

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100508; File No. SR-MSRB-2024-03)

July 11, 2024

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change to Amend MSRB Rule G-47, on Time of Trade Disclosure, to Codify and Retire Certain Existing Interpretive Guidance and Add New Time of Trade Disclosure Scenarios

I. Introduction

On April 9, 2024, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend MSRB Rules G-47 (“Rule G-47”), on time of trade disclosure, to codify certain existing interpretive guidance and retire certain other existing interpretive guidance, add new time of trade disclosure scenarios, and make technical clarifications (the “proposed rule change”).³

The MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published on the MSRB website no later than 30 days following this approval. The effective date will be no later than nine months following this approval.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-99949 (April 9, 2024), 89 FR 27809 (April 18, 2024) (“Notice”).

The proposed rule change was published for comment in the Federal Register on April 18, 2024.⁴ The Commission received one comment letter on the proposed rule change.⁵ On June 14, 2024, the MSRB responded to the comment letter.⁶ As described further below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

MSRB Rule G-47 requires brokers, dealers, or municipal securities dealers (“dealers”) to disclose to customers, at or prior to the time of trade, all material information known or available publicly through established industry sources. More specifically, MSRB Rule G-47 requires dealers selling a municipal security to a customer, or purchasing a municipal security from a customer, to disclose to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as information about the municipal security that is reasonably accessible to the market. This obligation exists for both unsolicited and recommended transactions as well as primary and secondary market transactions.⁷

⁴ See Notice, 89 FR at 27809.

⁵ See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (May 9, 2024) (“SIFMA Letter”), available at <https://www.sec.gov/comments/sr-msrb-2024-03/srmsrb202403.htm>.

⁶ See Letter to Secretary, Commission, from Ernesto A. Lanza, Chief Regulatory and Policy Officer, MSRB, dated June 14, 2024 (“MSRB Letter”).

⁷ Dealers are also subject to Commission Rule 15l-1 under the Exchange Act that requires broker-dealers to make certain prescribed disclosures to their retail customer, before or at

MSRB Rule G-47 Supplementary Material .03 contains examples of information that may be material in specific scenarios and therefore requires time of trade disclosures to a customer. The list of specific scenarios is non-exhaustive and other information not listed in MSRB Rule G-47 Supplementary Material .03 may be material to customers depending upon the specific scenario. In addition to the specific disclosure scenarios listed in MSRB Rule G-47 Supplementary Material .03, various items of MSRB interpretive guidance list other scenarios that could require a time of trade disclosure obligation to a dealer transacting with a customer.

In summary, the MSRB stated that the proposed rule change would amend MSRB Rule G-47 to:

- Clarify in section (a) of MSRB Rule G-47 that a dealer is not obligated to disclose material information in violation of insider trading rules or procedures;⁸
- Amend and simplify the definition of material information in subsection (b)(ii) of MSRB Rule G-47 and make a conforming amendment to Supplementary Material .01(a);⁹
- Codify into Supplementary Material .03 existing interpretive guidance pertaining to market discount and to zero coupon or stepped coupon securities;¹⁰

the time of the recommendation, about the recommended transaction and the relationship between the retail customer and the broker-dealer. See 17 CFR 240.151-1(a)(2)(i).

⁸ See Notice, 89 FR at 27809.

⁹ Id.

¹⁰ Id.

- Add a clarifying example of factor bonds as bonds that prepay principal in Supplementary Material .03(i);¹¹ and
- Add three new disclosure scenarios to Supplementary Material .03.¹²

The MSRB also stated that proposed rule change would also retire interpretive guidance on conversion costs and secondary market insurance and consolidate existing inter-dealer time of trade disclosure guidance into a single piece of interpretive guidance.¹³

B. Summary of the Proposed Rule Change

i. Disclosure of Material Information

The MSRB has stated that the proposed rule change would redesignate the existing language of MSRB Rule G-47(a) as subsection (i) and add a new subsection (ii) to MSRB Rule G-47(a) clarifying that information that may be material to the transaction would not be required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from customers.¹⁴ The MSRB noted that it would be beneficial to the market to clarify this point in the text of

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

MSRB Rule G-47 given that it is not the MSRB's intent for dealers to violate securities regulations.¹⁵

ii. Definition of Material Information

Current MSRB Rule G-47(b)(ii) defines the term "material information" and explains that information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. According to the MSRB, the proposed rule change would delete the language "or significant" in order to streamline and simplify the definition.¹⁶ The MSRB has stated that it does not believe that this would materially alter the definition of material information or impose any additional burdens on dealers.¹⁷ The MSRB further stated that the proposed rule change would make a conforming amendment in Supplementary Material .01(a) to change the word "significant" to "important."¹⁸

iii. Codify Existing Interpretive Guidance on Market Discount and Zero Coupon or Stepped Coupon Securities

¹⁵ Id.

