

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Extend the MSRB's Customer Complaint and Related Recordkeeping Rules to Municipal Advisors and To Modernize Those Rules

January 13, 2017.

I. Introduction

On November 1, 2016, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of (i) proposed amendments to 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) a proposed Board notice regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings (collectively, the "proposed rule change"). The proposed rule change was published for comment in the **Federal Register** on November 18, 2016.³

The Commission received five comment letters on the proposed rule change.⁴ On January 10, 2017, the

MSRB responded to the comments received by the Commission⁵ and filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").⁶ The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

The proposed rule change, as modified by Amendment No. 1, consists of (i) proposed amendments to 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) a proposed MSRB notice regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings.⁷

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").⁸ The Dodd-Frank Act amended Section 15B of the Exchange Act to establish a new federal regulatory regime requiring municipal advisors to register with the Commission, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that rulemaking authority, has been developing a comprehensive regulatory

dated December 9, 2016 (the "PIABA Letter"); Susan Gaffney, Executive Director, National Association of Municipal Advisors ("NAMA"), dated December 12, 2016 (the "NAMA Letter"); and Leo Karwejna, Chief Compliance Officer and Cheryl Maddox, General Counsel, Public Financial Management, Inc. and PFM Financial Advisors LLC (collectively, "PFM"), dated December 13, 2016 (the "PFM Letter").

⁵ See Letter to Secretary, Commission, from Pamela K. Ellis, Associate General Counsel, MSRB, dated January 10, 2017 (the "MSRB Response Letter"), available at <https://www.sec.gov/comments/sr-msrb-2016-15/msrb201615-1473509-130471.pdf>.

⁶ See Letter to Secretary, Commission, from Pamela K. Ellis, Associate General Counsel, MSRB, dated January 10, 2017, available at <https://www.sec.gov/comments/sr-msrb-2016-15/msrb201615-1473522-130450.pdf>. In Amendment No. 1, the MSRB partially amended the text of the proposed rule change to provide certain clarifications relating to the notifications that would be provided by municipal advisors to their municipal advisory clients and to the terms used with the recordkeeping of municipal advisory client complaints, to extend the proposed effective date, and to make other technical changes to clarify or simplify rule text.

⁷ See Notice of Filing.

⁸ Public Law No. 111-203, 124 Stat. 1376 (2010).

framework for municipal advisors and their associated persons.⁹

Further, and concurrent with its efforts to develop a comprehensive regulatory framework for municipal advisors and their associated persons, 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"). The MSRB initiated that review in the context of the Board's obligation to protect investors, municipal entities, obligated persons, and the public interest. As part of that review, the MSRB solicited comments from market participants.¹⁰ In response, market participants recommended that the Board update Rule G-10.¹¹ The MSRB has stated that the proposed rule change, as modified by Amendment No. 1, consisting of amendments to Rule G-10 and its related recordkeeping rules, Rules G-8 and G-9, and guidance under Rule G-32, is an important element of both MSRB regulatory initiatives.¹²

To extend its customer complaint and recordkeeping rules to municipal advisors and to modernize those rules, the Board filed the proposed rule change, as modified by Amendment No. 1, with the Commission. Specifically,

⁹ MSRB Rule D-11 defines "associated persons" as follows:

Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

¹⁰ MSRB Notice 2012-63, Request for Comment on MSRB Rules and Interpretive Guidance (Dec. 18, 2012).

¹¹ See, e.g., Letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (commenting that (i) the requirement to deliver an investor brochure under Rule G-10 should be eliminated, (ii) the investor brochure is of limited value, if any, to institutional investors as well as investors in municipal fund securities, and (iii) alternatively, the MSRB could accomplish the objective of Rule G-10 by posting the investor brochure on its Web site); Letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (commenting that (i) the requirement to deliver an investor brochure under Rule G-10 should be eliminated, (ii) the investor brochure is of limited value, if any, to institutional investors as well as investors in municipal fund securities, and (iii) alternatively, the MSRB could accomplish the objective of Rule G-10 by posting the investor brochure on its Web site).

