SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72706; File No. SR-MSRB-2014-06)

July 29, 2014

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G-9, on Preservation of Records

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 24, 2014, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "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 is filing with the Commission a proposed rule change consisting of proposed new Rule G-44, on supervisory and compliance obligations of municipal advisors; proposed amendments to Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers; and proposed amendments to Rule G-9, on preservation of records (the "proposed rule change"). The MSRB requests that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes except for proposed Rule G-44(d), which municipal advisors would be required to implement eighteen

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

2 17 CFR 240.19b-4.

months after the Commission approval date.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-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 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

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[3] The Dodd-Frank Act establishes a new federal regulatory regime requiring municipal advisors to register with the SEC, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that authority, is currently developing a comprehensive regulatory framework for municipal advisors. A significant element of that regulatory framework is proposed Rule G-44, which would establish supervisory and compliance obligations of municipal advisors when engaging in municipal advisory activities. Proposed Rule G-44 utilizes a primarily principles-based approach to supervision and compliance in order to,

[3] Pub. Law No. 111-2013, 124 Stat. 1376 (2010).

among other things, accommodate the diversity of the municipal advisor population, including small and single-person entities. Proposed Rule G-44 is accompanied by proposed amendments to Rules G-8 and G-9 to establish fundamental books-and-records requirements for municipal advisors, including those related to their supervisory and compliance obligations.

Proposed Rule G-44

Proposed Rule G-44 follows a widely accepted model in the securities industry consisting of a reasonably designed supervisory system complemented by the designation of a chief compliance officer ("CCO"). The proposed rule draws on aspects of existing supervision and compliance regulation under other regimes, including those for broker-dealers under rules of the MSRB and Financial Industry Regulatory Authority ("FINRA") and for investment advisers under the Investment Advisers Act of 1940 ("Advisers Act").

In summary, proposed Rule G-44 would require:

- A supervisory system reasonably designed to achieve compliance with applicable securities laws;
- Written supervisory procedures;
- The designation of one or more municipal advisor principals to be responsible for supervision;
- Compliance processes reasonably designed to achieve compliance with applicable securities laws;
- An annual certification regarding those compliance processes;
- The designation of a CCO to administer those compliance processes; and
- At least annual reviews of compliance policies and supervisory procedures.

The proposed amendments to Rules G-8 and G-9, in summary, would require each municipal advisor to make and keep records of its:

- Written supervisory procedures;
- Designations of persons as responsible for supervision;
- Written compliance policies;
- Designations of persons as CCO;
- Reviews of compliance policies and supervisory procedures; and
- Annual certifications regarding compliance processes.

Paragraph (a) of proposed Rule G-44 is the core provision, which would require all municipal advisors to establish, implement and maintain a system to supervise their municipal advisory activities and those of their associated persons that is reasonably designed to achieve compliance with all applicable securities laws and regulations, including applicable MSRB rules (defined as "applicable rules"). Paragraph (a) specifies that final responsibility for proper supervision rests with the municipal advisor. Subparagraph (a)(i) requires the establishment, implementation, maintenance and enforcement of written supervisory procedures reasonably designed to achieve compliance with applicable rules. Paragraph .01 of the Supplementary Material specifies several factors that municipal advisors' written supervisory procedures must take into consideration, including the advisor's size, organizational structure, nature and scope of activities, number of offices, disciplinary and legal history of its associated persons, the likelihood that associated persons may be engaged in relevant outside business activities, and any indicators of irregularities or misconduct (i.e., "red flags"). This guidance allows municipal advisors to tailor their supervisory procedures to, among other things, their size, particular business model and structure. Paragraph .02 of the Supplementary Material emphasizes the

flexibility of the proposed rule to accommodate small municipal advisor firms, even those with only one associated person. Proposed Rule G-44(a)(i) also specifies requirements to promptly amend supervisory procedures (i) to reflect changes in applicable rules and (ii) as changes occur in the municipal advisor's supervisory system; and to communicate the procedures and amendments to the municipal advisor's relevant associated persons.

Proposed Rule G-44(a)(ii) would require municipal advisors to designate one or more municipal advisor principals to be responsible for the supervision required by the proposed rule. Paragraph .03 of the Supplementary Material specifies the authority and specific qualifications required for municipal advisor principals designated as responsible for supervisory functions. According to the proposed rule, they must have the authority to carry out the supervision for which they are responsible, including the authority to implement the municipal advisor's established written supervisory procedures and take any other action necessary to fulfill their responsibilities. They also must have sufficient knowledge, experience and training to understand and effectively discharge their supervisory responsibilities.[4] Paragraph .03 of the Supplementary Material also specifies that, even if not designated as a supervisory principal, whether a person has responsibility for supervision under the proposed rule would depend on whether, under the facts and circumstances of a particular case, the person has the requisite

[4] The MSRB intends to propose amendments to MSRB Rules G-2 and G-3 to create the "municipal advisor principal" classification, define the term and require qualification in accordance with the rules of the Board. The MSRB expects those changes to become effective well in advance of the proposed implementation dates of the proposed rule change. Although the MSRB does not expect a municipal advisor principal examination to be in place by the time of the implementation dates of the proposed rule change, the MSRB may develop such an examination in the future. The absence of such an examination does not preclude the creation of the classification.

degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.

Paragraph (b) of proposed Rule G-44 would require municipal advisors to implement processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures. Proposed Rule G-44(b) would specify that the reviews of compliance policies and supervisory procedures must be conducted at least annually. Paragraph .04 of the Supplementary Material would provide, however, that municipal advisors should consider the need, in order to comply with all of the other requirements of the proposed rule, for more frequent reviews. The paragraph also would provide guidance on what, at a minimum, municipal advisors should consider during their reviews of compliance policies and supervisory procedures. These considerations include any compliance matters that arose since the previous review, any changes in municipal advisory activities and any changes in applicable law.