¹⁶ See Notice, 89 FR at 27810.

¹⁷ Id.

¹⁸ Id.

The MSRB states that the proposed rule change would codify and retire November 2016 interpretive guidance (the “Market Discount Guidance”)¹⁹ on market discount.²⁰ The Market Discount Guidance states that, absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of such investor’s investment return represented by accretion of the market discount is taxable as ordinary income.²¹ The Market Discount Guidance goes on to state that the fact that a security has market discount is material information that is required to be disclosed to a customer under MSRB Rule G-47 at or prior to the time of trade.²² The MSRB states that the proposed rule change would codify this information into MSRB Rule G-47 Supplementary Material .03(p).²³ Furthermore, the MSRB states that the proposed rule change would retire the Market Discount Guidance upon codification as the MSRB believes that it would not retain any standalone value.²⁴ The MSRB believes that codifying this information into the text of MSRB Rule G-47 would facilitate compliance and consolidate its rulebook by removing redundant interpretive guidance.²⁵ The MSRB notes, however, that proposed MSRB Rule G-47 Supplementary Material .03(p) would not require

¹⁹ See MSRB Interpretive Guidance, Time of Trade Disclosure – Disclosure of Market Discount (November 22, 2016), available at <https://www.msrb.org/Time-Trade-Disclosure-Disclosure-Market-Discount>.

²⁰ See Notice, 89 FR at 27810.

²¹ See Market Discount Guidance.

²² Id.

²³ See Notice, 89 FR at 27810.

²⁴ Id.

²⁵ Id.

dealers to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice, with respect to market discount.²⁶

The MSRB also states that the proposed rule change would also codify and retain April 1982 interpretive guidance (the “Zero or Stepped Coupon Guidance”)²⁷ pertaining to municipal securities with zero coupons or stepped coupons.²⁸ The Zero or Stepped Coupon Guidance states in the context of discussing zero coupon bonds and stepped coupon bonds that the MSRB is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities in order to comply with the MSRB’s fair practice rules.²⁹ The MSRB states that the proposed rule change would incorporate this guidance into MSRB Rule G-47 Supplementary Material .03(q) but retain the Zero or Stepped Coupon Guidance as it contains additional standalone value pertaining to MSRB Rule G-12 and MSRB Rule G-15.³⁰

iv. Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

²⁶ Id.

²⁷ See MSRB Interpretive Guidance, Notice Concerning “Zero Coupon” and “Stepped Coupon” Securities (April 27, 1982), available at <https://www.msrb.org/Notice-Concerning-Zero-Coupon-and-Stepped-Coupon-Securities>.

²⁸ See Notice, 89 FR at 27810.

²⁹ Id.

³⁰ Id.

The MSRB states that the proposed rule change would retire two pieces of interpretive guidance that the MSRB believes have become outdated.³¹ The MSRB states that the first interpretive guidance to be retired is interpretive guidance from August 1988 (the “Conversion Cost Guidance”)³² stating that transfer agents for some interchangeable securities charge fees for the conversion of registered certificates to bearer form, which can be substantial and, in some cases, prohibitively expensive.³³ The MSRB further states that the Conversion Cost Guidance goes on to state that dealers therefore should ascertain the amount of the fee prior to agreeing to deliver bearer certificates and that, if a dealer passes on the costs of converting registered securities to bearer form to its customer, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade and the customer must agree to pay the conversion fee.³⁴ The MSRB believes that interchangeable securities are a rare occurrence in the marketplace, and as such, the MSRB believes that there is limited utility in retaining this guidance and proposes its retirement.³⁵

³¹ Id.

³² See MSRB Interpretive Guidance, Confirmation, Delivery and Reclamation of Interchangeable Securities (August 10, 1988), available at <https://www.msrb.org/Confirmation-Delivery-and-Reclamation-Interchangeable-Securities>.

³³ See Notice, 89 FR at 27810.

³⁴ Id.

³⁵ Id.

The MSRB states that the second piece of interpretive guidance to be retired is guidance from March 1984 (the “Secondary Market Insurance Guidance”)³⁶ on secondary market insurance.³⁷ The MSRB states that the Secondary Market Insurance Guidance, in part, reminds the industry that if a security has been insured or if arrangements for insurance have been initiated, the market price of the security would be affected and this information is material and must be disclosed to a customer at or before the execution of a transaction in the security.³⁸ MSRB Rule G-47 Supplementary Material .03(e) currently includes a disclosure obligation scenario detailing when a security has been insured or arrangements for insurance have been initiated, the credit rating of the insurance company, and information about potential rating actions with respect to the bond insurance company, which, according to the MSRB, effectively makes the comparable portion of the Secondary Market Insurance Guidance superfluous.³⁹ In addition, the MSRB explained in the Secondary Market Insurance Guidance that it believes that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device.⁴⁰ However, the MSRB believes that it is no longer common practice to require such evidence of insurance

³⁶ See MSRB Interpretive Guidance, Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features (March 6, 1984), available at <https://www.msrb.org/Application-Board-Rules-Transactions-Municipal-Securities-Subject-Secondary-Market-Insurance-or>.