¹² See Notice of Filing.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 79295 (November 14, 2016) (the "Notice of Filing"), 81 FR 81837 (November 18, 2016).

⁴ See Letters to Secretary, Commission, from Mike Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated December 9, 2016 (the "BDA Letter"); Matthew J. Gavaghan, Associate General Counsel, Janney Montgomery Scott LLC ("Janney"), dated December 9, 2016 (the "Janney Letter"); Marnie Lambert, President, Public Investors Arbitration Bar Association ("PIABA"),

the proposed rule change would (i) extend the Board'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 client¹³ complaint records for six years, (iii) overhaul Rule G-10 so that the rule would more closely focus on customer and municipal advisory client education and protection as well as align that rule with customer education and protection rules of other financial regulators, and (iv) extend the Board'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. In summary, by regulated entity, the proposed rule change, as modified by Amendment No. 1, would do the following:

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 would define electronic recordkeeping;
- amend Rule G-8 to provide guidance in supplementary material that would remind 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

¹³ The proposed rule change, as amended by Amendment No. 1, in Rule G-8(e)(ii), would define a municipal advisory client as 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.

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 would define electronic recordkeeping;
- amend Rule G-8 to provide guidance in supplementary material that would 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 would more clearly focus on customer protection and education.

A detailed rule discussion of the proposed rule change's recordkeeping requirements, customer and municipal advisory client education and protection requirements, and electronic delivery guidance to municipal advisors is contained in the Notice of Filing.

The MSRB requested in the Notice of Filing that the proposed rule change be approved with an implementation date of six months after the Commission approval date for all changes.¹⁴ Pursuant to Amendment No. 1, the MSRB now requests that the proposed rule change be approved with an implementation date of nine months after the Commission approval date for all changes.¹⁵

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received five comment letters on the proposed rule change, and the MSRB Response Letter. Commenters generally expressed support for the principles behind the proposed rule change, but also expressed various concerns or suggested revisions.

1. Effective Date

BDA urged that the MSRB provide at least 12 months, rather than the six months proposed in the Notice of Filing, to provide dealers with adequate time

¹⁴ See Notice of Filing.

¹⁵ See Amendment No. 1.

for implementation, especially given the resources required to implement other ongoing regulatory initiatives.¹⁶ The MSRB acknowledged that those other regulatory initiatives require significant attention by compliance and technology staff. In response, the MSRB, pursuant to Amendment No. 1, proposes an effective date of nine months after the Commission's approval date of all changes.¹⁷

2. Municipal Advisor Terms

NAMA suggested that certain terms used in the proposed amendments to Rule G-8 be revised to more closely reflect terms more commonly used by municipal advisors. In particular, NAMA noted that the proposed rulemaking refers to a municipal advisory client's "account."¹⁸ NAMA stated that such a phrase does not "translate" to municipal advisors. In response, the MSRB, pursuant to Amendment No. 1, proposes to replace "account" when used with a municipal advisory client with the phrase "number or code, if any."¹⁹

3. Customer and Municipal Advisory Client Brochures

PIABA supported giving investors information about the protections provided by the MSRB and about how to file a complaint with a regulator, noting that the proposed amendments to Rule G-10 would provide for the education of customers or municipal advisory clients before they encounter a problem.²⁰ PFM submitted that the "proposed Rules . . . unnecessarily impose undue encumbrances of additional brochure delivery."²¹ BDA also requested clarity about when a municipal advisor should send the investor brochure to a municipal advisory client, and suggested that it was not necessary to send the investor brochure to an institutional investor. BDA suggested that the Board should develop a brochure that focuses on municipal advisory clients.²² NAMA and PFM commented that they needed

¹⁶ See BDA Letter.

¹⁷ See MSRB Response Letter.

¹⁸ See NAMA Letter.

¹⁹ See MSRB Response Letter.

²⁰ See PIABA Letter.

²¹ See PFM Letter.

