

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71665; File No. SR-MSRB-2013-07)

March 7, 2014

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals , and the Proposed Deletion of Interpretive Guidance

I. Introduction

On September 17, 2013, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of new MSRB Rule G-47 (time of trade disclosures), new MSRB Rules D-15 and G-48 (sophisticated municipal market professionals or “SMMPs”), and amendments to MSRB Rule G-19 (suitability). The proposed rule change was published for comment in the Federal Register on October 22, 2013.³ The Commission received two (2) comment letters in response to the proposed rule change.⁴ On January 14, 2014, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 70593 (October 1, 2013), 78 FR 62867 (October 22, 2013) (Notice of Filing of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance) (“Proposing Release”). The comment period closed on November 12, 2013.

⁴ Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2013 (“ICI Letter”) and David L. Cohen, Managing Director/Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“SIFMA Letter”).

MSRB responded to the comments.⁵ On January 16, 2014, the Commission published an order to solicit comments from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change (“Proceedings Order.”).⁷ The Commission received no comment letters in response to the Proceedings Order. The Commission is approving the proposed rule change.⁸

II. Description of Proposal

As further described in the Proposing Release, the MSRB states that it has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and proposes to consolidate this guidance and codify it into several rules: a new time of trade disclosure rule (proposed Rule G-47), a revised suitability rule (Rule G-19), and two new SMMP rules (proposed Rules D-15 and G-48). Additionally, the proposed revisions to Rule G-19 are designed to harmonize the MSRB’s suitability rule with the Financial Industry Regulatory Authority’s (“FINRA”) suitability rule.⁹

In connection with the rule changes described above, the MSRB proposed to delete certain interpretive guidance affected by these rule changes from the MSRB’s Rule Book. Additionally, in the Proposing Release, the MSRB indicated that it did not intend to preserve the relevant guidance, because doing so “would not advance the MSRB’s goal to streamline its

⁵ See Letter from Michael L. Post, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated January 14, 2014 (“Response”).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Exchange Act Release No. 71326 (January 16, 2014), 79 FR 3909 (January 23, 2014) (Order Instituting Proceedings 2013-SR-MSRB-07). The comment period closed on February 13, 2014.

⁸ The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

⁹ See FINRA Rule 2111.

rulebook.”¹⁰ In its Response, the MSRB articulated a different approach. Specifically, to address a commenter concern, the MSRB stated that it will archive on its website the existing guidance that is to be deleted from the Rule Book in connection with the proposed rule change.¹¹ Moreover, the MSRB states that “[t]o the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.”¹²

A. Rule G-47 on Time of Trade Disclosures

MSRB Rule G-17 provides that, in the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer (“dealer”), and municipal advisor must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G-17 to require a dealer, in connection with a municipal securities transaction, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.¹³ The MSRB stated in the Proposing Release that it has issued extensive interpretive guidance discussing this time of trade disclosure obligation in general, as well as in specific scenarios. Proposed Rule G-47 is designed to consolidate most of the previously issued guidance into rule language which the MSRB believes would ease the burden on dealers and other market participants who endeavor to

¹⁰ See Proposing Release at 21 (responding to a SIFMA comment regarding proposed Rule G-47). See also Proposing Release at 4, describing the MSRB’s streamlining goals (“The structure of Proposed G-47 (rule language followed by supplementary material) is the same structure used by FINRA and other self-regulatory organizations (“SROs”). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.”)

¹¹ See Response at 2. See also discussion of comments, below.

¹² Response at 2.

understand, comply with and enforce these obligations. The MSRB asserted that the proposed codification of the interpretive guidance on time of trade disclosure obligations is not intended to, and will not, substantively change the current obligations. Rather, the MSRB maintained that the codification is an effort to consolidate the current obligations into streamlined rule language.

A summary of proposed Rule G-47 is as follows:

1. General Disclosure Obligation

Proposed Rule G-47(a) states that dealers cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. The rule applies regardless of whether the transaction is unsolicited or recommended or whether it occurs in a primary offering or the secondary market. The proposed rule provides that the disclosure can be made orally or in writing.

Proposed Rule G-47(b) states that information is considered to be “material information” if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The proposed rule defines “reasonably accessible to the market” as information that is made available publicly through “established industry sources.” Finally, the proposed rule defines “established industry sources” as including the MSRB’s Electronic Municipal Market Access (“EMMA”®)¹⁴ system, rating agency reports, and other sources of information generally used by dealers that effect transactions in the type of municipal securities at issue.

¹³ See, e.g., MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17 (November 30, 2011).

¹⁴ EMMA is a registered trademark of the MSRB.