³⁷ See Notice, 89 FR at 27810.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

for effective transference, and as a result, the MSRB proposed to retire the Secondary Market Insurance Guidance.⁴¹

v. Add an Example of a Bond that Prepays Principal

Current MSRB Rule G-47 Supplementary Material .03(i) lists bonds that prepay principal as a specific scenario which may be material and require disclosure at or prior to the time of trade. More specifically, the scenario lists the fact that the security prepays principal and the amount of unpaid principal that will be delivered on the transaction as a scenario that may be material and require a time of trade disclosure. The MSRB states that the proposed rule change would add factor bonds to Rule G-47 Supplementary Material .03(i) as an example of a bond that prepays principal.⁴² The MSRB described factor bonds as bonds for which partial distributions are processed by a proportional return of principal to each bondholder.⁴³ After the partial distribution, the factor must be applied to the face value to determine interest payments as well as the principal amount for each future transaction.⁴⁴ The MSRB explains that factor bonds, by their terms, are already subject to this scenario and therefore this addition does not add or remove any disclosure burdens but instead simply provides an example of a potential disclosure

41 Id.

42 Id.

43 Id.

44 Id.

obligation currently contained in MSRB Rule G-47 that serves to remind dealers of the applicability of this provision to factor bonds.⁴⁵

vi. Add Three New Disclosure Scenarios

The MSRB states that the proposed rule change would add three new disclosure scenarios to MSRB Rule G-47 Supplementary Material .03's non-exhaustive list of specific scenarios that could be material and require a time of trade disclosure.⁴⁶ Specifically, the MSRB states that these three new scenarios are yield to worst, the unavailability of the official statement, and the fact that continuing disclosures are not available.⁴⁷

Yield to Worst. The MSRB indicated that the proposed rule change would add yield to worst as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (r) thereof.⁴⁸ MSRB Rule G-15(a)(i)(A)(5) requires the yield at which a transaction is effected for transactions that are computed on the basis of yield to maturity, yield to a call date, or yield to a put date to be disclosed on a customer's confirmation.⁴⁹ Furthermore, the MSRB stated that if the computed yield required by MSRB Rule G-15 is different than the yield at which the transaction

⁴⁵ See Notice, 89 FR at 27810-27811.

⁴⁶ See Notice, 89 FR at 27811.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. The MSRB noted that, pursuant to MSRB Rule G-15(a)(i)(A)(5)(c)(v), yield is to be calculated in accordance with MSRB Rule G-33, on calculations. Id.

was effected, the computed yield must also be disclosed on the confirmation.⁵⁰ The MSRB explained that this information is typically referred to as yield to worst.⁵¹ The MSRB believes that this information may be material to a customer's investment decision, as it could impact a decision to purchase a municipal security at the current price or yield, and therefore may be required to be disclosed at or prior to the time of trade in addition to being disclosed on a customer's confirmation.⁵²

Unavailability of Official Statement for New Issue Customers. The MSRB states that the proposed rule change would add, in the case of sales to customers of new issue municipal securities, the fact that an official statement is unavailable or only available from the underwriter as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (s) thereof.⁵³ For purposes of this scenario, the MSRB indicated that new issue municipal securities consist of offered municipal securities within the meaning of MSRB Rule G-32, which in general are municipal securities sold in a primary offering until 25 days after the closing of the new issue.⁵⁴ In contrast, the MSRB explained that the potential for the lack of an official statement to

⁵⁰ Id.; see also MSRB Rule G-15(a)(i)(A)(5)(c)(vii).

⁵¹ See Notice, 89 FR at 27811.

⁵² Id.

⁵³ Id.