²² BDA states that it "requests clarity with when a municipal advisor should send the G-10 brochure to a municipal advisory client." BDA also stated that "[i]f the MSRB is committed to requiring dealers to send the investor brochure to institutional investors, BDA recommends that MSRB provide clarity on 'customer' for the purposes of G-10." See BDA Letter.

to review the brochure to provide sufficient comment.²³

The MSRB responded by stating that, unlike the current requirements of Rule G–10, the proposed amendments to Rule G–10 would not require that a regulated entity deliver a Rule G–10 brochure to its customer or municipal advisory client, but would require that a regulated entity provide only annual notifications to its customer or municipal advisory client about the availability of the brochure on the MSRB’s Web site.²⁴ Further, after carefully considering BDA’s request for clarity regarding the use of the term “promptly” relating to when a municipal advisor must send the annual notifications required by the amendments to Rule G–10 to its municipal advisory client, the MSRB provided a technical change in Amendment No. 1 to clarify that “promptly” means “promptly, after the establishment of a municipal advisory relationship.”²⁵ Although municipal advisors may elect to provide the first notification earlier, the MSRB believes this standard is consistent with the flexibility provided by the proposed rule change to include the proposed annual notifications with other materials required to be given by municipal advisors.²⁶

The MSRB further states that it believes that all customers and municipal advisory clients should be aware of the important protections provided by the MSRB’s rules, the reminder that regulated entities are registered with the Commission, and the information about how to file a complaint with a regulator. Rule G–10 currently provides no exception from its requirements for institutional investors, and the MSRB believes that there is no reason why institutional investors should receive less of this information about the protections provided by MSRB rules and education than other investors.²⁷ As discussed in the Notice of Filing, the MSRB believes that the annual notifications required by Rule G–10 present only a slight burden to regulated entities, but could represent a significant enhancement to customer or municipal advisory client protection and education.²⁸

The MSRB agrees with BDA’s view that the Board should use a separate brochure focused on municipal advisory activities. The Notice of Filing

contemplated a separate brochure focused on municipal advisory activities, and the MSRB has stated that it will develop such a brochure.²⁹ However, the MSRB notes that the content of the current investor brochure was not made part of Rule G–10. Likewise, the content of the future brochures has not been made part of the proposed amendment text.

4. Product and Problem Codes

BDA, Janney, NAMA and PFM commented on the problem and product codes that would be required by the proposed amendments to Rule G–8 for the electronic customer or municipal advisory client complaint logs.³⁰ BDA and Janney commented that such codes should harmonize with the problem and product codes required by FINRA Rule 4530. BDA also commented that it believed that the MSRB and the Commission have existing independent reporting systems that allow municipal entities or obligated persons to file complaints directly to a regulator, which are more appropriate systems to monitor complaints than the MSRB developing an “expansive set of problem codes.” BDA, NAMA, and PFM urged that the Board publish the product and problem codes for comment.³¹

The MSRB notes that it coordinates its rule interpretations and requirements with those of other financial regulators, including FINRA. This coordination has been and is occurring on an ongoing basis with respect to the product and problem codes. The MSRB is aware that having two different sets of compliance codes for dually registered regulated entities would impose significant compliance and cost burdens, and to lessen such burdens, the MSRB states that it would coordinate and harmonize the product and problem codes, and the methods for determining the appropriate codes, required by the proposed amendments to Rule G–8 with FINRA.³²

In response to BDA’s comment that the MSRB and the SEC have existing independent reporting systems that allow municipal entities or obligated persons to file complaints directly with a regulator, the MSRB states that its complaint referral system is quite different than, for example, the Commission’s well-established and comprehensive independent reporting system through its Office of Investor

Education and Advocacy. The MSRB notes that its role has been to provide information about how an individual or firm may make a complaint to a regulator. If an individual or a regulated entity is unsure about which regulator the individual or firm should file the complaint with, that individual or firm may submit the complaint with the MSRB, and the MSRB then will forward the complaint to the appropriate regulator. The MSRB states that, unlike the Commission, the MSRB neither enforces its own rules nor surveils regulated entities; rather, other financial regulators enforce MSRB rules and perform market surveillance functions.³³ The MSRB further notes that other financial regulators subject to the Commission’s jurisdiction, such as FINRA, currently require that written customer complaints be tracked using an electronic log. In approving FINRA Rule 4530, the Commission found that the FINRA Rule 4530 was consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.³⁴