2. Supplementary Material

In addition to stating the general disclosure obligation, proposed Rule G-47 includes supplementary material describing the disclosure obligation in more detail. Proposed supplementary material .01 provides that dealers have a duty to give customers a complete description of the security, which includes a description of the features that would likely be considered significant by a reasonable investor, and facts that are material to assessing potential risks of the investment. This section of the proposed supplementary material further provides that the public availability of material information through EMMA, or other established industry sources, does not relieve dealers of their disclosure obligations. Section .01 of the proposed supplementary material also provides that dealers may not satisfy the disclosure obligation by directing customers to established industry sources or through disclosure in general advertising materials. Finally, section .01 of the proposed supplementary material states that whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

Proposed supplementary material .02 provides that dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other dealers. Proposed supplementary material .03 provides a list of examples describing information that may be material for certain types of securities and in specific scenarios and, therefore, would require disclosures to a customer.

Finally, proposed supplementary material .04 provides that dealers must implement processes and procedures reasonably designed to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer.

B. Rule G-19, on Suitability of Recommendations and Transactions

The amendments described below are designed to more closely harmonize Rule G-19 with FINRA's suitability rule,¹⁵ and to incorporate elements of the MSRB's current interpretive guidance on suitability into Rule G-19. Proposed Rule G-19 includes Supplementary Material .01 through .06, which generally tracks Supplementary Material .01 through .06 in FINRA Rule 2111.¹⁶

A summary of the proposed revisions to Rule G-19 is as follows:

1. Account Information

Current MSRB Rule G-19(a) requires dealers to obtain a record of certain customer information at or before completion of a transaction in municipal securities. The MSRB did not include a provision equivalent to current Rule G-19(a) in proposed Rule G-19, because MSRB Rule G-8 already independently requires dealers to make and keep a record of this information for each customer. Additionally, by deleting this provision, the MSRB intends to streamline the rule and more closely align it with FINRA's suitability rule, which does not contain this specific requirement.¹⁷

2. Information Required for Suitability Determinations

The current MSRB suitability rule contains a list of customer information that dealers must obtain prior to recommending a transaction to a non-institutional account.¹⁸ The proposed revisions to Rule G-19 would expand this list to include additional items from FINRA's

¹⁵ See FINRA Rule 2111.

¹⁶ The Proposing Release states that "...Rule G-19 will be interpreted in a manner consistent with FINRA's interpretations of Rule 2111. If the MSRB believes an interpretation should not be applicable to Rule G-19, it will affirmatively state that specific provisions of FINRA's interpretation do not apply."

¹⁷ See FINRA Rule 2111.

¹⁸ See MSRB Rule G-19(b).

suitability rule¹⁹ such as: age, investment time horizon, liquidity needs, investment experience and risk tolerance. The proposed revision also would delete Rule G-19(b) and replace it with rule language corresponding to FINRA’s suitability rule. The list of customer information that dealers must assess in the proposed rule would also include “any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation,” which corresponds to language in the FINRA rule.²⁰ Therefore, the proposed rule would delete the similar requirement in current MSRB Rule G-19(c)(ii) which states that, in recommending a transaction, a dealer shall have reasonable grounds “based upon the facts disclosed by such customer or otherwise known about such customer for believing that the recommendation is suitable.”

Further, the proposed revisions to Rule G-19 incorporate the reasonable-basis suitability terminology from FINRA Rule 2111 in supplementary material .05(a) and delete section (c)(i) of Rule G-19.²¹

3. Discretionary Accounts

Current MSRB Rule G-19(d)(i) provides that dealers cannot effect transactions in municipal securities with or for a discretionary account unless permitted by the customer’s prior written authorization that has been accepted in writing by a municipal securities principal. The MSRB proposed to delete this provision, because there is a substantially similar provision already included in MSRB Rule G-8(a)(xi)(I) which requires that, for customer discretionary

¹⁹ See FINRA Rule 2111(a).

²⁰ Id.

²¹ As noted in the Proposing Release, although this change deletes the explicit requirement in MSRB Rule G-19(c)(i) for dealers to consider information available from the issuer of the security or otherwise in making suitability determinations, the MSRB asserts that in order to perform a reasonable-basis suitability analysis, dealers must necessarily consider information available from the issuer of the security.

accounts, dealers must make and keep a record of the customer's written authorization to exercise discretionary power over the account, written approval of the municipal securities principal who supervises the account, and written approval of the municipal securities principal with respect to each transaction in the account stating the date and time of approval.