⁵⁴ Id. MSRB Rule G-32(c)(vi) defines offered municipal securities as municipal securities that are sold by a dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. Primary offering disclosure period is defined in MSRB Rule G-32(c)(ix) as the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities

be material to a customer in a transaction outside of the primary offering disclosure period is considerably lower and therefore normally would not trigger an obligation under MSRB Rule G-47.⁵⁵

Exchange Act Rule 15c2-12⁵⁶ requires underwriters to obtain and review an official statement for most primary offerings of municipal securities.⁵⁷ MSRB Rule G-32(b)(i)(B) generally requires that the underwriter submit such official statement (as well as any official statement produced for a primary offering exempt from Exchange Act Rule 15c2-12⁵⁸) for posting on the Electronic Municipal Market Access (“EMMA®”)⁵⁹ website. If no official statement is posted by an underwriter to EMMA for a primary offering by the closing date, the MSRB notes that the underwriter is generally required under MSRB Rule G-32 to post to EMMA, as applicable, either: (i) notification that no official statement exists pursuant to MSRB Rule G-32(b)(i)(C) or (ii) in the case of a primary offering not subject to Exchange Act Rule

from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter. Pursuant to MSRB Rule G-32(c)(viii), primary offering means an offering defined in Exchange Act Rule 15c2-12(f)(7) (17 CFR 240.15c2-12(f)(7)), including but not limited to any remarketing of municipal securities that constitutes a primary offering as such subsection (f)(7) may be interpreted from time to time by the Commission.

⁵⁵ See Notice, 89 FR at 27811.

⁵⁶ 17 CFR 240.15c2-12.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ EMMA® is a registered trademark of the MSRB.

15c2-12⁶⁰ by virtue of paragraph (d)(1)(i) thereof (sometimes referred to as a limited offering) and the underwriter has withheld posting the official statement to EMMA pursuant to MSRB Rule G-32(b)(i)(E), contact information for investors to request a copy of the official statement.⁶¹

Under certain circumstances, the MSRB notes that dealers currently have obligations to inform new issue customers by trade settlement regarding the availability or unavailability of the official statement under MSRB Rule G-32(a)(i) or (a)(iii)(A).⁶² The MSRB believes that the fact that an official statement is not available could be material to a new issue investor in making an investment decision and therefore should be included in MSRB Rule G-47's list of scenarios that could trigger a time of trade disclosure.⁶³ As a result, the MSRB states that the new clause(s) of MSRB Rule G-47 Supplementary Material .03 would accelerate the timing for this disclosure to a point in time where this information would be available to the customer while making such investment decision, rather than merely by settlement of the transaction and thus after such decision has been made.⁶⁴

The MSRB states that dealers generally would be able to rely, for purposes of proposed clause(s), on information posted on EMMA as of the time of trade of a new issue municipal

⁶⁰ 17 CFR 240.15c2-12.

⁶¹ See Notice, 89 FR at 27811. MSRB Rule G-32(b)(i)(F) also provides an exemption for certain commercial paper offerings or remarketings from the official statement submission requirement assuming applicable conditions are met.

⁶² See Notice, 89 FR at 27811.

⁶³ Id.

⁶⁴ Id.

security with regard to whether an official statement is unavailable or available only from the underwriter.⁶⁵ In the case of a customer trade by a dealer (other than the underwriter of the municipal security) occurring prior to the posting on EMMA of the official statement or any statement about the official statement's availability,⁶⁶ the MSRB states that such dealer may presume that an official statement will become available unless the dealer has knowledge that the official statement will not in fact be posted or will only be made available through the underwriter.⁶⁷ Dealers that serve as underwriters for a primary offering would, in contrast, be deemed to know whether or not an official statement will be posted for such offering or will be made available only from such underwriters.⁶⁸

Unavailability of Continuing Disclosure. The MSRB states that the proposed rule change would add, as a disclosure scenario to MSRB Rule G-47 Supplementary Material .03 in new clause (t) thereof, the fact that no issuer of, or other obligated person with respect to, a customer's municipal security has agreed to make continuing disclosures as contemplated under

⁶⁵ Id.

⁶⁶ Id. The MSRB indicated that it is common for new issue municipal securities to be traded beginning immediately after the time of first execution within the meaning of MSRB Rule G-34(a)(ii)(C)(1)(b) but before the underwriter timely posts the official statement to EMMA under MSRB Rule G-32(b)(i)(B). Id. The MSRB further noted that this gap typically is a result of the time needed to finalize and produce the official statement that incorporates the final terms of a new issue offering. Id.

⁶⁷ See Notice, 89 FR at 27811. The MSRB noted that this is somewhat analogous to the ability of dealers other than the underwriter of a new issue to effectively presume that the underwriter has made the required submissions to EMMA under MSRB Rule G-32(a)(ii)(B). Id.

⁶⁸ Id.

