Person or a member of]the staff of the SEC, [except]*as authorized by* [with authorization of]the Operating Committee as described below, or as may be otherwise required by law.

ii. The Operating Committee or a subcommittee thereof may authorize the disclosure of Confidential Information by an affirmative vote of the number of members that represent a majority of the total number of members of the Operating Committee or subcommittee. Notwithstanding the foregoing, the Operating Committee will not authorize the disclosure of Confidential Information that is generated by a Participant or Advisor and designated by that Participant or Advisor as Confidential, unless such Participant or Advisor consents to the disclosure.

iii. Members of the Advisory Committee may be authorized by the Operating Committee to disclose particular Confidential Information *only in furtherance of the interests of the Plan,* to enable them to consult with industry representatives or technical experts, provided that the Member of the Advisory Committee takes any steps requested by the Operating Committee to prevent further dissemination of that Confidential Information, including providing the individual(s) consulted with a copy of this policy and requesting that person to maintain the confidentiality of such information in a manner consistent with this policy.

iv. A Covered Person that is a representative of a Participant may *be authorized by the Operating Committee to* disclose *particular* Confidential Information [and Highly Confidential Information]to other employees or agents of the Participant or its affiliates only *in furtherance of the interests of the Plan* as needed for such Covered Person to perform his or her function on behalf of the *Plan*[Participant, as reasonably determined by the Covered Person]. A copy of this policy will be made available to recipients of such information who are employees or agents of a Participant or its affiliates that are not Covered Persons, who will be required to abide by this policy.

v. A Covered Person may disclose their own individual views and statements that may otherwise be considered Confidential Information without obtaining authorization of the Operating Committee, provided that in so disclosing, the Covered Person is not disclosing the views or statements of any other Covered Person or Participant that are considered Confidential Information.

vi. *A person that has reason to believe that Confidential Information has been disclosed by another without the authorization of the Operating Committee or otherwise in a manner inconsistent with this Policy may report such potential unauthorized disclosure to the Chair of the Operating Committee. In addition, a* [A ]Covered Person that discloses Confidential Information without the authorization of the Operating Committee will report such disclosure to the Chair of the Operating Committee. Such *self-reported* unauthorized disclosure of Confidential Information will be recorded in the minutes of the meeting of the Operating Committee and will contain: (a) The name(s) of the person(s) who disclosed such Confidential Information, and (b) a description of the Confidential Information disclosed. The name(s) of the person(s) who disclosed such Confidential Information will also be recorded in any publicly available summaries of Operating Committee minutes.

[FR Doc. 2020–10040 Filed 5–11–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88828; File No. SR–MSRB–2020–02]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Align Certain MSRB Rules to Securities Exchange Act Rule 15l–1, Regulation Best Interest

May 6, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2020, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule G–8, on books and records, MSRB Rule G–9, on preservation of records, MSRB Rule G–19, on suitability of recommendations and transactions, MSRB Rule G–20, on gifts, gratuities, non-cash compensation and expenses of issuance, MSRB Rule G–48, on transactions with Sophisticated Municipal Market Professionals (''SMMPs''), and the deletion of an interpretation of MSRB Rule G–20 (the ''proposed rule change''). The proposed rule change would align MSRB rules to the Commission's recently adopted Rule 15l–1 under the Exchange Act (''Regulation Best Interest'').[3]

The proposed rule change would result in the following changes to MSRB rules:

- MSRB Rule G–19 would apply only in circumstances in which Regulation Best Interest does not apply;
- MSRB Rule G–48 would make clear that the exception from the requirement to perform a customer-specific suitability analysis when making a recommendation to an SMMP, as defined in MSRB Rule D–15, is available only for recommendations that are subject to MSRB Rule G–19;
- MSRB Rule G–20 would require any permissible non-cash compensation to align with the requirements of Regulation Best Interest; and
- Dealers would be required to maintain books and records required by Regulation Best Interest and the related SEC Form CRS requirement.

The effective date of all of the amendments to MSRB rules included in the proposed rule change will be the compliance date for Regulation Best Interest.[4] Dealers would not have an obligation to comply with the proposed rule change until the effective date and the current versions of MSRB Rules G–8, G–9, G–19, G–20, and G–48 would remain applicable in the interim period between SEC approval and the effective date.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15l–1; *see also* Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019) (File No. S7–07–18) (''Regulation Best Interest Adopting Release'').

[4] *See* Regulation Best Interest Adopting Release, 84 FR 33400 (setting June 30, 2020 as the compliance date for Regulation Best Interest).

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

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

1. Purpose

Background

On June 5, 2019, the SEC adopted Regulation Best Interest, which establishes a new standard of conduct for broker-dealers [5] and natural persons who are associated persons of a broker-dealer (collectively, ''broker-dealers'') when they make a recommendation to a retail customer, defined generally as a natural person or the legal representative of such person, who receives and uses a recommendation from a broker-dealer primarily for personal, family, or household purposes, of any securities transaction or investment strategy involving securities. The Commission stated that Regulation Best Interest enhances the broker-dealer standard of conduct beyond existing suitability obligations, and aligns the standard of conduct with retail customers' reasonable expectations by imposing certain new requirements on broker-dealers.[6] Specifically, Regulation Best Interest imposes the following ''general obligation'':

A broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.[7]

Regulation Best Interest provides that this general obligation is satisfied only if a broker-dealer complies with four component obligations: (i) An obligation to make certain prescribed disclosures, before or at the time of the recommendation, about the recommendation and the relationship between the retail customer and the broker-dealer (the ''Disclosure Obligation''); [8] (ii) an obligation to exercise reasonable diligence, care, and skill in making a recommendation (the ''Care Obligation''); [9] (iii) an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest (the ''Conflict of Interest Obligation''); [10] and (iv) an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest (the ''Compliance Obligation'').[11]

The MSRB has reviewed its rule book in light of the Commission's adoption of Regulation Best Interest and the related Form CRS requirement [12] and, as further discussed below, is filing the proposed rule change to harmonize the MSRB's rules with the Commission's Regulation Best Interest and Form CRS and reduce the potential for conflicting or duplicative regulation in the municipal securities market.[13] The MSRB has coordinated the proposed amendments with FINRA, which has proposed similar amendments to its rules,[14] in order to harmonize requirements, to the extent possible, for dealers that are subject to the rules of both the MSRB and FINRA.

