2012). In response, some market participants recommended that the MSRB update Rule G-10.

<sup>4</sup> See "Recordkeeping Requirements" below for a discussion of the definition of municipal advisory client.

By type of regulated entity, the rule changes will:

#### **Municipal Advisors**

- Amend Rule G-8 to exclude municipal advisors from the definition of “customers;”
- Amend Rule G-8 to include the definition of “municipal advisory client;”
- Amend Rule G-8 to extend the requirements that are similar to the rule’s customer complaint recordkeeping requirements to municipal advisory client complaint recordkeeping;
- Amend Rule G-8 to provide guidance in supplementary material that defines electronic recordkeeping;
- Amend Rule G-8 to provide guidance in supplementary material that reminds a municipal advisor that it may be required to promptly report certain municipal advisory client complaints to other regulatory authorities;
- Amend Rule G-9 to require that the records of municipal advisory client complaints be kept for at least six years;
- Amend Rule G-10 to extend requirements that are similar to the rule’s dealer customer protection and education requirements to municipal advisory client protection and education; and
- Extend to municipal advisors, under Rule G-32, the guidance provided by the 1998 Notice, as relevant.

#### **Dealers**

- Amend Rule G-8 to require that dealers keep a standardized complaint log electronically, using product and problem codes tailored for municipal securities, to document the written complaints of customers;
- Amend Rule G-8 to define written customer complaints to include complaints received electronically by the dealer;
- Amend Rule G-8 to provide guidance in supplementary material that defines electronic recordkeeping;
- Amend Rule G-8 to provide guidance in supplementary material to remind a dealer that it may be required to promptly report certain written customer complaints to other regulatory authorities; and
- Amend Rule G-10 in its entirety so that the rule more clearly focuses on customer protection and education.

A more detailed discussion of the amendments follows.

### **Recordkeeping Requirements**

Rule G-8 currently requires that a dealer keep a record of all written complaints from customers and what action, if any, has been taken by the dealer in connection with those complaints. The amendments to Rule G-8 will enhance those current recordkeeping requirements and then extend those enhanced recordkeeping requirements to municipal advisors. More specifically, amended Rule G-8 will require regulated entities to retain additional detailed information about complaints electronically using a standard set of complaint product and problem codes. Supplementary Material will define electronic recordkeeping, and will remind regulated entities of their complaint reporting obligations to other regulatory authorities.

The three major components of the amendments to Rule G-8 – namely, the application of those requirements to municipal advisors, the electronic complaint log, and supplementary material – are discussed below.

#### *Application of Customer Complaint Recordkeeping Requirements to Municipal Advisors*

To extend its customer complaint recordkeeping requirements to municipal advisors, amended Rule G-8 will: (i) define municipal advisory client and (ii) require that a municipal advisor keep a record of written municipal advisory client complaints similar to the record that will be required for dealers to keep of customer complaints (see discussion under “Electronic Complaint Log” below).<sup>5</sup> Also, amended Rule G-9 will extend the record retention period applicable to customer complaints under Rule G-9(a)(v) to municipal advisory client complaints under Rule G-9(h)(iii).

Consistent with the MSRB’s mandate under the Dodd-Frank Act to protect investors, municipal entities and obligated persons,<sup>6</sup> the definition of municipal advisory client under amended Rules G-8 and G-10 will include clients of non-solicitor and solicitor municipal advisors. Specifically, amended Rules G-8 and G-10 will provide, in part, that a municipal advisory client shall include:

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<sup>5</sup> “Written” will include electronic correspondence. “Complaint” will mean any written statement alleging a grievance involving the activities of the dealer or any of its associated persons with respect to a customer’s account or involving the municipal advisory activities of the municipal advisor or any of its associated persons. See amended Rule G-8(a)(x)(ii) and (h).

<sup>6</sup> See *supra* note 2.

either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in [MSRB] Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

Further, amended Rule G-9 will set the record retention period for written municipal advisory client complaints at six years. Because of the potential importance of municipal advisory client complaints to informing other regulators on inspections of regulated entities and on the potential enforcement of MSRB rules (see discussion under “Electronic Complaint Log” below), the MSRB believes that the retention period for such municipal advisory client complaint records should correspond to the existing period for dealers for customer complaint records.