Paragraph (c) of proposed Rule G-44 would require municipal advisors to designate one individual as their CCO. Paragraph .05 of the Supplementary Material would explain the role of a CCO and the importance of that role. Specifically, a CCO is a primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts in order to comply with applicable law. To fulfill this role, a CCO should have competence in the process of (1) gaining an understanding of the services and activities that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the applicable rules pertaining to those services and activities; (3) developing policies and procedures that are reasonably designed to achieve compliance with applicable law; and (4)

developing programs to test compliance with the municipal advisor's policies and procedures.[5] Paragraph .05 would further explain that the CCO can be a principal of the firm or a person external to the firm; though, in that case, the person must have the described competence and the municipal advisor retains ultimate responsibility for its compliance obligations. This approach to the CCO function in the proposed rule, which would give municipal advisors the option to outsource the CCO role, follows the approach applicable to investment advisers under the Advisers Act.[6]

Paragraph .06 of the Supplementary Material specifies that the CCO, and any compliance officers that report to the CCO, shall have responsibility for and perform the compliance functions required by the proposed rule. Paragraph .07 of the Supplementary Material provides that a municipal advisor's CCO may hold any other position within the municipal advisor, including senior management positions, so long as the person can discharge the duties of CCO in light of all of the responsibilities of any other positions. This guidance is especially relevant to small municipal advisors, including sole proprietorships and other one-person entities. It makes clear that a single individual may, for example, serve under appropriate circumstances as chief executive officer ("CEO"), supervisory principal and CCO. In addition, as discussed above, the CCO may be external to the firm, such as an outside consultant.

Paragraph (d) of proposed Rule G-44 would require municipal advisors to have their CEO(s) (or equivalent officer(s)) annually certify in writing that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance procedures

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5 These qualifications of a CCO draw on those specified in FINRA's CCO requirement for its member firms. See FINRA Rule 3130 Supplementary Material .05.

6 See Section 202(25) of the Advisers Act, 15 U.S.C. 80b-2(25), and Rule 206(4)-7, 17 CFR § 275.206(4)-7.

and written supervisory procedures reasonably designed to achieve compliance with applicable rules. FINRA member firms that also are municipal advisors are already required under FINRA Rule 3130 to make annually a substantially similar certification with respect to applicable federal securities laws and regulations, including MSRB rules. In light of this existing FINRA requirement, proposed Rule G-44(d) would provide for an exception from the annual certification requirement for municipal advisors that are subject to a substantially similar FINRA requirement. Paragraph .08 of the Supplementary Material provides that the execution of the certification and any consultation rendered in connection with the certification does not by itself establish business line responsibility.

Paragraph (e) of proposed Rule G-44 would provide an exemption for banks engaging in municipal advisory activities in the exercise of bank fiduciary powers from Rule G-44 and the related books and records requirements if the municipal advisor certifies in writing annually that it is, with respect to those activities, subject to federal supervisory and compliance obligations and books and record requirements that are substantially equivalent to the supervisory and compliance obligations in Rule G-44 and the books and records requirements of Rule G-8(h)(iii). The ability to so certify and utilize this exemption is provided because it is unnecessary for a municipal advisor to comply with each other provision of proposed Rule G-44 if it is subject to substantially equivalent supervisory and compliance obligations as part of the extensive federal regulatory regime to which banks are already subject.

Paragraph (f) of proposed Rule G-44 would provide a definition of the term “municipal advisor” for purposes of the rule as a person that is registered or required to be registered as a municipal advisor under Section 15B of the Act and rules and regulations thereunder.

Proposed Amendments to Rules G-8 and G-9

The proposed amendments to Rules G-8[7] and G-9 would be the first revisions to those rules to address the books and records that must be made and preserved by municipal advisors registered or required to be registered with the SEC. As a fundamental element, new Rule G-8(h)(i) would require each municipal advisor to keep all of the general business records described in Exchange Act Rule 15Ba-1-8(a)(1)-(8). New Rule G-8(h)(v) would require each municipal advisor to make and keep records related to its supervisory and compliance obligations. It would require each municipal advisor to make and keep its written supervisory procedures and written compliance policies, records of designations of persons as CCO and of persons responsible for supervision, records of reviews of its written compliance policies and written supervisory procedures, annual certifications as to compliance processes, and, if applicable, certifications regarding the exemption for federally regulated banks.

The proposed amendments to Rule G-9 would require each municipal advisor to preserve the books and records described in Rule G-8(h), including records related to the municipal advisor's supervisory and compliance obligations, for a period of not less than five years. This five-year preservation requirement would be consistent with the requirement of Exchange Act Rule 15Ba1-8 (on books and records to be made and maintained by municipal advisors).[8] New subsection (h) to Rule G-9 would require, however, that records of the designations of persons responsible for supervision and designations of persons as CCO be preserved for the period of designation of each person designated and for at least six years following any change in such

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[7] Proposed Rule G-8(h) includes reserved subparagraphs (ii) - (iv) for books and records provisions that the MSRB may propose in relation to other rules for municipal advisors. The MSRB will make conforming changes to this proposal as appropriate depending on relevant future rulemaking actions by the MSRB and SEC.

[8] See 17 CFR § 240.15Ba1-8(b)(1).

designation. This six-year preservation requirement is supported by, among other things, the importance of such documents in later ascertaining the identity of responsible persons during particular periods of time. Moreover, it would be consistent with the current provisions of Rule G-9 for records of similar designations by brokers, dealers and municipal securities dealers.

The proposed amendments to existing Rule G-9(e) would expressly provide that municipal advisors may retain records using electronic storage media or by other similar medium of record retention, subject to the retrieval and reproduction requirements of Rule G-9. The allowance for this means of compliance would be made generally applicable, so as to expressly accommodate the use of electronic storage media by dealers as well as municipal advisors.