**I. Suitability**

*A. MSRB Rule G–19*

MSRB Rule G–19 provides that a dealer must have a reasonable basis to believe that a recommended transaction or investment strategy involving municipal securities is suitable for the customer, based on the information obtained through the reasonable diligence of the dealer to ascertain the customer's investment profile.[15] MSRB Rule G–19 is composed of three component obligations:

- *Reasonable-basis suitability,* which requires a dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors; [16]
- *Customer-specific suitability,* which requires a dealer to have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile; [17] and
- *Quantitative suitability,* which requires a dealer who has actual or *de facto* control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.[18]

MSRB Rule G–19 applies to all dealers when making a recommendation to a ''customer,'' which is defined in MSRB Rule D–9 as any person other than a dealer acting in its capacity as a dealer or an issuer in transactions involving the sale of a new issue of its securities.[19] When a dealer reasonably concludes that a customer is an SMMP,[20] however, the dealer is not

[5] To effect transactions in municipal securities, a dealer must be registered with the Commission as either a broker-dealer under Section 15(b)(1) or a municipal securities dealer under Section 15B(a)(2) of the Exchange Act. All dealers, other than bank dealers, are broker-dealers and therefore are subject to Regulation Best Interest. MSRB Rule D–8 defines a bank dealer as ''a municipal securities dealer which is a bank or a separately identifiable department or division of a bank.'' These dealers are registered with the Commission under Exchange Section 15B(a)(2) and thus are not subject to Regulation Best Interest. Because bank dealers can make recommendations of municipal securities transactions or investment strategies involving municipal securities to retail customers, the Board plans to issue a separate Request for Comment on whether the Board will apply the requirements of Regulation Best Interest, through further amendments to MSRB rules, to bank dealers.

[6] Regulation Best Interest Adopting Release, 84 FR 33319.

[7] 17 CFR 240.15l–1(a)(1).

[8] 17 CFR 240.15l–1(a)(2)(i).

[9] 17 CFR 240.15l–1(a)(2)(ii).

[10] 17 CFR 240.15l–1(a)(2)(iii).

[11] 17 CFR 240.15l–1(a)(2)(iv).

[12] When it adopted Regulation Best Interest, the Commission also adopted a requirement for registered investment advisers and registered broker-dealers to provide retail investors with a relationship summary on new Form CRS, including information about the ''types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and how to obtain additional information about the firm.'' Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).

[13] SEC staff frequently asked questions on Regulation Best Interest are available at: *https://www.sec.gov/tm/faq-regulation-best-interest.*

[14] *See* Exchange Act Release No. 88422, File No. SR–FINRA–2020–007 (March 19, 2020), 85 FR 16974 (March 25, 2020).

[15] MSRB Rule G–19 defines a customer's investment profile to include the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the dealer in connection with such recommendation.

[16] MSRB Rule G–19, Supplementary Material .05(a).

[17] MSRB Rule G–19, Supplementary Material .05(b).

[18] MSRB Rule G–19(c).

[19] MSRB Rule D–9 states that, ''Except as otherwise specifically provided by rule of the Board, the term 'customer' shall mean 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.''

[20] MSRB Rule D–15 defines a customer as an SMMP according to three elements:

(a) *Nature of the Customer.* The customer must be:

(1) a bank, savings and loan association, insurance company, or registered investment company;

Continued

obligated to perform a customer-specific suitability analysis under MSRB Rule G–19.[21]

Conceptually similar to MSRB Rule G–19, the Care Obligation of Regulation Best Interest also requires a three-part analysis to evaluate recommendations to retail customers but employs the higher best interest standard instead of MSRB Rule G–19's suitability standard. In addition, while Regulation Best Interest applies only to recommendations to ''retail customers,'' defined generally as a natural person or the legal representative of such person, who receives and uses a recommendation from a broker-dealer primarily for personal, family, or household purposes,[22] MSRB Rule G–19 applies to ''customers'' (with an exception to the customer-specific suitability requirement for recommendations to SMMPs).

The proposed rule change includes two amendments to MSRB Rule G–19 designed to harmonize MSRB requirements with Regulation Best Interest. First, to avoid unnecessary regulatory complexity, the applicability of MSRB Rule G–19 would be limited only to circumstances in which Regulation Best Interest does not apply. Second, to conform the quantitative suitability component of MSRB Rule G–19, for circumstances in which MSRB Rule G–19 applies, to the analogous requirement in Regulation Best Interest, the proposed rule change would remove the limitation that requires a quantitative suitability determination only when a dealer has ''actual or *de facto* control'' over the customer's account. These proposed amendments are discussed below.

i. Eliminate Applicability of MSRB Rule G–19 to Recommendations Subject to Regulation Best Interest

As noted above, Regulation Best Interest addresses generally the same conduct that is addressed by MSRB Rule G–19 but employs a best interest, rather than a suitability, standard. Absent action by the Board, a dealer would be required to reconcile compliance with both Regulation Best Interest and MSRB Rule G–19 in many circumstances. In such circumstances, the MSRB believes that compliance with Regulation Best Interest would result in compliance with MSRB Rule G–19 because a dealer who ''act[s] in the best interest of the retail customer'' [23] when making a recommendation to a retail customer of any securities transaction or investment strategy involving securities would necessarily also meet the MSRB Rule G–19 requirement to ''have a reasonable basis to believe that [the recommendation] is suitable for the customer.'' Accordingly, in order to reduce the potential for duplicative regulation and unnecessary complexity, the Board is proposing to limit the application of MSRB Rule G–19 to circumstances in which Regulation Best Interest does not apply. To do so, the Board would add new text to MSRB Rule G–19 that states that MSRB Rule G–19 does not apply to recommendations subject to Regulation Best Interest. MSRB Rule G–19 would thus apply only to:

- Recommendations to customers that are not ''retail customers,'' as defined by Regulation Best Interest, and
- Recommendations to any customers by bank dealers.[24]

Regulation Best Interest defines a retail customer as a natural person, or the legal representative of such natural person (regardless of net worth), who receives a recommendation from a broker-dealer and uses that recommendation primarily for personal, family, or household purposes. Accordingly, if the dealer making a recommendation is subject to Regulation Best Interest, MSRB Rule G–19 would not apply when the dealer makes a recommendation to such persons. The Board believes this approach will provide regulatory clarity about the applicability and requirements of MSRB Rule G–19 and Regulation Best Interest to market participants in an effective and efficient manner.

ii. Align MSRB Rule G–19's Quantitative Suitability Obligation to the Requirements of Regulation Best Interest

Currently, MSRB Rule G–19's quantitative suitability obligation requires a dealer to have a reasonable basis for believing that a series of recommended transactions are not excessive and unsuitable for the customer when taken together in light of the customer's profile, but only if the dealer has actual or *de facto* control over the customer's account.[25] In contrast, the quantitative care obligation of Regulation Best Interest applies regardless of whether the broker-dealer exercises actual or *de facto* control over the customer's account.[26] In the Regulation Best Interest Adopting Release, the Commission stated:

[I]mposing the quantitative care obligation without a ''control'' element would provide consistency in the investor protections provided to retail customers by requiring a broker-dealer to always form a reasonable basis as to the recommended frequency of trading in a retail customer's account—irrespective of whether the broker-dealer ''controls'' or exercises ''de facto control'' over the retail customer's account. This would also be consistent with the other obligations of the Care Obligation, which apply regardless of whether a broker-dealer ''controls'' or exercises ''de facto control'' over the retail customers' account.[27]

For the same reasons, the proposed rule change eliminates the control element of the quantitative suitability obligation prescribed in Supplementary Material .05(c) of MSRB Rule G–19.

*B. MSRB Rule G–48*

As described above, MSRB Rule G–48(c) provides that a dealer making a municipal securities recommendation to an SMMP does not have any obligation under MSRB Rule G–19 to perform a customer-specific suitability analysis. An SMMP is defined by three components:

- The customer must fit within a prescribed category of institutional investor or be a natural person or entity

(2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(3) any other person or entity with total assets of at least $50 million.

(b) *Dealer Determination of Customer Sophistication.* The dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities.

(c) *Customer Affirmation.* The customer must affirmatively indicate that it:

(1) is exercising independent judgment in evaluating:

(A) the recommendations of the dealer;

(B) the quality of execution of the customer's transactions by the dealer; and

(C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and

(2) has timely access to material information that is available publicly through established industry sources as defined in Rule G–47(b)(i) and (ii).

[21] MSRB Rule G–48(c).

[22] *See* 17 CFR 240.15l–1(b)(1).

[23] 17 CFR 240.15l–1(a)(1).

[24] As noted above, the MSRB plans to issue a Request for Comment on whether the MSRB will apply the requirements of Regulation Best Interest to bank dealers through further amendments to MSRB rules.

[25] MSRB Rule G–19, Supplementary Material .05(c).

[26] *See* 17 CFR 240.15l–1(a)(2)(ii)(C); *see also* Regulation Best Interest Adopting Release, 84 FR at 33327.

[27] Regulation Best Interest Adopting Release, 84 FR at 33384 (citation omitted).

with total assets of at least $50 million; [28]

• The dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently; [29] and

• The customer must make certain affirmations regarding the exercise of independent judgment and access to information.[30]

As a result of this definition, a dealer making a recommendation to a natural person with at least $50 million in assets and who otherwise meets the definition of SMMP, would be required by MSRB Rule G–19 to conduct reasonable basis and quantitative suitability analyses but not a customer-specific suitability analysis.

In contrast, Regulation Best Interest applies when a broker-dealer makes a recommendation to a ''retail customer.'' A ''retail customer'' is a natural person or the legal representative of such natural person (regardless of net worth) who receives a recommendation from a broker-dealer and uses that recommendation primarily for personal, family, or household purposes.[31] Whenever Regulation Best Interest applies, it applies in full; there is no exception from the customer-specific care obligation for high-net worth individuals.

As described above, under the proposed amendments to MSRB Rule G–19, MSRB Rule G–19 would not apply to recommendations subject to Regulation Best Interest. Accordingly, the proposed rule change includes an amendment to MSRB Rule G–48(c) stating that the exception from the customer-specific suitability requirement is available only when a recommendation is subject to MSRB Rule G–19 and not Regulation Best Interest.