#### *Electronic Complaint Log*

Amended Rule G-8 will require that all regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients and persons acting on behalf of such customers or municipal advisory clients. There will be no option to keep the complaint log solely in a paper format. The electronic complaint log will include identifying information about the customer or municipal advisory client (*i.e.*, his, her or its name, address, and account number or municipal advisory client number or code, if any), the date the complaint was received, the date of the activity that gave rise to the complaint, and the name of each person whom the customer or municipal advisory client identifies in his or her complaint. The record also will include a description of the nature of complaint, and the action, if any, the dealer or municipal advisor has taken concerning the complaint. The log will require that the regulated entity code the complaint using a standard set of product and problem codes.

By enhancing the information about customer and municipal advisory client complaints that a regulated entity will be required to keep, as well as by requiring that the regulated entity keep those records electronically using standard codes, amended Rule G-8 will align with the recordkeeping requirements of other financial regulators. For example, Rule 17a-3(18)

under the Exchange Act<sup>7</sup> and FINRA Rule 4513<sup>8</sup> each requires information about customer complaints similar to what would be required under the amendments. Further, FINRA Rule 4530 requires that member firms use product and problem codes to code their electronic logs of customer complaints.<sup>9</sup>

As noted above, the MSRB will develop codes for the electronic complaint log that will be based on the product and problem codes required by FINRA Rule 4530, but will be tailored to address municipal securities and municipal advisory activities.<sup>10</sup> The MSRB will make such codes available in a manual that will be posted on its website, and will coordinate with FINRA about those codes. A regulated entity, similar to the requirement for dealers under

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<sup>7</sup> Rule 17a-3(a)(18), 17 CFR 240.17a-3(a)(18), provides, in part, that every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall make and keep current the following books and records relating to its business:

A record:

- (i) As to each associated person of each written customer complaint received by the member, broker or dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. . .
- (ii) Indicating that each customer of the member, broker or dealer has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to the account may be directed.

<sup>8</sup> FINRA Rule 4513(a) provides, in part, that:

[e]ach member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints.

<sup>9</sup> See FINRA Rule 4530(d). The product and problem codes used under Rule 4530 as of August 29, 2016 are available at [http://www.finra.org/sites/default/files/Web%20-%20Complaints%20%20Problem%20and%20Product%20Codes\\_0.pdf](http://www.finra.org/sites/default/files/Web%20-%20Complaints%20%20Problem%20and%20Product%20Codes_0.pdf).

<sup>10</sup> *Id.*

FINRA Rule 4530, will be required to select the most prominent product and the most egregious problem discussed in the complaint.

#### *Supplementary Material*

Amended Rule G-8 will include supplementary material under Rule G-8 that will provide guidance as to the term “electronic format” used in amended Rules G-8(a) and (h), and will remind regulated entities of their reporting obligations to other regulatory authorities. The supplementary material, in paragraph .01, will make clear that a regulated entity could use any electronic format, *i.e.*, computer software that allows for the storing, organization and manipulation of data, as long as the software will allow for the electronic complaint log to be provided promptly upon request to a regulatory authority. The supplementary material, in paragraph .02, also will remind a regulated entity that it may have the duty to report certain complaints, such as complaints involving theft, to other appropriate regulatory authorities.

#### **Customer and Municipal Advisory Client Education and Protection**

The amendments will overhaul Rule G-10 to replace the current rule with a more modern customer and municipal advisory client education and protection rule. Amended Rule G-10 will apply to dealers and municipal advisors.

At its core, the MSRB originally designed Rule G-10 to protect investors by providing investors with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority. That information also includes an overview of the investor protections provided by MSRB rules. However, investors currently do not receive this information until after they have made a complaint to or about the dealer; at that point, the information in the investor brochure may arrive at a point in time that would impede the investor from making the best use of the information provided in the investor brochure. To solve that issue, amended Rule G-10 will modernize that rule.