Exchange Act Rule 15c2-12⁶⁹ available on EMMA.⁷⁰ Exchange Act Rule 15c2-12(b)(5)⁷¹ generally prohibits an underwriter from purchasing or selling municipal securities in most new issue offerings unless the underwriter has reasonably determined that an issuer or obligated person for whom financial or operating data is presented in the final official statement has undertaken in a written agreement or contract to provide certain continuing disclosures to the MSRB as specified in Exchange Act Rule 15c2-12(b)(5). Exchange Act Rule 15c2-12(d)(2)(ii)⁷² provides an exemption from Exchange Act Rule 15c2-12(b)(5),⁷³ but requires a modified version of such continuing disclosure agreement or contract. In addition, Exchange Act Rule 15c2-12(d)(3)⁷⁴ provides a partial exemption from Exchange Act Rule 15c2-12(b)(5)⁷⁵ but still requires a modified version of such continuing disclosure agreement or contract limited to specified event notices.⁷⁶ The MSRB states that this new disclosure scenario in proposed clause (t) would apply to any municipal securities of the foregoing offerings.⁷⁷ However, the MSRB notes that certain new issue offerings are wholly exempt from or otherwise not subject to

⁶⁹ 17 CFR 240.15c2-12.

⁷⁰ See Notice, 89 FR at 27811.

⁷¹ 17 CFR 240.15c2-12(b)(5).

⁷² 17 CFR 240.15c2-12(d)(2)(ii).

⁷³ 17 CFR 240.15c2-12(b)(5).

⁷⁴ 17 CFR 240.15c2-12(d)(3).

⁷⁵ 17 CFR 240.15c2-12(b)(5).

⁷⁶ See Notice, 89 FR at 27812.

⁷⁷ Id.

Exchange Act Rule 15c2-12(b)(5)⁷⁸ by virtue of paragraph (a) or subparagraph (d)(1) of Exchange Act Rule 15c2-12,⁷⁹ and therefore the MSRB states that this new disclosure scenario would not apply to any municipal securities of these specific types of exempt offerings.⁸⁰

The MSRB notes that continuing disclosure documents and related information submitted by issuers and obligated persons to EMMA's continuing disclosure service are made available on the EMMA website.⁸¹ The MSRB states that such continuing disclosures currently are accessible by users of the EMMA website through a variety of means, including on the Disclosure Documents tab of the EMMA Security Details page for each specific municipal security.⁸² The MSRB further states that the disclosures provided on such page are generally accompanied by certain information, as applicable, provided to EMMA by the underwriter of the applicable

⁷⁸ Id.

⁷⁹ 17 CFR 240.15c2-12(a) and (d)(1). In addition, Exchange Act Rule 15c2-12(d)(5) provides an exemption from Exchange Act Rule 15c2-12(b)(5) for municipal securities outstanding on November 30, 2010 so long as they continuously remain in authorized denominations of \$100,000 or more and may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent. 17 CFR 240.15c2-12(d)(5).

⁸⁰ See Notice, 89 FR at 27812.

⁸¹ See Notice, 89 FR at 27812; see also MSRB Information Facility IF-3, on Electronic Municipal Market Access System – EMMA, available at <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Informational/IF-3>.

⁸² See Notice, 89 FR at 27812.

municipal security at the time of its initial issuance regarding any agreement by the issuer or other obligated persons to undertake to provide continuing disclosures.⁸³

The MSRB states that dealers generally would be able to rely on such information posted on EMMA by the underwriter regarding an issuer's or other obligated person's continuing disclosure undertaking for purposes of MSRB Rule G-47 Supplementary Material .03(t) unless the dealer has knowledge to the contrary.⁸⁴ In addition, the MSRB states that particularly for municipal securities for which no such underwriter-provided information concerning any continuing disclosure agreement may be displayed on EMMA, a review of the official statement or other information available on EMMA typically would indicate whether the issuer or obligated person has undertaken to provide continuing disclosures on the municipal securities.⁸⁵

The MSRB believes that the fact that continuing disclosures are not required to be made available to a customer on EMMA, which is where a customer would typically go to review such information prior to trading a municipal security, will generally be material and therefore should

⁸³ Id. See also MSRB Rule G-32(b)(i)(A) and (b)(vi)(C)(1)(a).

⁸⁴ See Notice, 89 FR at 27812. The MSRB states that the ability of a dealer to rely on this posted information for purposes of MSRB Rule G-47 Supplementary Material .03(t) would not conclusively foreclose any other potential disclosure or other obligation of a dealer, under MSRB Rule G-47(a), Exchange Act Rule 15c2-12 (17 CFR 240.15c2-12) or otherwise, that might arise relating to the existence of or the performance or non-performance under any continuing disclosure agreement by an issuer or obligated person, or with regard to the content of such continuing disclosure, depending on the specific facts and circumstances. Id.