## II. Non-Cash Compensation

MSRB Rule G–20(g) broadly prohibits dealers and their associated persons from directly or indirectly accepting or making payments or offers of payments of any non-cash compensation in connection with the sale and distribution of a primary offering of municipal securities, subject to certain limited exceptions. Described generally, these exceptions are:

• Gifts that do not exceed $100 per individual per year and are not preconditioned on achievement of a sales target; [32]

• Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, provided that such gifts are not so frequent or so extensive as to raise any question of propriety and are not preconditioned on achievement of a sales target; [33]

• Payment or reimbursement by offerors (generally, the issuer and any advisors to the issuer, the underwriters, and their affiliates) in connection with training or education meetings, subject to specified conditions, including that the payment is not conditioned on achieving a sales target; [34]

• Internal non-cash compensation arrangements between the dealer and its associated persons, subject to specified conditions including that any non-cash compensation related to a sales contest must be based on the total production of all associated persons with respect to all municipal securities within respective product types distributed by the dealer and credit for those sales must be weighted equally; [35] and

• Contributions by any person other than the dealer to a non-cash compensation arrangement between a dealer and its associated persons, subject to the same conditions for permissible internal non-cash compensation arrangements, described above.[36]

Regulation Best Interest's Conflict of Interest Obligation requires broker-dealers to establish, maintain and enforce written policies and procedures reasonably designed to, among other things, identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time.[37] As described above, MSRB Rule G–20 permits certain sales contests in connection with primary offerings. Accordingly, the MSRB is proposing to clarify in MSRB Rule G–20(g) that any non-cash compensation permitted by MSRB Rule G–20(g), including any sales contests, must also be consistent with the applicable requirements of Regulation Best Interest.

Additionally, in June 1982, the MSRB published interpretive guidance under MSRB Rule G–20 stating that sales contests offered by an underwriter to participating members of a syndicate constitute compensation for services and, therefore, must meet the requirements of the then-current version of MSRB Rule G–20.[38] The MSRB proposes to delete this interpretation from 1982 because, with respect to dealers that make recommendations to retail customers, such sales contests may be inconsistent, depending on the particular facts and circumstances, with the requirements of Regulation Best Interest's Conflict of Interest Obligation, which requires broker-dealers to establish, maintain and enforce written policies and procedures reasonably designed to ''[i]dentify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.'' [39] In adopting Regulation Best Interest, the Commission stated that ''[s]ales contests, sales quotas, bonuses and non-cash compensation that are based on the sales of specific securities within a limited period of time create high-pressure situations for associated persons to increase the sales of specific securities or specific types of securities within a limited period of time and thus compromise the best interests of their retail customers.'' [40] The MSRB believes the same policy concerns apply with respect to non-retail customers. Specifically, the high-pressure sales situations described above have the potential to compromise the best interests of non-retail customers as well. Accordingly, the Board is proposing to delete this interpretation.

## III. Books and Records

### *A. MSRB Rule G–8*

MSRB Rule G–8 directs dealers to make and keep current specified books and records to the extent they are applicable to a dealer's business. For

[28] MSRB Rule D–15(a).

[29] MSRB Rule D–15(b).

[30] MSRB Rule D–15(c).

[31] 17 CFR 240.15l–1(b)(1).

[32] MSRB Rule G–20(d)(i).

[33] MSRB Rule G–20(d)(ii).

[34] MSRB Rule G–20(d)(iii).

[35] MSRB Rule G–20(d)(iv).

[36] MSRB Rule G–20(d)(v).

[37] 17 CFR 240.15l–1(a)(2)(iii)(D). The Conflict of Interest Obligation also requires broker-dealers to (1) identify and at a minimum disclose or eliminate all conflicts of interest associated with a recommendation of any securities transaction or investment strategy involving securities to a retail customer; (2) identify and mitigate any conflicts of interest associated with such recommendations that create an incentive for a natural person who is an associated person of a broker-dealer to place the interest of the broker-dealer or such natural person ahead of the interest of the retail customer; and (3) identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations and prevent such limitations and associated conflicts of interest from causing the broker-dealer, or a natural person who is an associated person of the broker-dealer, to make recommendations that place the interest of the broker-dealer or such natural person ahead of the interest of the retail customer. 17 CFR 240.15l–1(a)(3)(A)–(C).

[38] *See* Rule G–20 Interpretive Guidance, ''Authorization of Sales Contests'' (June 25, 1982).

[39] *See* 17 CFR 240.15l–1(a)(2)(iii).

[40] Regulation Best Interest Adopting Release, 84 FR at 33331.

dealers subject to Exchange Act Rule 17a–3, MSRB Rule G–8(f) provides that compliance with Exchange Act Rule 17a–3 under the Act will be deemed compliance with MSRB Rule G–8, provided that certain records required by MSRB Rule G–8 must be maintained in any event. Exchange Act Rule 17a–3 requires broker-dealers to make and keep current specified books and records and provides that for purposes of transactions in municipal securities by dealers, compliance with MSRB Rule G–8 will be deemed compliance with Exchange Act Rule 17a–3.[41]

When the Commission adopted Regulation Best Interest, it amended Exchange Act Rule 17a–3 to require broker-dealers to maintain a record of all information collected from and provided to a retail customer pursuant to Regulation Best Interest, along with the identity of each natural person who is an associated person, if any, responsible for the account.[42] The Commission also adopted a related requirement for broker-dealers to provide retail investors with Form CRS[43] and amended Exchange Act Rule 17a–3 to require broker-dealers to maintain a record of the date each Form CRS was provided.[44]

Because dealers may comply with Exchange Act Rule 17a–3 for purposes of transactions in municipal securities by complying with MSRB Rule G–8, the proposed rule change includes amendments to MSRB Rule G–8 that parallel the new Exchange Act Rule 17a–3 requirements relating to Regulation Best Interest and Form CRS. These amendments are necessary to ensure that dealers subject to Regulation Best Interest and the Form CRS requirement are required to maintain the records regardless of which books and records rule they comply with.

*B. MSRB Rule G–9*

MSRB Rule G–9 prescribes the periods of time that records must be preserved by dealers. Similar to MSRB Rule G–8, MSRB Rule G–9 provides that dealers who are subject to and comply with Exchange Act Rules 17a–3 and 17a–4 under the Act will be deemed to comply with MSRB Rule G–9, provided that certain specified records are preserved for the applicable time periods specified in Rule G–9 in any event. Exchange Act Rule 17a–4 under the Act sets forth record preservation requirements for broker-dealers and, like Exchange Act Rule 17a–3, provides that for purposes of transactions in municipal securities by dealers, compliance with MSRB Rule G–9 will be deemed compliance with Exchange Act Rule 17a–4.