Amended Rule G-10 will remain a rule that is focused on investor education and protection. However, instead of an investor receiving the educational material and information about filing a complaint only after he or she has made a complaint, the customer or municipal advisory client will receive more regular notifications from its regulated entity about the availability of such materials. Specifically, a dealer will be required to notify a customer about its registration status and the availability of the educational material annually, and a municipal advisor will be required to notify a municipal advisory client about its registration and the availability of educational material promptly, after the establishment of a municipal advisory

relationship, or promptly, after entering into an agreement to undertake a solicitation of a municipal entity or obligated person, and no less than once each calendar year during the course of a municipal advisory relationship. The notifications will require that the regulated entity disclose (i) that the regulated entity is registered with the MSRB and the SEC, (ii) the MSRB's website address, and (iii) that there is a brochure available on the MSRB website that describes the protections available under MSRB rules and how to file a complaint with an appropriate regulatory authority.

By requiring these notifications, the MSRB believes that a customer or municipal advisory client will be able to receive detailed and relevant information about its regulated entity, the protections provided by MSRB rules, and how to make a complaint in a more timely and consistent fashion. Further, by reminding the customer or municipal advisory client about the regulated entity's registration with the MSRB and SEC, the Board believes that a customer or municipal advisory client might be more likely to access the information and educational materials that are available from the MSRB and SEC, or the regulatory authority that may examine the regulated entity and/or enforce the MSRB's rules. The notifications will address concerns raised by market participants that the investor brochure may be of limited use to certain investors, such as institutional investors and investors in municipal fund securities, by directing investors to the most complete range of relevant information about the regulated entity, including the regulation of that regulated entity.<sup>11</sup>

Amended Rule G-10 will not specify, other than in writing, how the customer or municipal advisory client will receive the notifications. Amended Rule G-10 contemplates that the regulated entity could include the notifications with other materials. Further, as suggested by commenters to Regulatory Notice 2012-63, unlike with the current Rule G-10, a regulated entity will not be required to deliver an investor brochure to the customer. The notifications will replace that requirement.

The amendments will align Rule G-10 with FINRA Rule 2267, Investor Education and Protection, which contains similar notification requirements.<sup>12</sup>

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<sup>11</sup> See *supra* note 3.

<sup>12</sup> FINRA Rule 2267(a) provides, in part, that:

Except as otherwise provided in this Rule, each member shall once every calendar year provide in writing (which may be electronic) to each customer the following items of information:

### Electronic Delivery Guidance for Municipal Advisors

In 1998, the MSRB published guidance under Rule G-32 regarding the electronic delivery and receipt of information by dealers. The MSRB, in part, based that guidance on guidance that the SEC had provided about electronic delivery of information. However, since that time, the Dodd-Frank Act has granted the Board with rulemaking authority over municipal advisors.<sup>13</sup> To ensure that municipal advisors could take full advantage of the MSRB's electronic delivery guidance, as well as to ensure that the amendments to Rule G-10 will work as intended, the amendments will extend the MSRB's guidance provided by the 1998 notice to municipal advisors.

January 18, 2017

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## Text of Amendments\*

### **Rule G-10: [Delivery of] Investor [Brochure] and Municipal Advisory Client Education and Protection**

(a) Each broker, dealer and municipal securities dealer (collectively, a "dealer") shall, once every calendar year, provide in writing (which may be electronic) to each customer the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

(ii) the website address for the Municipal Securities Rulemaking Board; and

(iii) a statement as to the availability to the customer of an investor brochure that is posted on the website of the Municipal Securities Rulemaking Board that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority. [shall deliver a copy of the investor brochure to a customer promptly upon receipt of a complaint by the customer.]

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- (1) FINRA BrokerCheck Hotline Number;
  - (2) FINRA Web site address; and
  - (3) A statement as to the availability to the customer of an investor brochure that includes information describing FINRA BrokerCheck.

<sup>13</sup> See *supra* note 2.

\* Underlining indicates new language; strikethrough denotes deletions.

[(b) For purposes of this rule, the following terms have the following meanings:

(i) the term “investor brochure” shall mean the publication or publications so designated by the Board, and

(ii) the term “complaint” is defined in rule G-8(a)(xii).]

(b) Each municipal advisor shall promptly, after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), and no less than once each calendar year thereafter during the course of that municipal advisory relationship, or promptly, after entering into an agreement to undertake a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and no less than once each calendar year thereafter during the course of that agreement, provide in writing (which may be electronic) to the municipal advisory client, the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

(ii) the website address for the Municipal Securities Rulemaking Board; and

(iii) a statement as to the availability to the municipal advisory client of a municipal advisory client brochure that is posted on the website of the Municipal Securities Rulemaking Board that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.

