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Stakeholders
Brokers, Dealers,
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Notice Type
Request for Comment

**Comment
Deadline**
June 28, 2021

Category
Fair Practice

Affected Rules
[Rule G-10](#)
[Rule G-48](#)
[Rule D-9](#)
[Rule D-15](#)

Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers

Overview

The Municipal Securities Rulemaking Board (“MSRB” or “Board”) seeks comment on a draft amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify and better align the requirements for brokers, dealers, and municipal securities dealers (collectively, “dealers”) to provide the annual notifications to those customers who would be best served by receipt of the annual notifications. The MSRB also seeks comments on an associated draft amendment to MSRB Rule G-48, on transactions with sophisticated municipal market professionals (SMMPs), to exclude transactions with SMMPs from the application of draft Rule G-10.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information they believe would be useful to the MSRB. Comments should be submitted no later than June 28, 2021 and may be submitted by [clicking here](#) or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB’s website.¹

Questions about this notice should be directed to Bri Joiner, Director, Regulatory Compliance, or Lisa Wilhelmy, Assistant Director, Market Regulation, at 202-838-1500.

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



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Background

In 2017, the MSRB amended Rule G-10 with the goal to, among other things, modernize the rule and extend the rule's application to municipal advisors.² Prior to that time, the rule only applied to dealers and required dealers to provide a customer with a paper copy of the MSRB's investor brochure after a customer had made a complaint to the dealer.³ Recognizing this requirement did not afford customers the best use of the information in a timely manner, the 2017 amendments modified Rule G-10 and replaced the post-complaint delivery requirement.

Rule G-10 currently requires dealers and municipal advisors to provide certain notifications to customers and municipal advisory clients, respectively, at least annually by December 31st each year.⁴ More specifically, Rule G-10 requires regulated entities to provide, in writing, which may be made electronically, the following information ("annual notifications"):

- (i) A statement that the regulated entity is registered with the SEC and the MSRB;
- (ii) The website address for the MSRB; and
- (iii) A statement as to the availability to the MSRB's customer or municipal advisory client of a brochure that is available on the MSRB's

² See Exchange Act Release No. 79801 (January 13, 2017), 82 FR 7898 (January 23, 2017), (File No. SR-MSRB-2016-15). The 2017 amendments created similar obligations for municipal advisors to provide their municipal advisory clients with certain notifications. The text of the amendments addressed the scope of Rule G-10 notification obligations for municipal advisors by specifically defining "municipal advisory client" to 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 to 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."

³ See [Exchange Act Release No. 24764](#) (July 31, 1987), 52 FR 29459 (August 7, 1987), (File No. SR-MSRB-87-6).

⁴ Municipal advisors provide the requisite notifications promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement.

website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.⁵

The draft amendment being proposed is specific to dealer obligations' under Rule G-10 and the MSRB is not proposing to modify municipal advisors' obligations under the rule. Unlike municipal advisors who provide the annual notifications to clients that have engaged the municipal advisor to conduct municipal advisory services, dealers are currently obligated to provide the annual notifications to all customers, including customers who have not effected, and may never effect, a municipal securities transaction.⁶ In addition, during the rulemaking process to adopt the 2017 amendments, the MSRB made clear that the term "customers," consistent with MSRB Rule D-9, includes institutional customers as well as customers who invest in municipal fund securities.⁷

Since 2017, feedback from market participants has indicated that this rule would benefit from more clarity as to which customers should receive the annual notifications.⁸ Additionally, market participants are still raising the question of the utility of such annual notifications to institutional investors, contending that such notifications are unwarranted.⁹ Given there has been a reasonable implementation period to allow the MSRB time to gain experience with the rule and to obtain meaningful insight, the MSRB believes that this retrospective review presents an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule.

⁵ See MSRB's [Information for Municipal Securities Investors](#) and [Information for Municipal Advisory Clients](#).

⁶ Under MSRB Rule D-9, a "customer" means "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

⁷ See *supra* note 2. See also MSRB "[FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection](#)" (FAQs) (September 2017) at FAQs 6 and 7.