Proposed Rule G-9(i) would require compliance with Exchange Act Rule 15Ba1-8(b)(2) and (c),[9] regarding records related to the formation and cessation of business. Proposed Rule G-9(j) would require non-resident municipal advisors to comply with Exchange Act Rule 15Ba1-8(f),[10] regarding records of non-resident municipal advisors. Proposed Rule G-9(k) would provide that whenever a record is preserved by a municipal advisor on electronic storage media, if the manner of storage complies with Exchange Act Rule 15Ba1-8(d),[11] it will be deemed to be preserved in a manner that is in compliance with the requirements of Rule G-9. This provision would give municipal advisors the choice to comply with either the SEC's or the MSRB's preservation requirements.

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9 17 CFR § 240.15Ba1-8(b)(2) & (c).

10 17 CFR § 240.15Ba1-8(f).

11 17 CFR § 240.15Ba1-8(d).

2. Statutory Basis

Section 15B(b)(2) of the Act[12] 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)(A)(i) of the Act[13] provides that the MSRB's rules shall

> appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act[14] 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.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2), 15B(b)(2)(A)(i) and 15B(b)(2)(C) of the Act because it would require municipal advisors to adopt a supervisory structure and compliance processes in order to help ensure knowledge of,

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12 15 U.S.C. 78o-4(b)(2).

13 15 U.S.C. 78o-4(b)(2)(A)(i).

14 15 U.S.C. 78o-4(b)(2)(C).

and compliance with, applicable securities laws and regulations, including applicable MSRB rules. The applicable securities laws include, without limitation, relevant provisions of the Act and Commission rules thereunder, including the Commission's registration, form submission and recordkeeping requirements for municipal advisors.[15] Supervision and compliance functions are fundamental to preventing securities law violations from occurring, while they also promote early detection and prompt remediation of violations when they do occur. Such functions are complementary to an enforcement program designed to deter violations of securities laws by imposing penalties for violations after they occur. The MSRB believes that, for example, requiring each firm's chief executive officer (or equivalent officer) to provide an annual certification will help ensure that compliance processes are given sufficient attention at the highest levels of management and will help foster compliance, without adding a significant burden.

Section 15B(b)(2)(L)(iv) of the Act[16] requires that rules adopted by the Board

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act. While the proposed rule change would affect all municipal advisors, including small municipal advisors, it would be a necessary and appropriate regulatory burden in order to promote compliance with MSRB rules. Proposed Rule G-44 utilizes a primarily principles-based approach to supervision in order to, among other things, accommodate the

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15 Registration of Municipal Advisors, Rel. No. 34-70462 (Sept. 20, 2013) ("SEC Final Rule"), 78 FR 67467 (Nov. 12, 2013).

16 15 U.S.C. 78o-4(b)(2)(L)(iv).

diversity of the municipal advisor population, including small municipal advisors and sole proprietorships. Paragraph .02 of the Supplementary Material notes that even a municipal advisor with only one associated person can have a sufficient supervisory system under proposed Rule G-44. Under the same paragraph, one person may be designated as responsible for supervision and the rule would allow for written supervisory procedures to be tailored based on factors such as the size of the firm. The MSRB believes that all municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they plan to comply with applicable rules.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Act,[17] which provides that the MSRB's rules shall

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would require each municipal advisor to make and keep all of the general business records described in Exchange Act Rule 15Ba-1-8(a)(1)-(8). It also would require each municipal advisor to make and keep records of written supervisory procedures and compliance policies, designations of persons as CCO and of persons responsible for supervision, reviews of the adequacy of written compliance policies and written supervisory procedures, the annual certifications as to compliance processes, and, if applicable, annual certifications regarding the exemption for federally regulated fiduciary activities of banks. The proposed rule change also contains preservation requirements for the required records, including a modernization of the rule language made generally applicable to dealers as well as municipal advisors, which expressly allows preservation on electronic storage media. The MSRB believes

[17] 15 U.S.C. 78o-4(b)(2)(G).

that the proposed amendments to Rules G-8 and G-9 related to recordkeeping and records preservation will promote compliance and facilitate enforcement of proposed Rule G-44, other MSRB rules, and other applicable securities laws and regulations.

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

Section 15B(b)(2)(C) of the 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 Act. In determining whether this standard has been met, the MSRB has been guided by the Board's recently-adopted policy to more formally integrate economic analysis into the rulemaking process. In accordance with this policy the Board has evaluated the potential impacts of the proposed rule change, including in comparison to reasonable alternative regulatory approaches.

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since the supervision and compliance requirements, or substantially equivalent federal requirements, and the books and records requirements would apply equally to all municipal advisors to the extent their municipal advisory activities are not already supervised under existing Rule G-27.[18] The MSRB has considered whether it is possible that the costs associated with the supervision and compliance requirements of the proposed rule, relative to the baseline, may affect the competitive landscape by leading some municipal advisors to exit the market, curtail their activities or consolidate with other firms. For example, some municipal advisors may determine to consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.*, by

[18] Rule G-27 is the MSRB's supervisory rule applicable to brokers, dealers and municipal securities dealers.

leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the proposed rule.

It is also possible that the competitive landscape can be affected by leading some municipal advisors, particularly small municipal advisors, to exit the market. Such exits from the market may lead to a reduced pool of municipal advisors. However, as the SEC recognized in its final rule on the permanent registration of municipal advisors, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors), consolidation of municipal advisors, or lack of new entrants into the market.[19]

It is also possible that competition for municipal advisory services can be affected by whether incremental costs associated with requirements of the proposed rule are passed on to advisory clients. The amount of costs passed on may be influenced by the size of the municipal advisory firm. For smaller municipal advisors with fewer clients, the incremental costs associated with the requirements of the proposed rule may represent a greater percentage of annual revenues, and, thus, such advisors may be more likely to pass those costs along to their advisory clients. As a result, the competitive landscape may be altered by the potentially impaired ability of smaller firms to compete for advisory clients.

The Dodd-Frank Act provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons provided that there is robust protection of investors against fraud. The MSRB is sensitive to the potential impact of the requirements contained in proposed Rule G-44 and the proposed amendments to Rules G-8 and

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[19] See SEC Final Rule at 505, 78 FR 67467, at 67608.