⁸⁵ See Notice, 89 FR at 27812.

be included in time of trade disclosures provided to a customer.⁸⁶ The MSRB states that on occasion, an issuer or obligated person may undertake to provide continuing disclosures not contemplated by Exchange Act Rule 15c2-12⁸⁷ (sometimes referred to as voluntary continuing disclosures).⁸⁸ The MSRB further states that this proposed scenario is not intended to require disclosures with regard to the existence of an agreement solely in respect of such voluntary continuing disclosures.⁸⁹

vii. Consolidate Existing Inter-dealer Time of Trade Disclosure Guidance

The MSRB states that the proposed rule change would consolidate three pieces of existing interpretive guidance relating to inter-dealer time of trade disclosure into one standalone interpretive guidance in order to better streamline time of trade disclosure guidance.⁹⁰ The MSRB further states that while MSRB Rule G-47 applies to customer transactions and not

⁸⁶ Id.

⁸⁷ 17 CFR 240.15c2-12.

⁸⁸ See Notice, 89 FR at 27812.

⁸⁹ Id.

⁹⁰ See Notice, 89 FR at 27812. See also MSRB Interpretive Guidance, Notice Concerning Securities that Prepay Principal (March 19, 1991), available at <https://www.msrb.org/Notice-Concerning-Securities-Prepay-Principal>; MSRB Interpretive Guidance, Disclosure of Pricing: Calculating the Dollar Price of Partially Prerefunded Bonds (May 15, 1986), available at <https://www.msrb.org/Disclosure-Pricing-Calculating-Dollar-Price-Partially-Prerefunded-Bonds>; and MSRB Interpretive Guidance, Description Provided at or Prior to the Time of Trade (April 30, 1986), available at <https://www.msrb.org/Description-Provided-or-Prior-Time-Trade>. Any portions of such interpretive pieces relating to customer disclosure standards are already incorporated into MSRB Rule G-47.

transactions between dealers,⁹¹ the MSRB has previously discussed a dealer’s fair dealing disclosure obligations in connection with inter-dealer transactions in these three pieces of inter-dealer guidance.⁹² The MSRB believes that consolidating this existing guidance into a single interpretive guidance would be beneficial to the market and result in a more organized MSRB rulebook.⁹³ The MSRB does not believe that the three existing pieces of inter-dealer guidance would otherwise retain any standalone value upon consolidation into the new guidance and, therefore, these three pieces of guidance would be retired.⁹⁴

III. Summary of Comments Received to the Proposed Rule Change

The Commission received one comment letter⁹⁵ on the proposed rule change, as well as a response⁹⁶ from the MSRB to the comment letter.

The commenter stated that the MSRB should “make clear that a dealer should only be responsible for providing factor information pursuant to the rule if there is an event filing on EMMA which specifies that the factor concept applies, or the dealer otherwise has specific

⁹¹ See MSRB Rule G-47(a).

⁹² See Notice, 89 FR at 27812.

⁹³ Id.

⁹⁴ Id.

⁹⁵ See SIFMA Letter.

⁹⁶ See MSRB Letter.

knowledge of factor payments.”⁹⁷ The MSRB stated that if factor information that may be material is not known by the dealer or is not reasonably accessible to the market through established industry sources, such factor information would not be required to be disclosed pursuant to the proposed amendment to Supplementary Material .03(i).⁹⁸

The commenter stated that “it should be made clear that broker dealers neither give tax advice nor should they be perceived to be giving tax advice” and that the original guidance should be preserved due to the fact that it “merely requires notification of the existence of a discount” and dealers are concerned that discount disclosures “may force dealers to move closer to the line of giving tax advice.”⁹⁹ The MSRB responded that the proposed rule change would only require dealers to disclose the fact that the security bears a market discount and that an impact may exist, the proposed new Supplementary Material .03(p) would not require dealers to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice, with respect to market discount.¹⁰⁰ Thus, the MSRB stated the proposed rule change would not require dealers to calculate the impact or give tax advice.¹⁰¹

The commenter stated that “[d]ealers should be only required to disclose whether bonds are zero coupon bonds or stepped coupon bonds, but not the details of the special characteristics

⁹⁷ See SIFMA Letter at 2.

⁹⁸ See MSRB Letter at 2.

⁹⁹ See SIFMA Letter at 2.

¹⁰⁰ See MSRB Letter at 2.