⁸ On December 7, 2020, the MSRB issued [MSRB Request for Input on Strategic Goals and Priorities](#) with a comment period deadline of January 11, 2021. See [Letter from Mike Nicholas, Chief Executive Officer, BDA, dated January 11, 2021](#); See also [Letter from Leslie Norwood, Managing Director and Associate General Counsel and Bernard Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association \(SIFMA\), dated January 11, 2021](#) response letters.

⁹ See *supra* note 8.

Summary of Draft Amendment

The MSRB would like to hear from stakeholders about whether the MSRB should amend Rule G-10(a) to narrow the type of customers to include only those customers of the dealer who have effected transactions in municipal securities within the prior one-year period or who hold a municipal securities position. Thus, the draft amendment would no longer require a dealer to make the annual notifications to customers that have not, and may never, engage in municipal securities transactions, so long as the dealer has the notifications available to such customers on its website. Additionally, the MSRB is proposing a related draft amendment to Rule G-48 so that SMMPs that would otherwise receive the annual notification as a result of a municipal securities transaction or having a municipal securities position, would be excepted, so long as the dealer has the notifications available on its website. In order to deem a customer to be an SMMP, MSRB Rule D-15 requires dealers to determine the nature of the customer, the customer's sophistication level, and also requires a customer affirmation, as specified in the rule.

Economic Analysis

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Board has historically carefully considered the costs and benefits of new and amended rules. Accordingly, the Board's policy states, prior to proceeding with a rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted will, in its judgement, meet that need.¹⁰ The MSRB seeks comment on the economic effects of amending MSRB Rule G-10.

The purpose of amending Rule G-10 would be to better define the requirement for dealers to provide the required annual notifications to specified customers. Rule G-10 was originally designed to protect investors by providing them with the information necessary through the investor brochure to file a complaint about their dealers with the appropriate regulatory authority.

A. The Need for Amended Rule G-10

¹⁰ 15 U.S.C. 78o-4(b)(2)(C). See also an explanation of the MSRB's [Policy on the Use of Economic Analysis in MSRB Rulemaking](#)

As discussed above, prior to the rule amendments in 2017, Rule G-10 only required dealers to send a paper copy of the brochure outlining protections under MSRB rules to investors who had already complained to a dealer. The 2017 amendments replaced the post-complaint delivery requirement with an annual written notifications requirement to all customers of a dealer regardless of whether a customer ever effects a municipal bond transaction or owns municipal securities in the account. More specifically, the 2017 amendments permitted such written notifications to be made electronically in accordance with the electronic delivery and receipt guidance adopted by the SEC in 1996¹¹ and the MSRB in 1998.¹² To reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the annual notifications, the MSRB proposes to amend Rule G-10(a) to narrow the obligation of dealers to provide the required annual notifications to only customers who traded municipal securities or held a municipal securities position at the dealer during the calendar year. Thus, for all other customers, dealers would be permitted to make such notifications available on their websites in accordance with the rule.

Similarly, the MSRB is proposing a related draft amendment to Rule G-48, so that SMMPs that would otherwise receive the annual notifications, as a result of having traded municipal securities or because of having held a municipal securities position, would be excepted, as long as dealers make such notifications available on their websites.

B. Relevant Baselines Against Which the Likely Economic Impact of the Proposed Changes Can be Considered

To evaluate the potential impact of amended Rule G-10, a baseline or baselines must be established as a point of reference for comparison purposes. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.

For this Request for Comment, the current iteration of Rule G-10 is used as the baseline. Under the baseline, MSRB's dealers are sending the annual notifications to all customers regardless of whether a customer holds a

¹¹ See Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7-13-96).

¹² See Exchange Act Release No. 40848 (November 20, 1998); 64 FR 544 (January 5, 1999).

municipal securities position or has effected a municipal securities transaction.

C. Identifying and Evaluating Reasonable Alternative Regulatory Approaches

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

One alternative would be to revert the rule back to the pre-2017 version that contained a post-complaint delivery requirement; however, adding the electronic delivery option. By rolling back the 2017 changes, a dealer would no longer have to provide the notifications to *all* customers, regardless of whether they transacted in municipal securities or own municipal securities. This alternative would alleviate the burden to dealers of sending out thousands of notifications to investors but would still not solve the problem of providing investors with more timely access to information about how to file a complaint and the protections provided under MSRB rules.

