



THE NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS

*For Compliance | By Compliance*

January 14, 2014

**VIA ELECTRONIC MAIL**

Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

**Re: MSRB Regulatory Notice 2013-22 (December 13, 2013)**

Dear Mr. Smith:

This letter is submitted on behalf of the National Society of Compliance Professionals, Inc. (the “NSCP”) in response to the publication by the Municipal Securities Rulemaking Board, (“MSRB”). In Regulatory Notice 2013-22, the MSRB proposes amendments to Rule G-3 to require all associated persons primarily engaged in municipal securities activities to participate in a minimum of one hour of firm element continuing education (“CE”) on municipal securities topics annually. Additionally, Rule G-3(a)(ii)(c) would be modified so as to be analogous with FINRA’s NASD Rule 1032(b).

**About the NSCP:**

The NSCP is a non-profit membership organization with approximately 2,000 securities industry professionals dedicated to developing education initiatives and practical solutions to compliance-related issues. Our members work in the compliance areas of broker-dealers, investment advisers and private fund firms and come from firms of all sizes. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States devoted exclusively to compliance.

Our remarks reflect the NSCP’s fundamental mission, which is to set the standard for excellence in the securities compliance profession. This commitment is exemplified by, among other things, the time and resources the NSCP, and the industry professionals whose volunteer services its marshals, have devoted in the past seven years to the development of a voluntary certification and examination program for compliance professionals.<sup>1</sup>

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<sup>1</sup> Persons who complete NSCP’s certification program qualify for the “Certified Securities Compliance Professional” (CSCP) designation.

Our mission is directed at the interests of compliance programs and compliance professionals. We accordingly support a regulatory scheme that: (1) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonable workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

We shall first address the proposed rules changes in the Regulatory Notice and then address the concerns we have about certain aspects of some of the proposed changes.

1. Rule G-3 and G-7: Professional Qualifications. The proposed changes would eliminate the requirement of MSRB Rule G-3(d) for certain firms to appoint at least one financial and operation principal. We believe this is appropriate since it eliminates requirements that are redundant of FINRA requirements, *e.g.*, FINRA's NASD Rule 1022(b).

2. Rule G-3: Professional Qualifications. Rule G-3 would also be modified to limit the activities of a Limited Representative exclusively to sales and purchase from customers of municipal fund securities. This change would amend Rule G-3(a)(ii)(C) to be consistent with FINRA's NASD Rule 1032(b) so that a Series 6 Limited Representative would be precluded from engaging in activities other than sales. We believe this is an appropriate change which will reduce confusion as to the appropriate activities to be engaged in by a Series 6 Limited Representative.

If this change is adopted, following completion of the administrative review and adoption process, we recommend that MSRB clarify that the Limited Representative license referenced in the Regulatory Notice is the Series 6 (Investment Company and Variable Contracts Products) license. It would not affect the Series 51 (Mutual Fund Representative) or the Series 52 (Municipal Securities Representative) license categories.<sup>2</sup> Thus, there will continue to be three designations of municipal registered representatives: (1) Municipal Securities Representatives, (2) Municipal Securities Limited Representatives, and (3) Municipal Securities Representatives qualified by virtue of being a Limited Representative – Investment Company and Variable Products.

3. Rule G-3(h): Continuing Education Requirements. Rule G-3(h)(ii)(A) would be modified to apply its requirements to any "associated person as defined by MSRB Rule D-11." Associated persons (excluding those with solely clerical or ministerial functions) would be deemed "covered persons." This would broaden the scope of covered persons to include non-registered persons. Currently, the rule covers registered persons being in direct contact with customers, and those engaged in trading and investment banking activities and their immediate supervisors. With the concerns described later in this letter, it seems reasonable for non-registered persons to be required to complete continuing education training. We note, however, that this new requirement represents a departure from current industry-wide requirements, *e.g.*, FINRA Rule 1250 prescribes requirements for registered persons only. Registered persons are obviously bound by FINRA and MSRB rules and their registration necessarily includes a specific agreement that they are so bound. Mandating continuing

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<sup>2</sup> See MSRB Notice 2011-62 (November 7, 2011) for a full description.

education for non-registered persons may involve changes in the terms and conditions of employment for such employees (or otherwise associated persons). While MSRB members may be penalized for failing to implement such training, it is unclear what authority the MSRB has with respect to such individuals. Clearly, such persons are not subject to the loss of their registration status. We wonder if the MSRB has considered the full implications of such a change, especially since it reflects a departure from the requirements imposed by other self-regulatory organizations.<sup>3</sup>