The Commission amended Exchange Act Rule 17a–4 to require broker-dealers to retain the records related to Regulation Best Interest and Form CRS described above, as well as a copy of each Form CRS for six years.[45] Accordingly, the proposed rule change includes amendments to MSRB Rule G–9 that parallel these new requirements. These amendments are necessary to ensure that dealers are subject to similar requirements regardless of which record preservation rule they comply with.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Act,[46] which provides that:

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

Section 15B(b)(2)(C) of the Act[47] provides that the MSRB's rules shall:

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

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because it is designed to prevent fraudulent and manipulative practices by dealers, foster cooperation and coordination among regulators, promote just and equitable principles of trade, and protect investors.

**I. Statutory Basis for Amendments Related to Suitability**

The proposed amendments to MSRB Rules G–19 and G–48 are consistent with Section 15B(b)(2) of the Act because the amendments will foster cooperation and coordination with regulators, facilitate transactions in municipal securities and municipal financial products, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and protect investors, as described below.

*A. Eliminating the Applicability of MSRB Rule G–19 to Recommendations Subject to Regulation Best Interest*

The proposed amendments to MSRB Rule G–19 eliminating the applicability of MSRB Rule G–19's suitability requirements to recommendations subject to Regulation Best Interest will foster cooperation and coordination with regulators by harmonizing MSRB rules with the Commission's Regulation Best Interest. Consequently, these amendments will also facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by eliminating potential regulatory duplication and complexity, which will ease potential regulatory burdens on dealers associated with complying with two regulatory schemes. Dealers will be able to more efficiently analyze and operationalize compliance with Regulation Best Interest and MSRB Rule G–19. For example, dealers can proceed in conforming their municipal securities activities to Regulation Best Interest without engaging in a more extensive analysis of how the obligations of Regulation Best Interest may overlap, exceed, or differ from those of MSRB Rule G–19. Consequently, dealers will be able to more efficiently execute transactions in the municipal securities market with greater regulatory certainty under the proposed amendments.

These proposed amendments to MSRB Rule G–19 will also protect investors by ensuring dealers comply with the heightened regulatory requirements of the Commission's Regulation Best Interest, while maintaining the existing regulatory scheme under MSRB Rule G–19 for transactions not subject to Regulation Best Interest. As stated by the Commission in its adopting of Regulation Best Interest:

> The enhancements contained in Regulation Best Interest are designed to improve investor protection by enhancing the quality of broker-dealer recommendations to retail customers and reducing the potential harm to

[41] 17 CFR 240.17a–3.

[42] 17 CFR 240.17a–3(a)(35).

[43] 17 CFR 240.17a–14.

[44] 17 CFR 240.17a–3(a)(24).

[45] 17 CFR 240.17a–4(e)(5), (e)(10).

[46] 15 U.S.C. 78*o*–4(b)(2).

[47] 15 U.S.C. 78*o*–4(b)(2)(C).

retail customers that may be caused by conflicts of interest.[48]

For the same reasons, the MSRB believes that these amendments in the proposed rule change are consistent with the investor protection requirements of Section 15B(b)(2)(C) of the Act.[49]

*B. Aligning MSRB Rule G–19's Quantitative Suitability Obligation to the Requirements of Regulation Best Interest*

The proposed amendments to MSRB Rule G–19 aligning MSRB Rule G–19's quantitative suitability obligation to the requirements of Regulation Best Interest will foster cooperation and coordination with regulators by harmonizing MSRB rules with the Commission's Regulation Best Interest. Consequently, these amendments will also facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by eliminating potential regulatory duplication and complexity, which will ease potential regulatory burdens on dealers associated with complying with two regulatory schemes. Conforming the quantitative suitability requirement of MSRB Rule G–19 with Regulation Best Interest's Care Obligation will allow dealers to more efficiently operationalize compliance with their obligations under both requirements, and to more efficiently execute transactions in the municipal securities market with greater regulatory certainty.

The proposed amendment to the quantitative suitability obligation of MSRB Rule G–19 will also protect investors by heightening the requirements of MSRB Rule G–19 for recommendations not subject to Regulation Best Interest.[50] Accordingly, the MSRB believes that these amendments are consistent with the investor protection requirements of Section 15B(b)(2)(C) of the Act.[51]

*C. Amending MSRB Rule G–48(c) To State That the Exception From the Customer-Specific Suitability Requirement Is Available Only When a Recommendation Is Subject to MSRB Rule G–19*

The proposed amendments to MSRB Rule G–48(c) to state that the exception from the customer-specific suitability requirement is available only when a recommendation is subject to MSRB Rule G–19 will foster cooperation and coordination with regulators by harmonizing MSRB rules with Regulation Best Interest. Consequently, these amendments will also facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by eliminating potential regulatory duplication and, thereby, ease potential regulatory burdens on dealers associated with complying with two regulatory schemes. More specifically, dealers will not have to analyze whether aspects of complying with MSRB Rule G–19's suitability obligations in some circumstances could fail to satisfy the requirements of Regulation Best Interest. Consequently, dealers will be able to more efficiently execute transactions in the municipal securities market with greater regulatory certainty under the proposed amendments.

**II. Statutory Basis for Amendments Related to Non-Cash Compensation**

The proposed amendments to MSRB Rule G–20 related to non-cash compensation are consistent with Section 15B(b)(2) of the Act because the amendments will foster cooperation and coordination with regulators by harmonizing MSRB rules. Consequently, these amendments will also facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by eliminating potential regulatory duplication and, thereby, ease potential regulatory burdens on dealers associated with complying with two regulatory schemes. Consequently, dealers will be able to more efficiently execute transactions in the municipal securities market with greater regulatory certainty under the proposed amendments.