Current MSRB Rule G-19(d)(ii) states that a dealer cannot effect a transaction in municipal securities with or for a discretionary account unless the dealer first determines that the transaction is suitable for the customer or the transaction is specifically directed by the customer and was not recommended by the dealer. Instead, proposed MSRB Rule G-19 includes a general requirement, providing that a dealer must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer. The MSRB proposed deleting current Rule G-19(d)(ii) on the basis that: (1) the suitability obligation is the same for discretionary and non-discretionary accounts, and therefore, there is no reason to restate the obligation as it specifically relates to discretionary accounts; and (2) there is no corresponding provision in FINRA Rule 2111. The MSRB noted in its Response that it plans to consider adopting a separate rule addressing discretionary accounts and dealers continue to owe their customers a duty of fair dealing under MSRB Rule G-17 regarding discretionary accounts.

4. Churning

The proposed revisions to Rule G-19 retain the substance of the existing MSRB prohibition on churning,²² but recast it using the current terminology of "quantitative suitability" used in FINRA's suitability rule.²³ The quantitative suitability requirement is included in proposed Rule G-19, supplementary material .05(c).

²² See MSRB Rule G-19(e).

²³ See FINRA Rule 2111, Supplementary Material .05(c).

5. Investment Strategies

The proposed amendments to Rule G-19 incorporate the application of suitability to “investment strategies.” Specifically, proposed supplementary material .03 defines the phrase “investment strategy involving a municipal security or municipal securities” by stating that it is “to be interpreted broadly and would include, among other things, an explicit recommendation to hold a municipal security or municipal securities.” This definition is consistent with the definition of “investment strategy involving a security or securities” in FINRA’s suitability rule.²⁴ The proposed MSRB suitability rule, like the FINRA rule, carves out communications of certain types of material as long as such communications do not recommend a particular municipal security or municipal securities.²⁵ The MSRB stated in the Proposing Release that the list of materials in proposed Rule G-19, supplementary material .03, differs in minor respects from the list of materials in FINRA’s suitability rule²⁶ to account for unique attributes of the municipal securities market.

6. Proposed Technical Revisions to Rule G-8, on Books and Records

MSRB Rule G-8(a)(xi)(F) includes references to MSRB Rule G-19(c)(ii) and G-19(b). These referenced provisions are not codified as such in the proposed revisions to MSRB Rule G-19, but the concepts will remain in the proposed rule. Therefore, the MSRB proposed revising MSRB Rule G-8(a)(xi)(F) to include a reference to the entire MSRB Rule G-19.

C. Rules D-15 and G-48 on SMMPs

Proposed Rules D-15 and G-48 on SMMPs (the “proposed SMMP rules”) consist of a

²⁴ See FINRA Rule 2111, Supplementary Material .03.

²⁵ Id.

²⁶ Id.

new definitional rule, D-15, defining an SMMP and a new general rule, G-48, on the regulatory obligations of dealers to SMMPs.

A summary of proposed Rules D-15 and G-48 is as follows:

Proposed Rule D-15 defines the term “sophisticated municipal market professional” or “SMMP” as a customer of a dealer that is a bank, savings and loan association, insurance company, or registered investment company; or an investment adviser registered 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 any other entity with total assets of at least \$50 million. Proposed Rule D-15 further requires that the dealer 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, and that the customer affirmatively indicate that it is exercising independent judgment in evaluating the recommendations of the dealer.

The supplementary material to proposed Rule D-15 addresses the reasonable basis analysis and the customer affirmation. Section .01 states that as part of the reasonable basis analysis, the dealer should consider the amount and type of municipal securities owned or under management by the customer. Section .02 states that a customer may affirm that it is exercising independent judgment either orally or in writing, and such affirmation may be given on a trade-by-trade basis, on a type-of-municipal-security basis, or on an account-wide basis.

Proposed Rule G-48 describes the application of certain obligations to SMMPs. More specifically, the proposed rule provides that a dealer’s obligations to a customer that it reasonably concludes is an SMMP are modified as follows: (1) with respect to the time of trade disclosure obligation in proposed Rule G-47, the dealer would not have any obligation to

disclose material information that is reasonably accessible to the market; (2) with respect to transaction pricing obligations under Rule G-18, the dealer would not have any obligation to take action to ensure that transactions meeting certain conditions set forth in the proposed rule are effected at fair and reasonable prices; (3) with respect to the suitability obligation in Rule G-19, the proposed rule provides that the dealer would not have any obligation to perform a customer-specific suitability analysis; and (4) with respect to the obligation regarding bona fide quotations in Rule G-13, the dealer disseminating an SMMP's quotation which is labeled as such would be required to apply the same standards described in Rule G-13(b) for quotations made by another dealer.