(c) For the purposes of this rule, a municipal advisory client shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

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### **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) - (xi) No change.

(xii) *Customer Complaints*. A record of all written complaints of customers, and persons acting on behalf of customers[,] that are received by the broker, dealer or municipal securities dealer. This record must include the complainant's name, address, and account number; the date the complaint was received; the date of the activity that gave rise to the complaint; the name of each associated person of the broker, dealer or municipal securities dealer identified in the complaint; a description of the nature of the complaint; and what action, if any, has been taken by such broker, dealer or municipal securities dealer in connection with each such complaint. In addition, this record must be kept in an electronic format using the complaint product and problem codes set forth in the Municipal Securities Rulemaking Board Rule G-8 Customer and Municipal Advisory Client Complaint Product and Problem Codes Guide.

The term "written," for the purposes of this paragraph, shall include electronic correspondence. The term "complaint" shall mean any written statement alleging a grievance involving the activities of the broker, dealer or municipal securities dealer or any associated persons of such broker, dealer or municipal securities dealer with respect to any matter involving a customer's account.

(xiii) - (xxvi) No change.

(b) – (d) No change.

(e) *Definitions*.

(i) [of] *Customer*. For purposes of this rule, the term "customer" shall not include a broker, dealer, [or] municipal securities dealer or municipal advisor acting in its capacity as such or the issuer of the securities which are the subject of the transaction in question.

(ii) *Municipal Advisory Client*. For the purposes of paragraph (h)(vi) of this rule, the term "municipal advisory client" shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

(f) – (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) - (v) No change.

(vi) *Municipal Advisory Client Complaints*. A record of all written complaints of municipal advisory clients or persons acting on behalf of municipal advisory clients that are received by the municipal advisor. This record must include the complainant's name, address, and municipal advisory client number or code, if any; the date the complaint was received; the date of the activity that gave rise to the complaint; the

name of each associated person of the municipal advisor identified in the complaint; a description of the nature of the complaint; and what action, if any, has been taken by such municipal advisor in connection with each such complaint. In addition, this record must be kept in an electronic format using the complaint product and problem codes set forth in the Municipal Securities Rulemaking Board Rule G-8 Customer and Municipal Advisory Client Complaint Product and Problem Codes Guide.

The term “written,” for the purposes of this paragraph, shall include electronic correspondence. The term “complaint” shall mean any written statement alleging a grievance involving the municipal advisory activities of the municipal advisor or any associated person of such municipal advisor.

**---Supplementary Material:**

**.01 Electronic Recordkeeping.** Paragraphs (a)(xii) and (h)(vi) of this rule require that customer complaint logs be kept in an electronic format. For those purposes, “electronic format” is defined as any computer software program that is used for storing, organizing and/or manipulating data that can be provided promptly upon request to a regulatory authority.

**.02 Other Reporting Requirements.** In addition to the recordkeeping requirements of Paragraphs (a)(xii) and (h)(vi) of Rule G-8, the regulated entity may be required to promptly report certain written customer or municipal advisory client complaints to other appropriate regulatory authorities. Those written customer or municipal advisory client complaints that may be required to be promptly reported to other appropriate regulatory authorities include complaints in which the customer or municipal advisory client alleges theft or misappropriation of funds or securities or of forgery.

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**Rule G-9: Preservation of Records**

(a) – (g) No change.

(h) *Municipal Advisor Records.*

(i) - (ii) No change.

(iii) The records described in Rule G-8(h)(iii) and (vi) shall be preserved for at least six years; provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness.

(i) – (k) No change.

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### **Rule G-32 Interpretation – Notice Regarding Electronic Delivery and Receipt of Information by Municipal Advisors**

In November 1998, the MSRB published an interpretation about the use of electronic media to deliver and receive information by brokers, dealers and municipal securities dealers under Board rules (the “1998 interpretation”). Since that time, the MSRB has been granted rulemaking authority over municipal advisors, and in the exercise of that authority, the MSRB has been developing a comprehensive regulatory framework for municipal advisors.

The Board believes that the use of electronic media to deliver and receive information under Board rules also is important for municipal advisors, and extends the guidance provided in the 1998 interpretation, as relevant, to municipal advisors. **See Rule G-32 Interpretation – Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998).**