G-9 on small municipal advisors. The MSRB understands that some small municipal advisors and sole proprietors, unlike larger municipal advisory firms, may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule may be proportionally higher for these smaller firms. The MSRB believes that the proposed rule change is consistent with the Dodd-Frank Act's provision with respect to burdens imposed on small municipal advisors.

The MSRB solicited comment on the potential burdens of the proposed rule change in a notice requesting comment on a draft Rule G-44 and draft amendments to Rules G-8 and G-9, and a separate notice requesting comment on additional draft amendments to Rules G-8 and G-9 that were initially published in connection with draft MSRB Rule G-42, which notices incorporated the MSRB's preliminary economic analyses.[20] The specific comments and responses thereto are discussed in Part 5.

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

The MSRB received twelve comment letters in response to the Request for Comment,[21] and two comment letters specifically addressing the relevant draft record-keeping requirements

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20 MSRB Notice 2014-04 (Feb. 25, 2014) ("Request for Comment"); MSRB Notice 2014-01 (Jan. 9, 2014).

21 Comments were received in response to the Request for Comment from: American Bankers Association: Letter from Cristeena G. Naser, Vice President and Senior Counsel, dated May 1, 2014 ("ABA"); Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated April 28, 2014 ("BDA"); Edwin C. Blitz Investments, Inc.: E-mail from Edwin Blitz dated March 18, 2014 ("Blitz"); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated April 15, 2014 ("ICI"); LIATI Group, LLC: E-mail from Weldon Fleming dated March 10, 2014 ("LIATI"); MSA Professional Services, Inc.: Letter from Gilbert A. Hantzsch, Chief Executive Officer, dated April 28, 2014 ("MSA"); National Association of Independent Public Finance Advisors: Letter from Jeanine Rodgers Caruso, President, dated April 28, 2014 ("NAIPFA"); Raftelis Financial Consultants, Inc.: Letter from Alexis F. Warmath,

published in connection with draft MSRB Rule G-42.[22] The comment letters are summarized below by topic.

Support for the Proposed Rule

SIFMA states that it supports the MSRB's efforts to ensure that municipal advisors adopt a supervisory structure for engaging in municipal advisory activities and are properly supervised. SIFMA supports the required elements of supervisory systems contained in proposed Rule G-44 as it follows a widely accepted model in the securities industry. NAIPFA comments that the proposed rule strikes an appropriate balance between a principles-based and a prescriptive approach and encourages the MSRB to retain the overall tone and structure of the proposed rule. ICI supports the proposal and comments that its requirements are consistent with those imposed on other securities professionals.

Flexibility for Smaller Municipal Advisors

BDA comments that the proposed rule is too flexible in allowing small firms to determine and carve out an accommodation for themselves. BDA further states that the MSRB should set forth minimum standards that all municipal advisor firms must meet when establishing supervisory and compliance procedures, but allow firms to decide how to implement them. BDA states that small firms should not be allowed to diminish their obligations. Similarly, MSA states that the proposed rules appear to hold larger firms to a higher standard than smaller firms and

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Vice President, and Christopher P.N. Woodcock, President, Woodcock & Associates, Inc., dated April 28, 2014 ("Raftelis"); Roberts Consulting, LLC: E-mail from Jonathan Roberts dated March 13, 2014 ("Roberts"); Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director, Associate General Counsel, dated April 25, 2014 ("SIFMA"); Tibor Partners, Inc.: E-mail from William Johnston dated February 25, 2014 ("Tibor"); and Yuba Group: Letter from Linda Fan, Managing Partner, dated April 28, 2014 ("Yuba").

[22] Cooperman Associates: Letter from Joshua G. Cooperman dated March 10, 2014 ("Cooperman"); and Lamont Financial Services: Letter from Robert A. Lamb, President, dated March 10, 2014 ("Lamont").

recommends a prescriptive approach that places clear regulatory requirements on all firms, regardless of size. In contrast, NAIPFA comments that the proposed rule appropriately accommodates small and single person municipal advisors by, among other things, allowing supervisory systems to be tailored to the size of the firm. Yuba comments that the proposed rule is biased towards larger firms and does not make adequate accommodations for smaller and single-person firms since larger firms are able to spread the actual and opportunity costs of compliance over a larger number of clients and employees. MSA asks whether large firms will be held to a stricter compliance standard than small firms with respect to the development and implementation of policies and procedures.

The MSRB acknowledges that the proposed rule change contains standards that may vary based on firm size. The MSRB believes that the appropriateness of supervisory procedures is dependent on a firm's size since, for example, procedures that may be appropriate for a two-person firm would likely not be effective for a much larger firm. The proposed rule change deliberately gives firms flexibility to tailor their supervisory system to their particular firm. The MSRB believes that the proposed rule change strikes an appropriate balance between burdens on small advisors and flexibility for small advisors. This balance is evident from the comments, some of which state that the proposed rule is too burdensome for small advisors, while others state that the proposed rule gives small advisors too much flexibility.

Sole-Proprietorships

NAIPFA comments that the MSRB may want to consider exempting single person firms from developing a compliance manual. According to NAIPFA, since sole-proprietors will be obligated to monitor their own activities and will be disproportionately burdened by the proposed rule, requiring them to undertake such activities will not result in any appreciable benefit to

municipal entities or obligated persons. Tibor comments that it is a one-man operation with one client and that the proposed rule will ultimately deprive its client from access to valuable advice. Roberts asks what written policies on supervision sole proprietors can have and asks why it is necessary for a sole proprietor to assign the responsibility for the management of monitoring this supervision to the sole individual at the firm. Roberts also asks what the sole-proprietor should do in any self-imposed self-evaluation and why deal files are not enough.