As to the assertion that the electronic complaint log represents overregulation by the MSRB, the MSRB notes that dealers that are registered with FINRA are currently using electronic logs to track and code written customer complaints. The MSRB believes that the electronic complaint log requirement not only would assist regulators in enforcing MSRB rules and performing market surveillance, but also that the electronic complaint log would be used as a tool by regulated entities as part of their risk management programs. The MSRB believes that FINRA, the Commission, and numerous FINRA members, including members that are also registered with the MSRB, have found such electronic complaint logs to be valuable.³⁵

The MSRB states that federal securities laws do not require that the Board solicit public comment on the product and problem codes to be used under the proposed amendments to Rule G–8. The MSRB notes that FINRA recently revised its product and problem codes used for reporting customer complaints under FINRA Rule 4530.³⁶ FINRA did not seek public comment on the revisions to those product and problem codes; the Board

³³ *Id.*

³⁴ Securities Exchange Act Release No. 63260 (Nov. 5, 2010), 75 FR 69508 (Nov. 12, 2010).

³⁵ See MSRB Response Letter.

³⁶ In 2014, FINRA updated FINRA Rule 4530’s problem and product codes and provided a six-month implementation date. See Regulatory Notice 14–20 (May 7, 2014).

²³ See NAMA Letter, PFM Letter.

²⁴ See MSRB Response Letter.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Notice of Filing.

²⁹ See MSRB Response Letter.

³⁰ See BDA Letter, NAMA Letter, Janney Letter, PFM Letter.

³¹ See BDA Letter, NAMA Letter, PFM Letter.

³² See MSRB Response Letter.

would not expect to seek public comment on the product and problem codes to be used with the proposed amendments to Rule G–8.³⁷

5. Recordkeeping

BDA, NAMA, PIABA, and PFM provided comments and suggestions about the Board's proposed amendments to Rule G–8.³⁸ Those comments and suggestions related to the regulatory burden caused by the proposed amendments to Rule G–8, guidance as to certain of the terms used in the electronic complaint log, and guidance as to the development of the electronic complaint log itself.

PFM asserted that the proposed rule change “unnecessarily impose[s] undue encumbrances of additional brochure delivery and recordkeeping requirements.”³⁹ BDA submitted that it did not think that this type of “complaint and recordkeeping system is valuable for municipal advisory clients,”⁴⁰ and NAMA asserted that the recording of “actions” in the electronic complaint log required by the proposed amendments to Rule G–8 is not necessary because of the supervisory requirements set forth in MSRB Rule G–44.⁴¹

The MSRB states that it believes that the burden on regulated entities from the proposed rule change would not be significant.⁴² The proposed rule change would align Rule G–8 with the customer complaint recordkeeping requirements of other financial regulators. Rule 17a–3(a)(18) under the Act⁴³ and FINRA Rules 4513 and 4530 require information about customer complaints that is similar to what is required by the proposed rule change. The MSRB has stated that it would harmonize its product and problem codes with those required by FINRA Rule 4530.⁴⁴

Although the proposed rule change would represent a new recordkeeping burden on municipal advisors, the MSRB believes that it would not be a significant burden. The MSRB states that it is generally a good business practice, especially for the development of a regulated entity's risk management systems, to track written complaints using standard codes in an electronic complaint log. Any regulatory burden imposed by the proposed rulemaking is, in part, dependent upon the municipal

advisor and the number of municipal advisory client complaints that the municipal advisor receives. The MSRB anticipates that smaller municipal advisors would have fewer clients and accordingly may be likely to receive fewer complaints than larger municipal advisors. Further, the MSRB states that it mitigates that regulatory burden by providing flexibility as to how those electronic records may be kept.⁴⁵