**III. Statutory Basis for Amendments Related to Books and Records**

The proposed amendments to MSRB Rules G–8 and G–9 are consistent with Section 15B(b)(2) of the Act because the amendments will foster cooperation and coordination with regulators, facilitate transactions in municipal securities and municipal financial products, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and protect investors.

*A. Amending MSRB Rule G–8 to Align With Exchange Act Rule 17a–3*

Because dealers may comply with Exchange Act Rule 17a–3 for purposes of transactions in municipal securities by complying with MSRB Rule G–8, the proposed rule change includes amendments to MSRB Rule G–8 that parallel the new Exchange Act Rule 17a–3 requirements relating to Regulation Best Interest and Form CRS. These amendments will foster cooperation and coordination with regulators by harmonizing MSRB rules with the Commission's record-keeping requirements under Exchange Rule Act Rule 17a–3, as amended by Regulation Best Interest. Consequently, these amendments will also facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by providing greater regulatory certainty to dealers in the application of record-keeping requirements associated with municipal securities transactions. In this way, the proposed rule change will ease certain regulatory burdens on dealers when attempting to comply with the record-keeping requirements under MSRB Rule G–8 and Exchange Act Rule 17a–3.

The proposed amendments to MSRB Rule G–8 will also protect investors by requiring dealers to create and maintain books and records, as applicable, to demonstrate compliance with Regulation Best Interest and the SEC's Form CRS requirements.[52] These proposed amendments are coordinated with SEC books and records requirements to ensure that dealers are subject to similar requirements, whether under MSRB rules or the rules of the SEC.

*B. Amending MSRB Rule G–9 To Align With Exchange Act Rule 17a–4*

In its adoption of Regulation Best Interest, the Commission amended Exchange Act Rule 17a–4 to require dealers to retain the records related to Regulation Best Interest and Form CRS described above, as well as a copy of

[48] Regulation Best Interest Adopting Release, 83 FR at 33321.

[49] 15 U.S.C. 78*o*–4(b)(2)(C).

[50] *See, e.g.,* Regulation Best Interest Adopting Release, 83 FR at 33321.

[51] 15 U.S.C. 78*o*–4(b)(2)(C).

[52] *See* Regulation Best Interest Adopting Release, 83 FR at 33398 (''The Commission notes that the proposed new requirements of Rule 17a–3 are not designed to create additional, standalone burdens for broker-dealers but instead to provide a means by which they can demonstrate, and Commission examiners can confirm, their compliance with the new substantive requirements of Regulation Best Interest.'').

each Form CRS for six years.[53] Accordingly, the proposed rule change includes amendments to MSRB Rule G–9 that parallel these new requirements. These amendments will foster cooperation and coordination with regulators by harmonizing MSRB rules with the Commission's record-keeping requirements under Exchange Rule Act Rule 17a–4, as amended by Regulation Best Interest. These amendments will also facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by providing greater regulatory certainty to dealers in the application of record-keeping requirements associated with municipal securities transactions. In this way, the proposed rule change will ease regulatory burdens on dealers when complying with the record-keeping requirements under MSRB Rule G–9 and Exchange Act Rule 17a–4.

The proposed amendments to MSRB Rule G–9 will protect investors by requiring dealers to create and maintain books and records, as applicable, to demonstrate compliance with Regulation Best Interest and the SEC's Form CRS requirements.[54] These proposed amendments are coordinated with SEC books and records requirements to ensure that dealers are subject to similar requirements, whether under MSRB rules or the rules of the SEC.

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

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.[55] As discussed below, the proposed rule change would align MSRB rules with, or otherwise clarify the applicability of MSRB rules in relation to, the requirements of Regulation Best Interest. For those dealers that are already subject to Regulation Best Interest, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposed rule change would apply equally to all these dealers.[56]

1. Need for Proposed Rule Change

The adoption of Regulation Best Interest necessitates the proposed rule change consisting of amendments to MSRB Rules G–8, G–9, G–19, G–20 and G–48 described above. The proposed rule change is needed to harmonize Regulation Best Interest and relevant MSRB rules, to clarify and enhance dealers' regulatory obligations under MSRB rules when making recommendations involving municipal securities to retail investors, and thus to enhance investor protection. In addition, the proposed rule change is designed to better harmonize MSRB requirements with relevant FINRA rules.

Specifically, the proposed rule change would eliminate the applicability of Rule G–19 with regard to recommendations subject to Regulation Best Interest, align Rule G–19's quantitative suitability obligation with the requirements of Regulation Best Interest, amend Rule G–48 to make clear that the exception from the requirement to conduct a customer-specific suitability obligation when making a recommendation to an SMMP does not apply to recommendations that are subject to Regulation Best Interest, and align Rule G–20's permissible non-cash compensation to the requirements of Regulation Best Interest. In addition, the proposed rule change includes amendments to MSRB Rule G–8 and Rule G–9 on books and records that parallel the new Exchange Act Rule 17a–3 and 17a–4 requirements related to Regulation Best Interest and Form CRS under the Exchange Act.

2. Baseline for Evaluation

In order to evaluate the potential economic impact of any proposed rule change, a baseline must be established as a point of reference. This baseline enables a comparison to the expected state with the proposed rule change in effect. The economic impact of the proposed change is therefore viewed as the difference between the *baseline state* and the *expected state.* Typically, the baseline is defined as the present state before any proposed rule change is approved and implemented. For dealers subject to Regulation Best Interest, however, the future state after the Regulation Best Interest compliance date is a more appropriate baseline, as the MSRB's proposed rule change is in response to and closely tied to the future implementation of Regulation Best Interest.