The MSRB acknowledges that the costs associated with the proposed rule could fall disproportionately on small municipal advisors, including sole-proprietorships; however, to address this concern, the proposed rule change states that a municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system and that written supervisory procedures can be tailored to the firm's size. Requiring sole-proprietors to have a supervisory system in place is important because oversight of a firm's municipal advisory activities is essential regardless of firm size. Proposed Rule G-44 deliberately does not contain specific prescriptions as to the procedures a sole proprietor should have as such detail would undermine the flexibility of the proposed rule and the primarily principles-based approach utilized. Under the proposed rule's flexible principles, procedures would be required to be reasonably designed to achieve compliance, and such reasonableness will depend in part on the municipal advisor's size and particular business model. The MSRB believes, as noted, that all municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they plan to comply with applicable rules. Developing appropriate systems and documenting and following written procedures is a well established practice among businesses, regardless of size, for facilitating compliance with regulation in a broad range of other areas (e.g., taxes, human resources).

Self-Certification

BDA states that Rule G-44 should require all municipal advisors to complete a periodic self-certification regarding the meeting of professional qualification standards by its associated persons, as well as to certify the municipal advisor's ability to comply, and history of complying, with all applicable regulatory requirements. BDA states that it is critical for municipal advisors to self-certify that they are meeting the same professional qualification standards as broker-dealers regardless of size much like rules for broker-dealers and comments that, since self-certification is already required of broker-dealers, municipal advisors that are already broker-dealers should not be unduly burdened. MSA comments that periodic self-certifications seem practical and feasible but that certification metrics should be outlined by the MSRB for consistency among all regulated firms, regardless of size. In contrast, NAIPFA sees no value in requiring municipal advisor representatives to complete a periodic self-certification since it would appear to simply create an additional regulatory burden without any appreciable benefits. NAIPFA opposes the creation of a self-certification requirement unless an objective basis can be provided showing that it would result in a decrease in the number of compliance violations.

The MSRB has revised the proposal to create a self-certification in response to the BDA and MSA comments, though the proposed requirement is less broad. The commenters referenced a certification regarding the meeting of professional qualification standards and the ability to comply, and history of complying, with all applicable regulatory requirements. The proposed self-certification, like that in FINRA Rule 3130, is with regard to processes to establish, maintain, review, test and modify written supervisory procedures reasonably designed to achieve compliance with applicable rules. The MSRB does not believe it is feasible or should be

necessary to show in advance, as NAIPFA suggests, that the proposed self-certification will result in a decrease in the number of compliance violations.

Outsourcing CCO Function

NAIPFA comments that municipal advisors should be able to outsource the CCO function and that there should be no requirement that the CCO be either a principal or associated person of a municipal advisor. SIFMA does not object to the proposal's flexibility with respect to outsourcing the CCO function. Raftelis comments that the ability of municipal advisors to outsource the CCO function may be essential for fairly small firms to be able to address the proposed rule's requirements. BDA asks the MSRB to make clear within the language of proposed Rule G-44 that the firm remains ultimately responsible for any decisions made by the CCO, whether the position is outsourced or not. BDA acknowledges that this is included in Paragraph .05 of the Supplementary Material but states that it should be included in rule text beyond the Supplementary Material. MSA agrees that the ability to outsource the CCO position could help promote and improve the fiduciary duties required of municipal advisors, but questions whether municipal advisors will elect to use outside CCOs due to liability and exposure concerns since compliance ultimately falls to the municipal advisor firms.

No commenters opposed the option provided in the proposed rule to outsource the CCO role. The MSRB believes that the statement in paragraph .05 of the Supplementary Material that the municipal advisor retains ultimate responsibility for its compliance obligations is adequate; therefore, the MSRB is not revising the rule text in response to BDA's comment.

Recordkeeping Requirements

SIFMA supports the proposed amendments to Rules G-8 and G-9 related to municipal advisor supervisory and compliance obligations and comments that the proposed recordkeeping

and retention requirements are reasonable and are in line with existing MSRB requirements. NAIPFA requests that proposed Rule G-9(h) be amended to state that the records described in Rule G-8(h)(iii)(B) and (D) are required to be preserved only for the duration of a person's designation as a supervisor and/or CCO and for at least five years following any change in such designation to harmonize this portion of Rule G-9 with similar portions of Exchange Act Rule 15Ba1-8[23] relating to items such as the requirement that firms retain records relating to the "names of persons who are currently, or within the past five years were, associated with the municipal advisor." NAIPFA further comments that since Exchange Act Rule 15Ba1-8 mandates a five-year retention period following a person's disassociation, it would make sense to impose a similar five-year retention requirement under proposed rule G-9(h). Finally, NAIPFA states that establishing a six-year retention requirement when all other similar retention requirements are five years creates an inconsistent and overly complex regulatory regime with no appreciable benefit. MSA observed it would be premature to attempt to quantify record-keeping costs at this time as there are still unanswered questions regarding what types of information will be required for regulatory retention compliance.

As discussed in the Request for Comment, there is a six-year retention period for records relating to designations of persons responsible for supervision and as CCO to be consistent with the current provisions of Rule G-9 for records of similar designations by brokers, dealers and municipal securities dealers. This longer requirement is also supported by the importance of such records in ascertaining the identity of responsible persons during particular periods of time. The proposed rule change requires the other records related to municipal advisor supervisory and compliance obligations to be preserved for five years to be consistent with the preservation

[23] 17 CFR § 240.15Ba1-8.

requirements of Exchange Act Rule 15Ba1-8. Therefore, the MSRB is not proposing any revisions in response to NAIPFA's comments on the retention periods.

On the subject of the fundamental record-keeping requirements initially proposed in connection with draft MSRB Rule G-42, Cooperman requested that the MSRB provide a draft of a prototype baseline policies and procedures guide that smaller financial advisor firms can adopt or modify, as needed. Cooperman also requested that the MSRB clarify that maintenance of documents and emails on a firm's email site or through its internet service provider will comply with records retention requirements. Lamont asked whether all emails and client records should be saved in the same folder in electronic media. In addition, Lamont stated that costs will be substantial and not necessarily spread among all clients, that recordkeeping will be extremely time consuming and will result in lost productivity, and that the costs will impact small profit margins in the short term "before prices can be adjusted by the [municipal advisor] and the client."