The MSRB believes that an electronic log of complaints is necessary, and that such need is not lessened by the supervisory and compliance obligations of municipal advisors set forth in MSRB Rule G–44. The standard electronic format required by the proposed amendments would enhance the ability of financial regulators to conduct more cost-effective and efficient inspections and surveillance of regulated entities. MSRB Rule G–44 does not require that records of complaints be kept in a standard electronic format across all regulated entities. Further, the MSRB notes that many dealers that have been subject to MSRB Rule G–27, on supervision, a rule that is similar to MSRB Rule G–44, also have been subject to FINRA's electronic customer complaint recordkeeping requirements. The MSRB believes that the FINRA electronic customer complaint log requirements have proven useful in addition to general supervisory obligations.⁴⁶

NAMA requested guidance about the meaning of certain terms to be used in the electronic complaint log.⁴⁷ The MSRB believes that the titles of the codes, as well as the brief description of those codes published by the Board, as appropriate, will provide guidance as to the terms used with the electronic complaint log. Further, as discussed above under “Product and Problem Codes,” the MSRB would harmonize the product and problem terms used for the electronic log of customer and municipal advisory client complaints with the codes required by FINRA Rule 4530.⁴⁸

NAMA requested guidance as to how a municipal advisor should create an electronic complaint log. The MSRB notes that Proposed Supplementary Material .01 broadly defines electronic format to include “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.”⁴⁹ The MSRB states that it has determined that the degree of flexibility the MSRB is providing with the proposed rule change about the format of the electronic complaint log is preferable at this juncture.⁵⁰

NAMA and PFM commented about the municipal advisor record retention requirements set forth in the proposed amendments to Rule G–9. NAMA commented that municipal advisor records should be kept for five years and not six years.⁵¹ PFM commented that the Board lacked statutory authority to extend the record retention period for municipal advisors for one year and expressed “genuine concern regarding the misalignment regarding the proposed MSRB Rule changes and current Exchange Act requirements.”⁵²

After carefully considering the comments, the MSRB states that it has determined that the important reasons for retaining records of municipal advisory client complaints for six years remain valid. As discussed in the Notice of Filing, such retention period would assist other financial regulators with their inspections of municipal advisors (those inspections may not occur for several years after the municipal advisory client submitted the complaint) and with their surveillance of municipal advisors. Further, by requiring that municipal advisors retain records of municipal advisory client complaints for six years, the MSRB states that it would be “leveling the playing field” between dealers and municipal advisors and between dealer municipal advisors and non-dealer municipal advisors.⁵³ Dealers, including dealer municipal advisors, are required to retain records of customer complaints for six years under current Board rules.

The MSRB states that it disagrees with PFM's assertions that the Board lacks statutory authority to develop a record retention period under the Act for municipal advisor records. The MSRB notes that Section 15B(b)(2)(g) of the Act⁵⁴ specifically requires that the MSRB prescribe the records that are to be made and kept by dealers and municipal advisors and to prescribe the length of time the records are to be kept. The MSRB further notes that the Commission has approved as consistent with the Exchange Act the MSRB's several previous municipal advisor

³⁷ See MSRB Response Letter.

³⁸ See BDA Letter, NAMA Letter, PIABA Letter, PFM letter.

³⁹ See PFM Letter.

⁴⁰ See BDA Letter.

⁴¹ See NAMA Letter.

⁴² See MSRB Response Letter.

⁴³ 17 CFR 240.19b–4.

⁴⁴ See MSRB Response Letter.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See NAMA Letter.

⁴⁸ See MSRB Response Letter.

⁴⁹ See Notice of Filing and Amendment No. 1.

⁵⁰ See MSRB Response Letter.

⁵¹ See NAMA Letter.

⁵² See PFM Letter.

⁵³ See MSRB Response Letter.