Another alternative would be to amend Rule G-10 to eliminate the annual notifications delivery requirement. The MSRB already requires dealers to communicate certain information to investors under Rule G-15 on customer confirmations. Under Rule G-15 (a)(i)(D)(4), the dealer is required to provide a hyperlink to the EMMA[®] for publicly available information on a specific security. By amending Rule G-10 to require dealers to also provide a hyperlink to MSRB.org and a statement that the dealer is registered with the SEC and the MSRB, dealers would be able to minimize their direct outreach to investors by utilizing an existing required form of communication (*i.e.*, customer confirmations). However, with this alternative, only customers who have recently transacted in a municipal security would be notified of the information, but not customers who hold municipal securities in their accounts.

D. Assessing the Benefits and Costs of the Proposed Changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change when the rule change proposal is fully implemented against the context of the economic baselines.¹³ The MSRB believes the proposed draft amendment would

¹³ See *supra* note 10.

benefit dealers by lessening their compliance burdens through the narrowing of the scope of the delivery obligation to those that would most directly benefit; and thereby, also reducing the volume of annual notifications sent by dealers to customers, many of those who do not own or transact in municipal securities.

As to the scale of cost reduction to dealers, as well as potential costs to some customers who may no longer receive the notifications unless they initiate a transaction in municipal securities, the MSRB is currently unable to quantify these economic effects precisely because not all the information necessary to provide a reasonable estimate is available. The MSRB has considered these costs and benefits primarily in qualitative terms.

Regardless, the MSRB is seeking, as part of this Request for Comment, additional data, or studies relevant to the costs and benefits of amending Rule G-10. For example, data such as the percentage of dealers' customers who trade or hold municipal securities for a given calendar year, would be helpful for the MSRB in assessing the impact of this rule amendment.

Benefits

The main benefit of amending Rule G-10 would be to reduce the burden and confusion that has been expressed by stakeholders about the utility of such annual notifications to all customers. By amending the rule to limit the scope to customers who either held or transacted in municipal securities during the prior one-year period, burdens to dealers would be reduced. Amending the Rule to expressly clarify and narrow the scope of dealers' obligations would remove the existing ambiguity cited by dealers as to the scope of the term customer under the Rule. Also, other customers of dealers who do not transact in municipal securities would not be subjected to receipt of additional unnecessary communications. In addition, in striving to focus communications that are appropriate to the customer, the resulting effect may be that customers pay more attention to communications from dealers. Finally, dealers may incur savings from sending out less correspondence to customers due to the narrowed scope of the dealers' obligations; and due to the flexibility provided pursuant to the rule and related draft amendment to Rule G-48 that except other customers and SMMPs.

Costs

To evaluate the potential costs to customers, the MSRB divided all dealer customers into four segments to separately compare the future expected state to the current baseline state of each group.

1. Customers who currently hold municipal securities and plan to transact again in the future. These customers would not be impacted by the proposed draft amendment to Rule G-10 since they are expected to receive the annual notifications the same way as they receive the notifications now;
2. Customers who have never held municipal securities and do not plan to transact in them in the foreseeable future. These customers are currently receiving the annual notifications even though they do not hold any municipal securities nor effect any municipal securities transactions. The draft amendment to Rule G-10 would not impact these customers since the notifications are, likely, not relevant to these customers.
3. New customers to a dealer. These customers are currently receiving the annual notifications by the end of the calendar year irrespective of their holding of municipal securities or effecting a transaction in municipal securities. The draft amendment to Rule G-10 would not impact these customers, with respect to the timing in which such annual notifications are received, based upon the customer subsequently holding municipal securities or effecting a transaction in municipal securities; and lastly,
4. Customers who have never transacted in municipal securities before but may do so in the future. These customers currently receive annual notifications even though they have not transacted or held a position in municipal securities. Under the draft amendment to Rule G-10, these customers would not receive the annual notifications, required to be delivered by calendar year end, until such time as they transact in or hold a position in municipal securities. The MSRB has been careful to balance the stated objective of utility of information to customers against the slight risk that could be born out of not providing such annual notifications to all customers. The MSRB notes that notwithstanding, such customers would be able to avail themselves of the information provided in the notifications by reviewing a dealer's website. The MSRB notes that it does not have any data on the percentage of customers who belong this category.