3. Alternative Approaches

The MSRB identified and reviewed two options as alternatives to the changes outlined previously. In one alternative approach, the MSRB would eliminate MSRB Rule G–19 on suitability. However, Regulation Best Interest is only applicable to recommendations made to retail customers and is not applicable to recommendations made to other customers, such as institutions. If Rule G–19 were eliminated, no suitability rule would apply when dealers make recommendations regarding municipal securities that are not covered by Regulation Best Interest. In addition, Regulation Best Interest does not apply to bank dealers, while MSRB Rule G–19 applies to all dealers, including bank dealers. Consequently, this alternative would likely reduce protection to investors and thus be inferior to the proposed rule change. The second alternative is to require bank dealers to also comply with Regulation Best Interest, in addition to the proposed changes described above. As noted above, the MSRB plans to issue a Request for Comment on applying the requirements of Regulation Best Interest to bank dealers through further amendments to MSRB rules to further inform its consideration of this approach.

4. Benefits, Costs and Effect on Competition

Pursuant to the MSRB's policy on economic analysis in rulemaking, economic analysis should address the likely costs and benefits of the draft amendments. The economic analysis assesses the draft amendments as if they were fully implemented against the

[53] 17 CFR 240.17a–4(e)(5), (e)(10). As described above, registered broker-dealers and investment advisers are required to provide retail investors with a relationship summary on new Form CRS. Pursuant to this requirement, ''[r]etail investors will receive a relationship summary at the beginning of a relationship with a firm, communications of updated information following a material change to the relationship summary, and an updated relationship summary upon certain events.'' Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).

[54] *See* Regulation Best Interest Adopting Release, 83 FR at 33400 (''. . . the Commission believes it is important, including for examination purposes, that broker-dealers separately retain records that specifically demonstrate compliance with Regulation Best Interest and new paragraph (a)(35) of Rule 17a–3 . . .'').

[55] 15 U.S.C. 78*o*–4(b)(2)(C).

[56] For bank dealers that are not subject to Regulation Best Interest, to the extent these bank dealers are currently making recommendations of municipal securities to retail customers, the MSRB believes that a potential regulatory imbalance between bank dealers and dealers other than bank dealers likely will exist as of the compliance date of Regulation Best Interest. However, the MSRB plans to issue a Request for Comment on whether it will apply the requirements of Regulation Best Interest to bank dealers through further amendments to MSRB rules.

context of the economic baselines discussed above. In considering these costs, benefits, and impacts, the Board addresses reasonable alternatives, where applicable.

The SEC estimated in its filing that there was a total of 2,766 broker-dealers who had retail customers at the end of 2018. By comparison, the MSRB's Real-Time Transaction Reporting System (''RTRS'') trading records indicate that there are 768 dealers that are subject to Regulation Best Interest and had at least one municipal security trade with customers in 2019 with a trade size of $100,000 par amount or lower, a proxy for retail-sized trades.[57]

Since all dealers other than bank dealers are required to be in full compliance with Regulation Best Interest, the cost and benefit assessment focuses on the incremental impact of the proposed MSRB rule changes, beyond the costs and benefits of compliance with Regulation Best Interest.

*A. Benefits*

The MSRB believes that the proposed rule change would benefit dealers by clarifying and harmonizing their regulatory obligations under MSRB rules considering the upcoming implementation of Regulation Best Interest. Dealer compliance with the proposed rule change would provide greater certainty to dealers about when Regulation Best Interest applies rather than MSRB Rule G–19. This would in turn enhance investor protection as a result of dealers being clearer about when Regulation Best Interest applies.

The proposed rule change would also foster cooperation and coordination by harmonizing MSRB rules with Regulation Best Interest and related FINRA rules. The MSRB generally considers it desirable and efficient to improve the clarity and consistency of MSRB rules in relation to the rules of other regulators, particularly to the extent such changes may eliminate inconsistencies between rules of different regulators, ease the burdens of dealer compliance and lessen instances of confusion among dealers without reducing investor protections. Specifically, the proposed rule change will allow dealers to conform their policies and procedures and related business practices to Regulation Best Interest, MSRB Rule G–19 and FINRA's suitability rule without engaging in a more extensive analysis of how the obligations of each rule may overlap, exceed, or differ from each other.

*B. Costs*

For dealers, the MSRB believes the costs of complying with the proposed rule change that are incremental to the already allotted and absorbed costs of complying with Regulation Best Interest will be minor, given that dealers other than bank dealers are assumed to be in full compliance with Regulation Best Interest already when the proposed MSRB rule changes become effective. Bank dealers would not incur costs in complying with Regulation Best Interest and would continue to comply with MSRB Rule G–19, as amended to remove the control element from the quantitative suitability obligation.

The proposed rule change would trigger one-time policy and procedure revisions by all dealers (including bank dealers) in relation to the changes to MSRB Rule G–19's quantitative suitability requirement. Therefore, there would be upfront costs associated with revising the policies and procedures to comply with the new requirements. It is possible that the one-time revision cost may be proportionately higher for smaller-size dealers than larger-size dealers as a smaller firm may have to rely on outside legal counsel and technology support to review changes on policies and procedures. The MSRB, however, believes the revisions of policies and procedures by dealers would not be overly burdensome or expensive, and on balance, the aggregate benefits expected to accumulate to dealers and retail investors associated with the proposed rule change should outweigh the one-time policy and procedure revision costs over time.[58]

*C. Effect on Competition, Efficiency and Capital Formation*

The MSRB believes the proposed rule change may improve dealers' regulatory certainty by promoting clarity and consistency on issues related to suitability and permissible non-cash compensation. The MSRB also believes the proposed rule change would not result in undue burden on competition for dealers subject to Regulation Best Interest, as the proposed rule change would have a relatively mild impact on dealers who are in full compliance with Regulation Best Interest. For these dealers, the incremental impact of the proposed rule change should be limited to the need to update their policies and procedures to reflect the removal of the control element from the quantitative suitability obligation of MSRB Rule G–19, as noted above. Since this proposed amendment to Rule G–19 conforms with the care obligation of Regulation Best Interest, dealers likely have already implemented necessary changes to policies and procedures to comply with the obligation in the context of Regulation Best Interest.