⁵⁴ 15 U.S.C. 78o–4(b)(2)(g).

recordkeeping proposals, including select six-year retention periods.⁵⁵

6. Annual Notifications

The Commission received several comments about the annual notifications concerning the municipal advisor's registration, the MSRB's Web site address, and availability of a municipal advisory client brochure about the protections provided by the MSRB's rules and information about filing a complaint with a financial regulator required by the proposed amendments to Rule G-10 (the "annual notifications"). Those comments concerned the location of those annual notifications and the ability to include the annual notifications with other materials. NAMA suggested that in lieu of providing the written annual notifications to their municipal advisory clients, municipal advisors should have the option to post the annual notifications on their Web sites.⁵⁶ NAMA and PFM⁵⁷ suggested that the annual notifications be included with the written disclosure of all material conflicts of interest and other information required to be made by a municipal advisor by Rule G-42(b).⁵⁸

The MSRB states that it has carefully considered commenters' suggestions, and has determined that a municipal advisor should not have the option to post the annual notifications on its Web site in lieu of sending those notifications to its municipal advisory client. The Board believes that the purpose of the proposed amendments is best achieved by individual annual notifications to a customer or municipal advisor client. Nonetheless, if a regulated entity would like to post the annual notifications on its Web site, in addition to sending the written annual notifications to its customers or municipal advisory clients, the regulated entity may do so as long as the information on the regulated entity's Web site complies with Board and any

other applicable laws, rules and regulations.⁵⁹

As proposed, the amendments to Rule G-10 would provide a regulated entity with the flexibility to include the written annual notifications with other materials. The MSRB notes that those other materials may include the written disclosure of material conflicts of interest and other information required to be provided by a municipal advisor under MSRB Rule G-42(b). Because the proposed rule change would provide municipal advisors with the option to include the annual notifications with the written disclosure of material conflicts of interest and other information required by MSRB Rule G-42(b), the MSRB believes that the rule language, as proposed, provides sufficient flexibility to address NAMA's and PFM's suggestion that the annual notifications be included with the written disclosures required under Rule G-42(b).⁶⁰

7. Sufficiency of Comment Period

BDA, NAMA, and PFM commented that the Board did not solicit public comment on the proposed rule change before the Board filed the proposed rule change with the Commission.⁶¹ BDA submitted that the MSRB is proceeding with "unnecessary haste" and that if the MSRB issued a request for comment on the proposed rule change, it could have "received feedback and tailored these rule amendments to the activities of municipal advisors."⁶² NAMA commented that the municipal advisor community should be afforded the same opportunity to comment prior to a proposal being sent to the Commission that the dealer community is afforded and submitted that municipal advisors would have flagged some of the vague and duplicative provisions of the proposed rulemaking as well as use of clearly inapplicable terminology.⁶³ PFM stated that it was "a bit dismayed" that the MSRB did not publish a request for comment before filing the proposed rule change with the Commission, and suggested that without such a prior comment opportunity, PFM did not have "adequate opportunity for review and written comment."⁶⁴

The MSRB responds that the Commission provided market participants with the fulsome comment period generally required under the federal securities laws, which do not

require the Board to seek public comment before submitting a rulemaking proposal to the Commission.⁶⁵ Market participants provided comment on the proposed rule change, and as noted earlier, in response to those comments, the Board is filing Amendment No. 1.

Further, the MSRB notes that, in this case, not only did market participants request the proposed rule change, but every commenter supported the purposes of the proposed rule change. The proposed rule change would enhance the MSRB's ability to protect and educate customers and municipal advisory clients, which protections are vital to the Board's mission. The proposed rule change also would harmonize the Board's customer complaint rule with that of other financial regulators—a goal that is important both to the Board and to market participants.⁶⁶

8. Electronic Guidance

BDA commented that the MSRB's Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers—November 20, 1998 (the "1998 Notice") should not apply to municipal advisory relationships. BDA stated that "[a]s with attorney-client relationships . . . , municipal entities and obligated persons know exactly how they prefer to communicate and there is no need for a Federal regulator to regulate electronic communications in those relationships."⁶⁷

The MSRB stated that the 1998 Notice provides dealers with the MSRB's interpretation about the use of electronic media to deliver and receive information under Board rules. The proposed rule change would extend that interpretation to municipal advisors. Without that extension, some vagueness might exist regarding municipal advisors' ability to use electronic media to deliver and receive information required under Board rules.⁶⁸