In addition to costs to customers, dealers would likely incur some minor costs, relative to the baseline state, to meet the standards of conduct and duties contained in amended Rule G-10. These changes may include a one-time upfront cost related to revising policies and procedures, as well as ongoing costs such as compliance costs associated with identifying only relevant municipal securities investors for targeted outreach. Dealers may incur compliance costs as related to maintaining an active list of municipal securities investors, including costs pertaining to creating and maintaining books and records. However, the MSRB believes these costs would be minimal, as firms would be able to leverage their existing customer database to swiftly identify the relevant pool of customers eligible for the annual notifications under the proposed draft amendment to Rule G-10.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the draft amendment to Rule G-10 would neither impose a burden on competition nor hinder capital formation, as the proposed rule changes would reduce burden to dealers by narrowing the scope of the application of the rule. The MSRB believes that the amended rule would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses but believes the overall benefits would outweigh the costs to market participants.

The MSRB does not expect that amended Rule G-10 would change the competitive landscape of the municipal securities dealer community, as the draft amendment to Rule G-10 would be applicable to all dealers; therefore, the expected benefits and minor costs would be proportionate to the size and business activities of each dealer.

Request for Comments:

The MSRB seeks public comment on the following questions, as well as on any other topic relevant to this request for comment. The MSRB encourages statistical, empirical, and other data from commenters that may support their views and/or may otherwise support or refute the views, assumptions, or issues raised in this request for comment.

1. Is it appropriate to tailor a dealer's obligations to provide the annual notifications only to those customers for which a purchase or sale of a

municipal security was affected that calendar year and to those customers for which a municipal securities position is held during that calendar year? What are the potential benefits balanced against any foreseeable operational challenges?

2. Is it appropriate to provide an exception to the annual notifications requirement to exclude SMMPs, as defined in Rule D-15, from receipt of such notifications?
3. Should the MSRB provide an exception to the annual notifications requirement to exclude investors in 529 savings plans from receipt of such ongoing annual notifications after their initial purchase of units in a 529 savings plan?
4. Are there any other types of activities undertaken by dealers that warrant consideration as a carve-out from the annual notifications requirement (*e.g.* “check and app” business; settlement on a DVP/RVP basis)?
5. Does permitting dealers to place the notifications on their websites, in lieu of providing such notifications to customers that have not engaged in a municipal securities transaction that calendar year or that maintain a municipal securities position, reduce the burden on dealers while still providing adequate notice to such customers? Similarly, does placement of the notifications on dealers’ websites provide adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position?
6. Rule D-9 excludes an issuer in transactions involving the sale by the issuer of a new issue of its securities from the definition of customer. Should Rule G-10 require dealers to provide notifications to clients at the earliest stage of the underwriter’s relationship with such issuer client when an issuer client has not otherwise engaged a municipal advisor?
7. On an annual basis, what is the estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities?
8. Each year, what percentage of complaints are made by a customer who did not own municipal securities or did not affect a trade in the prior year at the time of a complaint inquiry?
9. On an annual basis, what would be the estimated cost savings from amending Rule G-10 to no longer send communications to customers

who have not effected a municipal securities transaction in that calendar year or that do not hold a municipal securities position?

May 14, 2021

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Text of the Proposed Draft Amendments*

Rule G-10: Investor 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 for which a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position during that calendar year, 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; and
 - ~~(ii) the website address for the Municipal Securities Rulemaking Board; and~~
 - ~~(iii)~~ (ii) 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 at www.msrb.org 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.
- (b) Notwithstanding the requirement in paragraph (a) of this Rule, any dealer that does not have customers or is a party to a carrying agreement where the carrying firm member complies with paragraph (a) of this Rule is exempt from the requirements of this Rule.
- (c) With respect to all other customers, each dealer shall make available on its website the information described in paragraph (a)(i) and (ii).
- ~~(d)~~ No change.

* Underlining indicates new language; strikethrough denotes deletions.

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

(a) – (e) No change.

(f) *Required Annual Notifications.* The broker, dealer, or municipal securities dealer shall not have an obligation under Rule G-10(a) to provide the annual written (which includes electronic) items of information, so long as such information required under paragraph (a)(i) and (ii) of Rule G-10 is made available on the broker's, dealer's, or municipal securities dealer's website.