Rule G-3(h)(ii)(B) (Standards for the Firm Element) would be modified to apply to “covered persons” (as redefined) primarily engaged in activities described in Rule G-3(a)(i). We ask if the MSRB has in mind a definition of “primarily engaged in.” Does this mean persons who have generated revenue constituting more than 50% of their revenue production; more than 50% of their transactional work; 50% of their average daily activity? We suggest that firms would be challenged in accurately identifying such persons on a consistent basis. Firms would also be challenged in assuring that the proper universe of “covered persons” will be identified on an ongoing basis and appropriately trained. Would an annual evaluation be required that firms must adequately substantiate to show compliance?

Policy Concerns. Besides the technical aspects of the proposed changes we discussed above, we have the following concerns:

1. Departure from Current FINRA – Mandated Standards for the Firm Element. As the MSRB is aware, firms must annually evaluate and prioritize their training needs. FINRA Rule 1250 requires members to implement a training program covering the securities products services and strategies they offer. Firms must conduct an annual “Needs Analysis.” Included in this evaluation, firms must, at a minimum, cover the general investment features and associated risk factors, suitability and sales practice considerations and applicable regulatory requirements. Generally, this annual Needs Analysis is to be particularized to a firm’s business and no special categories of that business are isolated for special treatment. Indeed, this Needs Analysis process is supported by the Securities Industry Continuing Education Council<sup>4</sup> in regularly published Firm Element Advisories. We note that in the most recent Advisory for example, a significant number of MSRB-related topics are recommended for consideration. (The Fall 2013 Advisory included these topics: Telemarketing, MSRB Rule G-39; Build America and Direct Pay Bonds, MSRB Notice 2013-13; Political Contributions, MSRB Notice 2013-09; Interdealer Dollar Pricing, MSRB Notices 2013-13 and 2012-55; MSRB Rule G-17, Application to Municipal Securities Underwriters; Regulation of Broker’s Brokers, MSRB Notice 2012-34; EMMA System; New Issue and Information Submission Requirements, MSRB 2012-64.)

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<sup>3</sup> Perhaps, rather than eliminating the “registered” component of “covered registered person” to capture the municipal securities representatives that the MSRB seeks to have trained, the Board could simply drop the “who has direct contact with customers in the conduct of the broker, dealer ...” portion of the MSRB Firm Element rule. In other words, if you perform activities that require significant regulatory responsibility, then you must be registered. And, if you are registered, then you are covered by G3(h)(ii) Firm Element requirements.

<sup>4</sup> Securities Industry/Regulatory Council on Continuing Education

We believe that firms engaged in the municipal securities business are currently required by FINRA rules to provide appropriate continuing education training to their employees and agents commensurate with the scope and volume of their business. We note that in MSRB Notice 2011-62, the MSRB reminded firms of their responsibilities to develop continuing education initiatives which suitably address their employees/agents conducting municipal securities activities:

The MSRB would expect that as a dealer's business becomes more focused on municipal securities, the written training plan would call for greater training regarding municipal securities and related regulatory developments. Similarly, as a dealer's municipal securities activities becomes more complex, the MSRB would expect that the written training plan would call for greater emphasis on those areas of complexity.

In accordance with the requirements of Rule G-27(b)(ii)(C)(1), dealers must designate a Municipal Securities Principal as responsible for supervising the various municipal securities activities of the dealer, including the Firm Element of the continuing education program as it applies to the dealer's municipal securities activities. To the extent a dealer engages in securities activities, other than municipal securities activities, which are covered by the continuing education rules of a registered securities association, it is the expectation of the MSRB that a Municipal Securities Principal would coordinate with any other personnel assigned to oversee the firm's overall continuing education program and would review the written training plan in order to confirm that the plan provides adequate coverage of municipal securities in light of the dealer's activities in that market.

We understand that firms have undertaken to provide CE training consistent with the municipal securities business conducted at these Firms.

We ask if the MSRB staff has conducted a review sufficient to demonstrate that firms are not appropriately conducting CE training tailored for individuals engaged in the municipal securities business. We question whether extraordinary training efforts should target those primarily engaged in the municipal securities business, as opposed to those persons not primarily engaged in the business. We suggest that less actively engaged persons might be more appropriate targets for municipal-related training. The occasional sale of a municipal securities product might arguably have been affected by a person less actively engaged in municipal business and perhaps less knowledgeable about industry and regulatory developments.