9. Other Comments

The other suggestions that the Commission received about the proposed rule change related to (i) expansion of the proposed rule change, (ii) concerns about the complaint process, and (iii) concerns about the economic impact of the proposed rule change on small municipal advisors. PIABA supported the proposed rule change, but also suggested that the

⁵⁵ See, e.g., Exchange Act Release No. 76753 (Dec. 23, 2015), 80 FR 81614 (Dec. 30, 2015) (approving Rule G-42 and amendments to Rule G-8); Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (approving Rule G-44 and amendments to Rules G-8 and G-9).

⁵⁶ See NAMA Letter.

⁵⁷ See NAMA Letter, PFM Letter.

⁵⁸ Rule G-42(b) provides, in part: "*Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest . . . [and]

(ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel. . . ."

⁵⁹ See MSRB Response Letter.

⁶⁰ *Id.*

⁶¹ See BDA Letter, NAMA Letter, PFM Letter.

⁶² See BDA Letter.

⁶³ See NAMA Letter.

⁶⁴ See PFM Letter.

⁶⁵ See MSRB Response Letter.

⁶⁶ *Id.*

⁶⁷ See BDA Letter.

⁶⁸ See MSRB Response Letter.

proposed rule change “go a step further” to provide investors with access to the electronic complaint logs.⁶⁹ NAMA expressed concern that the proposed rule change would require that a municipal advisory client make its complaint directly with the municipal advisor instead of with a regulator. NAMA also suggested that the Board consider the economic impact of the proposed rule change, and the cumulative effect of all Board rules on small municipal advisors.⁷⁰

The MSRB states that it recognizes that market transparency is important for investors. However, the MSRB is concerned that requiring electronic complaint logs to be available to customers and municipal advisory clients may not only mislead them because certain complaints may not be as material as others, but also may have a chilling effect on a regulated entity’s reporting of written customer or client complaints, which could undermine the goals of the rule.⁷¹

In addition, the proposed amendments to Rule G–10 do not set forth any requirement that a municipal advisory client make a complaint to its municipal advisor nor do those proposed amendments require that a municipal advisory client submit any complaint that it may have to a particular regulator. A municipal advisory client would continue to be able to submit its complaint to any party it considers appropriate, based on, among other things, the notifications and educational materials it receives.⁷²

Further, in connection with concerns about the economic impact of the proposed rule change on small municipal advisors, the MSRB states that it anticipates that smaller municipal advisors would have fewer clients and accordingly may be likely to receive fewer complaints than larger municipal advisors.⁷³ Further, the MSRB states that it mitigates that regulatory burden by providing flexibility as to how those electronic records may be kept.⁷⁴

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, the comments letters received, and the MSRB Response Letter. The Commission finds that the proposed

rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change, as modified by Amendment No.1, is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Act.⁷⁵ Section 15B(b)(2) of the Act provides that the MSRB shall propose and adopt rules to effect the purposes of that 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.⁷⁶ Section 15B(b)(2)(C) of the Act, provides that, among other things, the rules of the MSRB 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.⁷⁷ The Commission believes that the proposed rule change is reasonably designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and municipal financial products, and protect investors, municipal entities, obligated persons and the public interest by developing more comprehensive and modern customer and municipal advisory client complaint and recordkeeping rules. Furthermore, the Commission believes that by focusing on customer and municipal advisory client education and protection and enhancing the related recordkeeping requirements, the proposed rule change is reasonably

designed to protect investors, municipal entities, obligated persons, and the public interest. Additionally, the proposed rule change would align the MSRB’s customer and municipal advisory client complaint rules and related recordkeeping requirements with those of other financial regulators which will, among other things, promote compliance with MSRB rules by providing regulated entities with the opportunity to streamline their compliance procedures. In addition, the proposed rule change, according to the MSRB, would enhance the ability of other financial regulators to conduct more cost-effective and efficient inspections and surveillance of regulated entities.