For bank dealers that are not subject to Regulation Best Interest, to the extent these bank dealers are currently offering recommendations of municipal securities to retail customers, the MSRB believes that they could gain an advantage over dealers (other than bank dealers) by incurring less compliance costs, unless MSRB rules apply Regulation Best Interest to bank dealers. While this cohort of bank dealers makes up a relatively small percentage of all dealers that transact in municipal securities,[59] the MSRB plans to issue a Request for Comment on whether it will apply Regulation Best Interest to bank dealers through further amendments to MSRB rules to address this regulatory imbalance.

The MSRB believes the proposed rule change would not impose barriers on capital formation, as the intention is to harmonize MSRB rules with Regulation Best Interest and related FINRA rules.

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

The Board did not solicit comment on the proposed rule change. Therefore,

[57] While not a perfect proxy for a retail trade, the MSRB believes that the relatively low par amount is more indicative of a trade with a retail customer than an institutional investor.

[58] The proposed amendments to MSRB Rules G–8 and G–9 would not impose costs on dealers because these amendments impose no new requirements on dealers beyond those already imposed by Rules 17a–3 and 17a–4, as amended in light of Regulation Best Interest and the Form CRS requirement. Dealers not subject to Regulation Best Interest or the Form CRS requirement would not be required to maintain these records under MSRB Rules G–8 and G–9, as amended by the proposed rule change. Similarly, the proposed amendment to MSRB Rule G–20 would not impose costs on dealers because it imposes no new requirements on dealers beyond those already imposed by Regulation Best Interest. The proposed deletion of the interpretation of MSRB Rule G–20 would similarly impose no costs because it does not impose requirements on dealers beyond those of MSRB Rule G–20. Finally, the proposed amendment to MSRB Rule G–48 states that the existing exception to the MSRB Rule G–19 customer specific suitability obligation is only available in circumstances when MSRB Rule G–19, rather than Regulation Best Interest, applies and imposes no new obligations on dealers. Accordingly, this proposed amendment should not impose costs on dealers.

[59] *See, e.g.,* Broker-Dealers and Bank Dealers Registered with the MSRB, available at *http://www.msrb.org/BDRegistrants.aspx.* Using retail-sized dealer-to-customer trades (par value at $100,000 or less in this case) from MSRB's RTRS database as a proxy for the degree of interaction with retail customers, the MSRB found that only 17 bank dealers conducted at least one retail-sized trade in 2019.

there are no comments on the proposed rule change received from members, participants, or others.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2020–02 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–2020–02. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2020–02 and should be submitted on or before June 2, 2020.

For the Commission, pursuant to delegated authority.[60]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–10061 Filed 5–11–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88825; File No. SR–CTA/CQ–2019–04]**

## Consolidated Tape Association; Order Approving the Thirty-Third Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fourth Substantive Amendment to the Restated CQ Plan, as Modified by the Commission, Concerning a Confidentiality Policy

May 6, 2020.

**I. Introduction**

On November 25, 2019,[1] the Consolidated Tape Association Plan (''CTA Plan'') participants (''Participants'')[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal to amend the Second Restatement of the CTA Plan and the Restated Consolidated Quotation Plan (''CQ Plan'') (each a ''Plan'' and together with the CTA Plan, the ''Plans'').[5] These amendments represent the Thirty-Third Substantive Amendment to the CTA Plan and Twenty-Fourth Substantive Amendment to the CQ Plan (''Amendments''). As described in the Amendments, the Participants proposed to adopt a confidentiality policy to provide guidelines for the Operating Committee and the Advisory Committee of the Plans, and all subcommittees thereof, regarding the confidentiality of any data or information generated, accessed, or transmitted to the Operating Committee, as well as discussions occurring at a meeting of the Operating Committee or any subcommittee. The Amendments were published for comment in the **Federal Register** on January 14, 2020.[6]

In the Commission's view, the Amendments must balance protection against the potential misuse of confidential information with the strong interest in public transparency about the operations of the Plans in light of the important function the Plans serve in the national market system. This order approves the Amendments to the Plans, as modified by the Commission, to better strike that balance. A copy of the Amendments, as modified by the Commission, is attached as *Exhibit A* hereto. The Commission concludes that

[60] 17 CFR 200.30–3(a)(12).

[1] *See* Letter from Robert Books, Chairman, Operating Committee, CTA/CQ Plans, to Vanessa Countryman, Secretary, Commission, dated November 19, 2019 (''Transmittal Letter'').

[2] The Participants are the national securities association and national securities exchanges that submit trades and quotes to the Plans and include: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors Exchange LLC, Long-Term Stock Exchange, Inc., Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (each a ''Participant'' and collectively, the ''Participants''). Participants also are members of the Plans' Operating Committees. Other parties include the ''Processor,'' who is charged with collecting, processing and preparing for distribution or publication all Plan information. The ''Administrator'' is charged with administering the Plan to include data feed approval, customer communications, contract management, and related functions. The ''Advisory Committee members'' are individuals who represent particular types of financial services firms or actors in the securities market, and who were selected by Plan participants to be on the Advisory Committee. A list of the Processor, Administrator, and Advisory Committee members is available at *https://www.ctaplan.com/governance.*

[3] 15 U.S.C. 78k–1(a)(3).

[4] 17 CFR 242.608.

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 87909 (January 8, 2020), 85 FR 2207 (January 14, 2020) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/sr-ctacq-2019-04/srctacq201904.htm.*