The MSRB has declined at this time to provide a policies and procedures guide in part because it may be impracticable for the MSRB to develop policies and procedures that would appropriately address the scope and diversity of business models and particular practices of the numerous municipal advisor firms. With regard to records retention, the proposed amendments to Rule G-9 contain relatively principles-based requirements, including the standard that records be available for ready retrieval, inspection and production of copies. The draft amendments to Rule G-9 would not prescribe the specific details of how or where electronic records must be preserved. Additionally, if a municipal advisor would prefer to comply with the SEC's electronic record retention requirements (SEC Rule 15Ba1-8(d)), as interpreted by the SEC, the proposed

amendments to Rule G-9 would provide that alternative. The issue of compliance costs being passed on to municipal entity and obligated person clients is addressed separately below.

Comparison to Rule G-27

SIFMA states that it commends the MSRB for proposing a supervisory regime of similar robustness to the requirements of Rule G-27, resulting in a level playing field for all municipal advisors. SIFMA comments that municipal advisors should consider as a business practice some of the specific requirements contained in Rule G-27 that are not in the proposed rule. BDA states that the draft rule sets a lower baseline than Rule G-27 and some of the requirements imposed on municipal securities dealers in Rule G-27 should be extended to municipal advisors.

The MSRB recognizes that the approach taken in the proposed rule is different than that in Rule G-27. Rule G-27 reflects evolving broker-dealer industry practices and many of its more prescriptive elements reflect the fact that many dealers, unlike municipal advisors in their capacity as municipal advisors, hold customer funds and securities for safekeeping. In any event, complete parallelism between Rules G-44 and G-27 is not possible given that broker-dealers do not owe a fiduciary duty and therefore are subject to different underlying standards of conduct. BDA did not provide any details regarding which aspects of Rule G-27 should be applied to municipal advisors and why it would be appropriate to do so. The MSRB does not believe that it is appropriate at this time to apply any additional provisions from Rule G-27 to municipal advisors and is, therefore, not amending the proposed rule in response to these comments.

Economic Analysis - General

SIFMA comments that the MSRB's preliminary economic analysis incorporated in the request for comment justifies the supervisory and recordkeeping requirements in the proposed rule. MSA comments that there is little publicly available information about the municipal

advisor industry and, as such, benefits to municipal entities would seem clear as they relate to required informational transparency and the requirement of a supervisory structure. However, MSA states that explaining the costs and benefits of regulatory compliance to the benefiting municipalities is an element that has not received adequate attention.

The MSRB has engaged in, and will continue to engage in, education and outreach initiatives to municipal entities, obligated persons and the general public regarding the MSRB's regulation of municipal advisors.

NAIPFA comments that there is a lack of objective evidence indicating that firms have engaged in widespread violations of their fiduciary duties, and therefore a need does not exist for the MSRB to articulate supervisory or compliance obligations at this time since the costs (including significant impacts on competition, market efficiency, and capital formation), time and effort that will be required to be expended by municipal advisors will likely outweigh any incremental benefits that may be realized by municipal entities and obligated persons. Raftelis comments that the requirement to maintain written records of supervisory and compliance policies and procedures may be unnecessary, may not provide any additional benefits, and may be overly burdensome and costly. Raftelis comments that with respect to the specific services provided by firms that serve the water and wastewater utility industry and whose role as a municipal advisor is fairly limited, the benefits of the proposed rules will be small and there is a risk that information and services relied on by government-owned utilities to facilitate the process of borrowing money may become more expensive and less readily available.

Proposed Rule G-44 is intended to prevent unlawful conduct and to help detect and promptly address unlawful conduct when it does occur. The need for proposed Rule G-44 arises from the MSRB's regulatory oversight of municipal advisors as provided under the Dodd-Frank

Act. The Dodd-Frank Act establishes a federal regulatory regime that requires municipal advisors to register with the SEC and grants the MSRB broad rulemaking authority over municipal advisors. The MSRB, in the exercise of that authority, is in the process of developing a regulatory framework for municipal advisors. Supervision and compliance functions play an important role in promoting and fostering compliance by municipal advisors with all applicable securities laws, including applicable MSRB rules. Supervision and compliance functions are designed to prevent violations from occurring, while they also promote early detection and prompt remediation of violations when they do occur. Such functions are complementary to an enforcement program designed to deter violations of securities laws by imposing penalties for violations after they occur.

For similar reasons, the regulation of supervisory and compliance functions is well established within the financial services industry. The model of requiring a reasonably designed supervisory system complemented by the designation of a CCO to be responsible for compliance processes is a widely accepted regulatory model across the financial services industry. To achieve comparable levels of compliance with applicable securities laws as seen with other financial services professionals, there is a need for a MSRB rule establishing municipal advisors' supervisory and compliance obligations.

The MSRB believes that the proposed rule change will help to prevent violations of fiduciary duties and does not believe that prior evidence of such violations is necessary to support implementation of the proposed rule change. Proposed Rule G-44 follows a widely accepted model in the securities industry of a reasonably designed supervisory system complemented by the designation of a CCO and draws on aspects of existing supervision and compliance regulation under related regimes.

Economic Analysis – Small Firms and Sole Proprietorships

Many of the comments on the proposed rule and proposed amendments were directed to the costs of compliance for small municipal advisors. Yuba, a seven-person firm, provided specific cost estimates related to complying with draft Rules G-42 and G-44 during the first six months of 2014 that exceeded $125,000, or nearly $18,000 per person. Yuba states that the opportunity cost of time spent on compliance is time that is not available for client matters, which directly impacts the firm's bottom line negatively. Yuba encourages the MSRB to evaluate the potential impact and costs of compliance on small firms both with respect to increased out-of pocket costs and the opportunity cost of the firm's time. Yuba further states that, with fewer people and no other business lines than their advisory work, smaller firms will be impacted much more than larger firms. Yuba recommends that the MSRB better accommodate smaller firms by consolidating regulatory communications and rules into fewer publications and webinars.