The Commission also finds that the proposed rule change, as modified by Amendment No.1, is consistent with Section 15B(b)(2)(L)(iv) of the Act in that it does 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.⁷⁸ Although the proposed rule change would affect all municipal advisors, including small municipal advisors, the proposed rule change is a necessary and appropriate regulatory burden in order to protect municipal entities and obligated persons. For example, under the proposed rule change, a municipal advisory client would be able to receive detailed and relevant information about its municipal advisor, the protections provided by MSRB rules, and how to make a complaint in a timely and consistent fashion.

The Commission also finds that the proposed rule change, as modified by Amendment No.1, is consistent with Section 15B(b)(2)(G) of the Act which provides that the MSRB’s rules shall prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.⁷⁹ The proposed rule change would, among other things, enhance the current customer complaint recordkeeping requirements under Rule G–8 by requiring that dealers keep more detailed information about written customer complaints in an electronic format and then would extend those recordkeeping requirements to municipal advisors. In addition, the proposed rule change would extend the

⁶⁹ See PIABA Letter.

⁷⁰ See NAMA Letter.

⁷¹ See MSRB Response Letter.

⁷² *Id.*

⁷³ See MSRB Response Letter.

⁷⁴ *Id.*

⁷⁵ 15 U.S.C. 78o–4(b)(2) and (b)(2)(C).

⁷⁶ 15 U.S.C. 78o–4(b)(2).

⁷⁷ 15 U.S.C. 78o–4(b)(2)(C).

⁷⁸ 15 U.S.C. 78o–4(b)(2)(L)(iv).

⁷⁹ 15 U.S.C. 78o–4(b)(2)(G).

six-year record retention period applicable to customer complaints to municipal advisory client complaints.

In approving the proposed rule change, as modified by Amendment No.1, the Commission has also considered the impact of the proposed rule change on efficiency, competition, and capital formation.⁸⁰ The Commission does not believe that the proposed rule change, as modified by Amendment No. 1 would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No.1, 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 email to rule-comments@sec.gov. Please include File Number SR-MSRB-2016-15 on the subject line.

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-2016-15. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3:00 p.m. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2016-15 and should be submitted on or before February 13, 2017.

VI. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1 partially amends the text of the proposed rule change to provide certain clarifications relating to the notifications that would be provided by municipal advisors to their municipal advisory clients and to the terms used with the recordkeeping of municipal advisory client complaints, to extend the proposed effective date, and to make other technical changes to clarify or simplify rule text.⁸¹ Specifically, the changes respond to commenters' concerns, are technical in nature, and clarify or simplify the proposed rule change. The MSRB states that Amendment No. 1 in many respects eliminates unnecessary language by relying on terms that are defined in the MSRB's rule book, the Act, or Commission rules under the Act.⁸² In addition, the MSRB notes that the changes are consistent with the purposes of the proposed rule change to advance the development of a comprehensive regulatory framework for municipal advisors and to update the Board's customer complaint rules. With respect to those portions of Amendment No. 1 that modify certain definitions, the MSRB notes that the proposed rule change, as described in the Notice of Filing, contemplated that the clients of both solicitor and non-solicitor municipal advisors would be covered by the proposed rule change.⁸³ According to the MSRB, the precision added to certain definitions by Amendment No. 1 parallels the precision with which the MSRB defines

a municipal advisory client of a solicitor municipal advisor and eliminates unnecessary language.⁸⁴ The MSRB believes other technical changes made serve to clarify or simplify the proposed rule change.

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸⁵ that the proposed rule change, as modified by Amendment No. 1 (SR-MSRB-2016-15) be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority,⁸⁶

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79796; File No. SR-C2-2017-003]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

January 13, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 3, 2017, C2 Options Exchange, Incorporated (the "Exchange" or "C2") 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 Exchange. 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 Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://>

⁸⁴ See Amendment No. 1.

⁸⁵ 15 U.S.C. 78s(b)(2).

⁸⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸¹ *Supra* note 6.

⁸² See Amendment No. 1.

⁸³ See Notice of Filing.

⁸⁰ 15 U.S.C. 78c(f).