¹⁰¹ Id.

of these features, such as the details of the increases to the interest rates” due to the fact that information is limited on the MSRB’s primary market feed.¹⁰² The MSRB noted that time of trade disclosures, including those related to zero or stepped coupon bonds, are limited to information that dealers know or that is reasonably accessible to the market.¹⁰³ Therefore, the MSRB stated, if the information available via established industry sources (including but not limited to the MSRB’s primary market feed) is limited or not present, a dealer would not be required to seek out additional information that is not known to the dealer or not reasonably accessible to the market at the time of trade.¹⁰⁴

The commenter expressed concern that describing a disclosure as “Yield to Worst” could be misleading or confusing and “regulatory examiners and/or customers alike may believe that this is the computation which accounts for all potential scenarios and represents the absolute worst possible yield a customer may experience when purchasing a municipal security.”¹⁰⁵ In addition, the commenter requested that “if the MSRB moves forward with requiring this time of trade disclosure, that the MSRB make clear that the time of trade disclosure it is articulating in the proposed rule change is the same ‘Computed Yield’ calculation that is required under Rule G15’s confirmation requirements and that dealers are not expected to provide any additional or

¹⁰² See SIFMA Letter at 3.

¹⁰³ See MSRB Letter at 3.

¹⁰⁴ Id.

¹⁰⁵ Id.

different disclosures in this regard.”¹⁰⁶ The MSRB responded that the proposed time of trade disclosure lists the required information to be disclosed as the computed yield required by MSRB Rule G-15(a)(i)(A)(5)(c), if different than the yield at which the transaction was effected, and does not contemplate dealers providing any additional or different disclosures in this regard.¹⁰⁷ The MSRB also stated that dealers are not required to refer to such computed yield as “yield to worst” to their customers and may appropriately refer to it is a computed yield consistent with the proposed rule change.¹⁰⁸

The commenter requested that the MSRB remove certain time of trade disclosure requirements related to whether an official statement is unavailable or provide further guidance.¹⁰⁹ The commenter stated that “the proposed rule change as drafted would provide little to no actionable information for investors in a public offering.”¹¹⁰ The MSRB responded that it believes that the fact that an official statement is unavailable is material information that could impact investors’ investment decisions, especially retail customers, for whom MSRB Rule G-47 is primarily oriented.

The commenter also requested that the MSRB clarify the application and disclosure

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Id.

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See MSRB Letter at 3.

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Id.

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See SIFMA Letter at 4.

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Id.

requirements of the proposed rule change in four different scenarios.¹¹¹ The scenarios were as follows: “(1) public offerings where it is anticipated that the issuer will produce a Final Official Statement by settlement but a Final Official Statement is not available at the Time of Trade; (2) Rule 15c2-12 exempt offerings where an issuer has drafted and disseminated an offering document that does not technically meet the Final Official Statement requirements of Rule 15c2-12 but would meet the official statement definition of Rule G32(c)(vii); (3) Rule 15c2-12 exempt offerings where the issuer declines to draft an offering document for the offering; and (4) remarketings of municipal securities that may be deemed to be a primary offering of municipal securities under Rule 15c2-12 and Rule G-32.” (footnotes omitted).¹¹² The commenter further stated that it “supports the MSRB proposals that any such time of trade disclosure should be limited to underwriters in new issue trades.”¹¹³

The MSRB responded to the four scenarios.¹¹⁴

With respect to the first scenario, the MSRB responded that if an underwriter is expected to produce a final official statement, but it is not yet available at the time of trade or it is still in production, a dealer selling a new issue security constituting an offered municipal security within the meaning of Rule G32 would not be required to disclose that there is no official statement

¹¹¹ See SIFMA Letter at 5.

¹¹² Id.

¹¹³ Id.

¹¹⁴ See MSRB Letter at 5.

available for the municipal security in question.¹¹⁵ The MSRB further stated that such disclosure requirement only attaches when the underwriter is not expected to produce an official statement at all, which would be evidenced by the required notification by the underwriter, pursuant to MSRB Rule G-32(b)(i)(C), that no official statement will be prepared, which notification is displayed on EMMA.¹¹⁶ As the MSRB noted in its proposed rule change, dealers (other than the underwriter of a new issue of municipal securities) generally would be able to rely on information posted on EMMA as of the time of trade of such new issue municipal security with regard to whether an official statement is or will be unavailable, while the underwriter for such new issue would be deemed to know whether or not an official statement will be posted for such offering.¹¹⁷

With respect to the second scenario, the MSRB responded that the proposed rule change uses the term “official statement” for purposes of proposed new Supplementary Material .03(s) with the same meaning as in Rule G-32(c)(vii).¹¹⁸ The MSRB noted that underwriters have become familiar over many years with the use of the term “official statement” as defined under MSRB Rule G-32, including any distinctions that exist between that term in Rule G-32 and the term “final official statement” as used in Exchange Act Rule 15c2-12.¹¹⁹

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ See MSRB Letter at 6.

¹¹⁹ Id.