We question the need for a prescriptive rule suggesting a minimum amount of time to be committed to municipal securities-related CE training. Currently, there are no prescriptive rules that we are aware of that mandate specific time on any aspect of securities industry CE training.

Request for Comments. We believe that the Regulatory Notice poses some excellent questions seeking relevant data concerning the imposition of new burdens placed upon firms in terms of cost and process changes that might have to be developed. Given the limited amount of time allowed for

comments (30 days) which overlapped the extended holiday season for a good part of that time, we recommend that the MSRB allow a longer period of time for firms to become familiar with the MSRB's proposed changes and to supply more responsive information. Given the timing it has been difficult to identify much in the way of data to be responsive to the questions posed. With more time, NSCP could reach out to more members for additional information if so requested by the MSRB. Nonetheless, we offer some thoughts on several of the questions posed in the Request for Comment:

- Anticipated benefits of protecting investors resulting from proposed training requirement changes. We are unaware of how much actual change would result from the proposed changes since firms are required to provide CE training targeting the products, services and strategies they currently offer. We are not sure what would be added except for a new process to identify certain "covered persons" to receive at least one hour of focused training. Such a process would presumably need to be included in a firm's written supervisory procedures with which the execution of such procedures must be "proved up" by documentation.

- Generally, the annual Needs Analysis for designing a firm's CE program is performed by the firm's compliance professionals often working with other business and operations area personnel. In smaller firms, much of the administrative burden for identifying topics to be covered and persons to receive CE training is borne by a firm's compliance department. A prescriptive requirement, *e.g.*, minimum of one hour for each "covered person" will add to the administrative burden for those persons and because of the detail involved perhaps result in greater opportunity for errors. Training is considered very important by the compliance profession but at the same time we do not want individuals to lose sight of its importance while being bogged down by administrative functions associated with such a prescriptive rule.

- The estimate of costs for firms to develop one hour of focused Firm Element is unclear. Based upon the limited information obtained from a few of our members, we understand that the cost of developing (or buying) a single 20 minute training program could vary between \$5,000 to \$15,000 if it was determined that additional training courses were needed (*i.e.* new covered persons). Many firms currently use third party vendors to provide courses as well. Total costs for firms would vary based upon the size of firms and their scope of business. A few estimates ranged from \$25,000 to \$100,000. As mentioned, these estimates are calculated based upon the prior experience of the few NSCP members we were able to contact. We recommend that the MSRB seek further input reflecting its determination of how a firm's CE process would need to be modified, how covered persons are to be identified, and what types of training are anticipated. In other words, greater accuracy of projecting anticipated costs may be supported by more precision in what would be expected to be implemented.

- The responses too many of the excellent questions posed in the Request for Comment will depend upon the business model, size and experience of each firm. Once again, in the limited time available, we are unable to provide much information that is responsive. We ask if the MSRB has a sufficient amount of data to conclude that the objectives of the proposed changes are not currently being met through existing continuing education efforts by firms.

- The MSRB asks if alternatives to the proposed changes are available. We suggest that through the Securities Industry Council, the MSRB continue to press for inclusion of appropriate coverage of municipal securities issues in the Regulatory and Firm Elements of continuing education recommendations. For example, we understand that persons registered in the operations professional category are prescreened when taking the Regulatory Element Training, *i.e.*, individuals taking such training identify the operational areas they are engaged in. Training is thus tailored to assume they are knowledgeable about important aspects of the operational areas they are engaged in. Persons taking Firm Element courses who are primarily involved in municipal securities could be similarly identified and appropriately trained on issues they are expected to know about.

Further, we believe that the MSRB, FINRA and the SEC could undertake to develop a White Paper describing best practices for firms to develop and implement their continuing education programs. Thus each firm could be guided in establishing continuing education programs that are consistent with its business model.

Conclusion: We commend MSRB for seeking guidance on ways for firms to develop programs to effectively train their supervised persons engaged in the municipal securities business. We believe that firms should be able to tailor their CE training programs within a flexible process. We also believe that mandating prescriptive minimum hourly training requirements is inconsistent with the industry-wide goal of designing CE training appropriately addressing each firm's needs, based upon a self-managed analysis.

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Thank you for your attention to these comments. The NSCP appreciates the opportunity to submit comments in response to the Notice and would welcome the opportunity to answer any follow-up questions the MSRB has on this submission. Questions regarding the foregoing should be directed to the undersigned at (860) 672-0843.

Very truly yours,



Judy Werner  
Executive Director  
jwerner@nscp.org