Roberts, a sole proprietorship municipal advisory firm, states that the supervision requirement for a one-person firm creates an undue burden as the supervision would require Roberts to supervise himself. Roberts comments that a larger organization can spread the costs, time, and attorney's fees to produce a procedures manual and still be able to source and do a deal for profit. Roberts also comments that the MSRB needs to consider the rules in the context of the whole when determining the burden because one rule in isolation is not an undue burden but the totality of all of the rules will cause sole proprietors to struggle.

LIATI has two persons involved in municipal advisory activities and comments that the imposition of a supervisory scheme similar to that required by FINRA will be a major cost in terms of time and money to initiate and maintain.

As discussed above, the MSRB has acknowledged that the costs associated with the proposed rule change could fall disproportionately on small municipal advisory firms. To address this concern, the proposed rule allows for small advisors, and advisors with other particular traits, to reasonably vary their supervisory procedures as appropriate. Proposed Rule G-44 states that a municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system under the proposed rule, that written supervisory procedures can be tailored to the firm's size, and that the CCO role may be outsourced. As new municipal advisor rules are proposed, the MSRB has carefully considered, and will continue to carefully consider, the burden of municipal advisor regulation as a whole.

Costs Passed to Municipal Entities and Obligated Persons

NAIPFA comments that the costs of implementing the proposed rules will directly or indirectly be passed to municipal entities and obligated persons. MSA comments that the development and implementation of policies and procedures, annual filing and/or certification requirements, and the preservation of client records will result in additional costs that will be passed to municipalities. Raftelis comments that costs imposed on municipal advisors as a result of the proposed rules will almost certainly be passed on to municipal entities or obligated persons. Raftelis also states its belief that the proposed rules will add at least five percent to the cost of providing debt issuance support services for its clients, while providing little benefit to the client.

The MSRB is sensitive to the potential that the costs of the proposed rule change may be passed on to municipal entities and obligated persons and this is a factor that the MSRB has considered as part of its economic analysis. The MSRB believes that any increase in municipal advisory fees charged to advisory clients attributable to the incremental costs of the proposed

rule compared with the baseline state may be, in the aggregate, minimal in that the cost per municipal advisory firm likely would be spread across the number of advisory engagements for each firm. The MSRB believes that the benefits to municipalities and obligated persons of the proposed rule change outweigh the potential for increased costs being passed on to these entities. The MSRB will continue to consider the impact that increased costs will have on municipal entities and obligated persons as it continues to develop a regulatory framework for municipal advisors.

Prescriptive vs. Principles-Based Approach

Raftelis comments that, although it seems unlikely that a more prescriptive approach would be helpful or advantageous to municipal entities, the current principles-based approach is made less effective due to the ambiguous nature of the language and lack of applicable and useful guidance. Raftelis further comments that, given the broad nature of the types of services and types of firms that may be impacted by the proposed rule change, it will be extremely difficult to provide reasonable guidance that covers all situations.

The MSRB agrees that the proposed principles-based approach is appropriate considering the broad array of firms and types of services impacted by these rules. The MSRB believes that stating more specific obligations in the rule or guidance, however, would undermine the flexibility to create supervisory systems that are reasonably based on, among other things, the municipal advisor's size, organizational structure, nature and scope of activities, and number of offices. The proposed principles-based approach affords municipal advisors flexibility in determining the lowest-cost means to meet regulatory objectives.

Bank Trust Departments and Trust Companies

ABA comments that, with respect to municipal advisory activities of bank trust departments and trust companies ("bank fiduciaries"), the MSRB should consider the fiduciary regulatory regimes of federal and state bank regulators as a baseline for compliance and states that the regulatory regime applicable to bank fiduciaries promotes compliance with applicable securities laws by requiring bank fiduciaries to develop and implement compliance and supervisory policies. ABA believes the regulatory regime applicable to bank fiduciaries satisfies the principles underlying the proposed rule and that compliance with this regulatory regime should be deemed to constitute compliance with the proposed rule as this would further the rule's purpose and avoid overlaying an unnecessary and costly securities-based compliance program on a banking-law compliance regime. ABA believes that the imposition of this costly regulatory regime will provide no additional protections for municipal entities that are bank fiduciary clients and will require bank fiduciaries to undertake costly reviews to determine where there are duplicative or contradictory procedures between the two systems.

All municipal advisors should be required, at a minimum, to adhere to federal supervisory and compliance obligations that are substantially equivalent to those set forth in the proposed rule change regardless of their other business activities and regulatory obligations. In response to this comment, the MSRB has revised proposed Rule G-44 so that a bank fiduciary that certifies annually pursuant to proposed Rule G-44(e) that it is subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of Rule G-44 and the books and records requirements of Rule G-8(h)(iii) would be exempt from the other provisions of Rule G-44 and Rule G-8(h)(iii). Bank fiduciaries would remain subject to all other applicable MSRB rules.

Requests for More Guidance

NAIPFA comments that it is unclear what the last portion of paragraph .02 of the Supplementary Material requires in terms of the development of a compliance policy and requests that additional substantive guidance be provided that addresses how a single associated person's procedures should be prepared in line with this provision.[24] Proposed Rule G-44 requires municipal advisors to develop written supervisory procedures that are "reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules." Raftelis comments that this language is insufficient and asks how municipal advisors know if the written policies and procedures are reasonable and sufficient. Raftelis asks whether the MSRB will provide samples of written procedures and rules to provide a guide for addressing this requirement and also asks who is responsible for determining if the written policies and procedures are adequate and if they will be reviewed by someone at the MSRB and approved. Raftelis comments that the lack of guidance on what the written policies need to address increases the burden and cost of compliance. Raftelis further states that similar comments and concerns are raised by the requirement for conducting a periodic review and update of the written policies and procedures. MSA states that paragraph .01 of the Supplementary Material may not provide enough structure and a more objective, metric-based approach would be preferable; one which clearly defines the appropriate number of municipal advisor representatives required to fulfill regulatory responsibilities. MSA requests direction and clarification from the MSRB and specifically asks

[24] Paragraph .02 of the Supplementary Material provides, in pertinent part: "In the case of a municipal advisor with a single associated person, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules."

whether the MSRB will be releasing an outline with guidelines or requirements for each policy and procedures manual. Finally, Raftelis states that the proposed rule does not provide adequate guidance for smaller firms that provide a limited and specialized set of services that fall under the municipal advisor definition.