III. Summary of Comments Received and the MSRB's Response

On October 22, 2013, the Commission published the MSRB's proposed rule change in the Federal Register.²⁷ The comment period ended on November 12, 2013, and the Commission received two (2) comment letters in response to the proposed rule change.²⁸ Both commenters expressed general support for the proposed rule change but sought further changes or clarification as discussed below.²⁹ The MSRB responded to comments in a letter dated January 14, 2014.³⁰ On January 16, 2014, the Commission published the Proceedings Order in the Federal Register to provide interested parties an opportunity to consider the MSRB's proposed treatment of past interpretive guidance, as set forth in the Response.³¹ The Commission received no comment letters in response to the Proceedings Order.

²⁷ See supra note 3.

²⁸ See supra note 4.

²⁹ See ICI Letter and SIFMA Letter.

³⁰ See supra note 5.

³¹ See supra note 7.

A. General Support for the Proposed Rule Change

Both commenters expressed support for harmonizing MSRB Rule G-19 with FINRA's suitability rule.³² One commenter noted that it supports the efforts by the MSRB to provide clarity to regulated entities by developing new or revised rules that highlight core principles.³³

B. Suggestions for Changes to Proposal

1. Include Suitability Guidance regarding 529 Plans

One commenter recommended that the MSRB incorporate into Rule G-19 existing interpretive guidance relating to suitability assessments for 529 college savings plans.³⁴ The commenter noted that that inclusion would, among other things, "[e]liminate the confusion that may result from MSRB registrants believing that the MSRB's suitability rule contains all relevant information relating to their suitability obligations... ." ³⁵

The MSRB responded by explaining that the guidance is not proposed to be codified in Rule G-19 because the MSRB may propose a separate rule addressing 529 plans in the future, and the relevant guidance will remain intact until such time as the MSRB may adopt such a rule.

2. Differentiate Disclosure Obligations between Sales to Customers versus Purchasers from Customers

One commenter stated that proposed MSRB Rule G-47 should reflect that there is a different time of trade disclosure obligation when a dealer is selling a bond to a customer as opposed to when a dealer is purchasing a bond from a customer arguing that customers should

³² ICI Letter and SIFMA Letter.

³³ See SIFMA Letter.

³⁴ ICI Letter.

³⁵ Id.

know the characteristics of the bonds they own.³⁶ The commenter acknowledged that in answer to a similar comment it previously made, the MSRB clarified in the rule that whether the customer is purchasing or selling is a factor in determining what information is material and must be disclosed by the dealer.³⁷ The commenter stated that the modification did "not go far enough" and requested that the MSRB further modify Rule G-47 to include supplementary material explaining the differences in disclosure obligations.³⁸ The MSRB responded this modification would involve a substantive change to the current disclosure obligations beyond the scope of this rulemaking and that the MSRB Board may consider substantive changes as part of a future initiative.

3. Extend Implementation Period to One Year

One commenter advocated for a one year implementation period, stating that the period proposed by the MSRB was too brief given the scope of the training and system changes required.³⁹ The MSRB responded that it does not believe such a lengthy implementation period is necessary, noting that the revised rule will largely be consistent with FINRA's suitability rule, with which many dealers already are familiar. Nonetheless, to address this concern, the MSRB extended the effective date for the proposed rule change for an additional 60 days, to total 120 days following the date of SEC approval.

³⁶ SIFMA Letter.

³⁷ Id.

³⁸ Id.

³⁹ Id.

4. Reflect Reduced Duties to SMMPs within Rules Governing non-SMMPs

One commenter suggested that rules governing non-SMMPs should also reflect dealers' reduced duties to SMMPs.⁴⁰ The MSRB responded that stand-alone rules are more prominent, and that the proposed stand-alone SMMP rule would address dealers' modified duties in multiple areas under rules not part of this rulemaking. Additionally, the MSRB noted that future modifications to dealer obligations with respect to SMMPs could be accomplished more efficiently by having a stand-alone SMMP rule. The commenter also suggested that Rule G-19 and proposed Rules G-47 and G-48 should cross-reference each other stating that cross-referencing would further the MSRB's objective to provide clarity to investors, dealers, and regulators.⁴¹ The MSRB responded that such cross-references are unnecessary.