With respect to the third scenario, the MSRB responded that there no official statement is anticipated, a dealer selling a new issue security constituting an offered municipal security within the meaning of Rule G-32 would be required to disclose to the customer that there is no official statement.¹²⁰ The MSRB noted that this disclosure requirement would attach, and dealers other than the underwriter would be entitled to rely on information posted to EMMA, as described in the preceding paragraph.¹²¹

With respect to the fourth scenario, the MSRB responded that in sales of new issue securities constituting offered municipal securities within the meaning of Rule G-32 in a remarketing that is deemed to be a primary offering, dealers are required to make a time of trade disclosure if no official statement is available, with such disclosure requirement attaching, and dealers other than the underwriter being entitled to rely on information posted to EMMA, as described above.¹²²

The MSRB further stated that the proposed time of trade disclosure would not apply to any sales occurring after the end of the primary offering disclosure period, but such application would not be limited to sales by underwriters of such securities but would apply to any sale by any dealer of such securities during the primary offering disclosure period (although dealers

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

other than underwriters would be entitled to certain reliance on information posted on EMMA in regard to such requirement, as described in the proposed rule change).¹²³

The commenter stated that “disclosing the issuer or obligated person has not agreed to make continuing disclosures with respect to the municipal securities, as contemplated under Securities Exchange Act Rule 15c2-12, that will be available on EMMA should be limited to new issue trades” and that “[s]ecurities exempt from 15c2-12 would typically have such a disclosure in an investor letter” and “[i]nvestors making secondary market trades can see offering documents, or the lack thereof, on EMMA.”¹²⁴ The MSRB responded that it believes that the fact that continuing disclosures may not be available is material information that may impact an investor’s investment decision and is relevant beyond the primary offering disclosure period.¹²⁵ In addition, the MSRB noted that while it may be obvious to dealers or sophisticated investors how to determine if continuing disclosures are not available, it may not be so obvious to retail customers for whom MSRB Rule G-47 is primarily oriented.¹²⁶

IV. Discussion and Commission’s Findings

The Commission has carefully considered the proposed rule change, the comment letter received, and the MSRB’s response thereto. The Commission finds that the proposed rule

¹²³ See MSRB Letter at 5.

¹²⁴ See SIFMA Letter at 5-6.

¹²⁵ See MSRB Letter at 6.

¹²⁶ See MSRB Letter at 6.

change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C), which provides, in part, 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.¹²⁷

The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act because the proposed rule change would protect investors and the public interest. The proposed rule change would clarify for market participants the meaning of material information under Rule G-47, and better ensure that retail and other customers receive such material information at or prior to the time of trade, allowing them to make a more informed investment decision. The proposed rule change would add new requirements in specific scenarios for dealers to disclose when an official statement is unavailable, when continuing disclosures are not available, and the yield to worst of a transaction, and these new requirements would provide investors with material information when deciding to transact in municipal

¹²⁷ 15 U.S.C. 78o-4(b)(2)(C).

securities. Finally, consolidating existing interpretive guidance into the text of MSRB Rule G-47 and clarifying existing rule language would also promote compliance by dealers with existing requirements under MSRB Rule G-47 and thereby promote the protection of investors and the public interest by assisting investors, particularly retail customers who may or may not know how or where to access this information, by providing them with material information that could influence an investment decision.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. Section 15B(b)(2)(C) of the Act¹²⁸ 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. The Commission believes the proposed rule change to amend Rule G-47 would not impose any burden on competition and would not have an impact on competition, as the proposed rule change would apply a uniform standard for disclosures required under MSRB Rule G-47. In addition, the proposed rule change would apply equally to all dealers. As all components of the proposed rule change would be applied equally to all registered dealers transacting in municipal securities, the Commission believes that the proposed rule change would not impose any additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

The Commission also finds that the proposed rule change will not hinder capital formation. As noted above, the proposed rule change ensures a uniform standard for disclosures required under MSRB Rule G-47, and would be applied equally to all dealers. As such, the

¹²⁸ 15 U.S.C. 78o-4(b)(2)(C).

Commission believes that the proposed rule change would promote clearer regulatory requirements for the disclosures under MSRB Rule G-47 by retiring interpretive guidance on conversion costs and secondary market insurance and consolidating existing inter-dealer time of trade disclosure guidance into a single piece of interpretive guidance. The Commission also finds that the proposed rule change would promote efficiency by retiring guidance no longer in use and consolidating other existing interpretive guidance.

As noted above, the Commission received one comment letter on the filing.¹²⁹ The Commission believes that the MSRB, through its response, addressed the commenter's concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

¹²⁹ See SIFMA Letter.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹³⁰ that the proposed rule change (SR-MSRB-2024-03) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.¹³¹

J. Matthew DeLesDernier,

Deputy Secretary.

¹³⁰ 15 U.S.C. 78s(b)(2).

¹³¹ 17 CFR 200.30-3(a)(12).