The MSRB intends proposed rule G-44 to allow firms a degree of flexibility to develop written supervisory procedures that are appropriate for their particular business. There are no plans at this time to review and pre-approve firms' written supervisory procedures and each municipal advisor is ultimately responsible for ensuring that its written policies and procedures are adequate. Additionally, the MSRB is not providing an outline of guidelines or requirements as doing so would undermine the flexibility of the principles-based approach utilized by the proposed rule and could not foresee all possible facts and circumstances that could arise among an extremely diverse population of municipal advisors operating in a complex market.

Raftelis asks how large a firm has to be, or how large a municipal advisory practice has to be, before it is necessary to designate additional principals as having supervisory roles. MSA asks what the proper ratio of certified municipal advisor representatives is for appropriate compliance with municipal advisor activities.

Proposed Rule G-44(a) would require a supervisory system reasonably designed to achieve compliance with all applicable rules. Each municipal advisor would be expected to use its judgment to determine how many supervisory principals and municipal advisor representatives are needed for the particular firm to meet this standard.

MSA asks whether the additional experience, training, and knowledge metrics referenced for municipal advisor principals will be identified in subsequent MSRB notices. MSA also asks

what metrics the MSRB will use to determine experience, training and knowledge outside of the qualification requirements referenced in MSRB Notice 2014-08.

Under paragraph .03 of the Supplementary Material, municipal advisor principals must have sufficient knowledge, experience and training "to understand and effectively discharge their [supervisor] responsibilities." The MSRB does not currently plan to issue additional guidance regarding this general requirement, which will depend on the particular facts and circumstances. Municipal advisors must use judgment to determine whether a designated supervisory principal's knowledge, experience and training are sufficient.

MSA asks whether a CCO and/or designated municipal advisor principal can also serve in a functional municipal advisor representative capacity, whether the duties of the CCO and municipal advisor professional can be vested in the same person, and whether a person can serve as CCO and municipal advisor principal for a firm.

Under paragraph .07 of the Supplementary Material, a CCO may hold any other position within a municipal advisor, including being designated as a supervisory principal, provided that the person can discharge the duties of CCO in light of all of the responsibilities of any other positions. A CCO or municipal advisor principal may serve in a functional municipal advisor representative capacity.

MSA asks, if a firm decides to outsource the CCO function, whether that entity is operating under the municipal advisor registration of the firm, or whether he or she must be registered as an individual municipal advisor.

If a firm outsources the CCO functions, the CCO is not required on that basis alone to be associated with the municipal advisor and is also not required to be separately registered as a

municipal advisor if the individual is not engaging in municipal advisory activities as defined by the Act and the rules and regulations thereunder.

MSA observed that a previous MSRB proposal contained a provision that stated that, if a firm chooses to subcontract with an independent municipal advisor on behalf of its clients, said municipal advisor could not have been associated with the firm for two years. MSA asks if the same provisions apply to the CCO position. MSA states that this requirement, if enforced, may prevent access and participation to the municipal advisory services market by qualified professionals who could provide the municipal advisory services at a reduced cost and asks the MSRB to explain the rationale and intent behind the two-year duration.

The previously proposed Rule G-44 that was filed with the SEC and withdrawn in 2011 has no force or effect and the current proposal does not include a provision similar to that described by MSA.

Implementation Date

BDA states that the MSRB should delay implementation of all of its municipal advisor rules and regulations until they have all been approved by the SEC. BDA further comments that an implementation date of six months following SEC approval of the last of the rules is fair. BDA states that this is particularly important for a rule like G-44 which will require firms to use the information in other rules to establish a complete supervisory system. NAIPFA comments that the MSRB may wish to consider refraining from implementing the proposed rule at this time. ICI recommends that the MSRB provide municipal advisors with a sufficient period of time to be fully compliant with the requirements since municipal advisors will need to adopt or revise existing compliance and supervisory systems to comply with the new rule and hire or appoint necessary qualified personnel. ICI states that the MSRB should provide advisors with a

minimum of twelve months to comply with the new rule to avoid unduly straining the resources of such advisors. NAIPFA requests that the proposed rule have a compliance date that is at least ninety days following the date on which it is effective. SIFMA requests that the MSRB provide for a reasonable compliance period of no less than six months.

The MSRB will not delay implementation of the proposed rules until all municipal advisor rules have been approved by the SEC. Municipal advisors are currently subject to a host of applicable federal securities laws, and benefits would flow from having in place supervisory and compliance obligations reasonably designed to ensure compliance with those laws. Moreover, the MSRB believes that it is important for firms to have a supervisory system and compliance processes in place that can be updated as new rules are adopted. The MSRB further believes that an implementation period of six months following the SEC's approval of proposed Rule G-44 and the proposed amendments to Rules G-8 and G-9 will provide sufficient time for firms to develop supervisory systems and compliance processes to comply with the proposed rule change, except for proposed Rule G-44(d). This general period meets SIFMA's request and is longer than NAIPFA's requested implementation period. The MSRB would expect municipal advisors to comply with proposed Rule G-44(d), on annual certifications as to compliance processes, by a date eighteen months following SEC approval.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2014-06 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-2014-06. This file number should be included on the subject line if e-mail 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 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2014-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.[25]

Kevin M. O'Neill
Deputy Secretary

[25] 17 CFR § 200.30-3(a)(12).