5. Retain Existing Interpretive Guidance

One commenter asked the MSRB to archive and preserve existing time of trade disclosure interpretive notices.⁴² As noted previously, the MSRB stated that it will archive on its website the existing guidance that is to be deleted from the MSRB's Rule Book in connection with the proposed rule change. The MSRB further responded that to the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

C. Requests for Clarifications

1. Use of a Preliminary Official Statement (“POS”) to Satisfy Time of Trade Disclosure Obligations

One commenter noted that dealers, in reliance on previous guidance indicating that a POS can serve as a primary vehicle for providing time of trade disclosures, have either delivered or provided access to a POS to fulfill time of trade disclosure obligations.⁴³ The commenter requested that the MSRB affirm that a POS can serve as a primary vehicle for providing the required time of trade disclosures under Rule G-47.⁴⁴ The MSRB found this comment to be outside the scope of the current proposal because it would require a substantive change, which the MSRB may consider as part of a future initiative. Nevertheless, in response, the MSRB stated that existing guidance does not state that providing mere access to a POS would be a sufficient means of disclosure, and the adequacy of disclosure depends on facts and circumstances. The MSRB noted, however, that existing guidance will continue to be potentially applicable.

2. Additional Clarifications

One commenter requested that the MSRB affirm 1) that information barriers do not need to be dismantled in order to provide time of trade disclosures, and 2) that time of trade disclosures need not be given to customers that hold discretionary accounts.⁴⁵ The MSRB indicated that these requests would require substantive changes to existing requirements and are thus outside the scope of the current proposal. The MSRB stated that it may consider these requests if the MSRB Board undertakes to amend the rule in the future.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters received and the MSRB's response, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, as discussed below, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which, among other things, provides that the MSRB's rules 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.⁴⁶

The disclosure of material information about a transaction to investors and the performance of a meaningful suitability analysis are central to the role of a dealer in facilitating municipal securities transactions. Proposed Rule G-47, on time of trade disclosures, codifies current interpretive guidance and protects investors by requiring dealers to make disclosures to customers in connection with purchases and sales of municipal securities. These required disclosures are designed to prevent fraudulent and manipulative acts and practices by dealers, and promote just and equitable principles of trade, by requiring dealers to disclose information about a security and transaction that would be considered significant or important to a reasonable investor in making an investment decision. Similarly, the proposed revisions to Rule G-19, on

⁴⁶ 15 U.S.C. 78q-4(b)(2)(C).

suitability, further these purposes by requiring dealers and their associated persons to make only suitable recommendations to customers and fosters more efficient regulation by harmonizing the rule with FINRA’s suitability rule. The proposed revisions to Rule G-19 are also aligned with a recommendation of the SEC in its 2012 Report on the Municipal Securities Market that the MSRB consider “amending Rule G-19 (suitability) in a manner generally consistent with recent amendments by FINRA to its Rule 2111, including with respect to the scope of the term ‘strategy’”⁴⁷ The Commission believes that the proposed rule, which would require a dealer to have a reasonable basis in recommending an investment strategy, enhances investor protection. Specifically, by interpreting the term "investment strategy" broadly, the MSRB will provide important protections to investors who receive this type of recommendation. Moreover, the Commission believes that the MSRB, through its Response, has addressed commenters’ concerns, other than those it determined are outside the scope of the current proposal.

In approving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation.⁴⁸ The Commission found significant that the proposed changes related to time-of-trade disclosure and SMMPs involve no substantive change to existing requirements. Additionally, the rule changes could ease burdens on dealers and promote competition by clarifying certain core dealer obligations and the reduced obligations when transacting business with SMMPs.

Furthermore, harmonizing MSRB Rule G-19 with the FINRA suitability rule enhances efficiency in the market by enabling those dealers that are dually registered with the MSRB and

⁴⁷ See <http://www.sec.gov/news/studies/2012/munireport073112.pdf> at 141.

⁴⁸ See 15 U.S.C. 78c(f).

FINRA to establish and implement one suitability standard.⁴⁹ Although one commenter implied that further efficiency could be attained by including suitability guidance relating to 529 plans within proposed Rule G-19, the commenter did not indicate that the proposed rule created inefficiencies. Moreover, the Commission notes that the existing guidance relating to 529 plans continues to apply and understands that the MSRB may determine to propose a separate rule for 529 plans in the future.

The Commission also believes that the MSRB's Response includes certain accommodations that help promote efficiency and do not impede competition. Specifically, the MSRB's retention of its interpretative guidance and the continuing applicability of such guidance to the extent it does not conflict with any MSRB rules or interpretations provides continuity to dealers. Moreover, the MSRB's extension of the implementation period from 60 to 120 days gives additional time, if needed, for dealers to establish or modify their compliance systems.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Section 15B(b)(2)(C) of the Act. The proposal will become effective 120 days following the date of this order.

⁴⁹ See Attachment to ICI Letter.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁰ that the proposed rule change (SR-MSRB-2013-07) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Kevin M. O'Neill
Deputy Secretary

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).