



Municipal Securities Rulemaking Board

August 31, 2023

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comments on File No. SR-MSRB-2023-05

Dear Ms. Countryman,

On July 21, 2023, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change, File No. SR-MSRB-2023-05, to amend MSRB Rule G-3, on professional qualifications, to (i) create a criteria-based exemption for certain individuals to requalify as municipal advisor representatives after a lapse in qualification without retaking the Municipal Advisor Representative Qualification Examination (“Series 50 examination”); (ii) remove provisions in Rule G-3 relating to waivers in extraordinary cases from reexamination of municipal advisor representatives and principals; (iii) amend Rule G-8, on books and records, to establish accompanying recordkeeping requirements; and (iv) make technical changes to Rules G-3 and G-8 to update certain phrases and clauses (the “proposed rule change”).¹

The proposed rule change was published for comment in the Federal Register on July 31, 2023.² The MSRB appreciates the participation of commenters in the rulemaking process. One written comment letter was filed with the Commission in response to the proposed rule change.³ Below, the MSRB responds to the material aspects of the comments received.

NAMA expressed support for the proposed rule change; specifically, that it will allow municipal advisor professionals to step away from municipal advisory activities for up to three years without having to retake the Series 50 examination and reenter the profession through reasonable requirements. However, NAMA indicated, “[a] few questions remain about the sequence of events that need to occur for an [municipal advisor] to take advantage of the

¹ The proposed rule change is available at <https://www.msrb.org/sites/default/files/2023-07/MSRB-2025-05.pdf>. Except as expressly defined herein, the defined terms used in this letter shall have the meanings as defined in the proposed rule change.

² See Exchange Act Release No. 97984 (July 25, 2023), 88 FR 49528 (July 31, 2023) (File No. SR-MSRB-2023-05).

³ See Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”) (August 21, 2023) (“NAMA Letter”).

amendments.”⁴ NAMA also encouraged the MSRB to clarify the process for a new municipal advisor professional, yet to be associated with a firm, to take the Series 50 examination.

With respect to the process for new municipal advisor professionals to take the Series 50 examination, the MSRB outlined within the filing supporting the proposed rule change⁵ the sequence of events and timing for completing the requisite requirements under the criteria-based exemption for municipal advisor professionals reassociating with a municipal advisor firm or seeking to act as solo-practitioners. Specifically, the MSRB stated that individuals associating with a municipal advisor firm and seeking to use the exemption should, in the following order:

- i) take and complete the requisite continuing education (“CE”) (*e.g.*, resources available through trade associations or the MSRB, firm-developed materials, or off-the-shelf purchased materials);
- ii) review the municipal advisor firm’s compliance policies and procedures;
- iii) have the municipal advisor firm complete SEC Form MA-I in accordance with the instructions in the form and file the form electronically with the SEC; and
- iv) submit the requisite affirmation notification to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I.

In addition, the MSRB stated that solo-practitioners seeking to use the exemption should, in the following order:

- i) take and complete the requisite CE (*e.g.*, resources available through trade associations or the MSRB, firm-developed materials, or off-the-shelf purchased materials);
- ii) review the developed compliance policies and procedures of the municipal advisor firm;
- iii) complete SEC Form MA-I in accordance with the instructions in the form and file the form electronically with the SEC;
- iv) complete SEC Form MA: Application For Municipal Advisor Registration/ Annual Update Of Municipal Advisor Registration/ Amendment of A Prior Application For Registration (“SEC Form MA”) in accordance with the instructions in the form and file the form electronically with the SEC;⁶

⁴ NAMA Letter.

⁵ *See* File No. SR-MSRB-2023-05 at 12-13.

⁶ Filing Form MA and Form MA-I is mandatory for municipal advisor firms that are required to register with the SEC. *See* 17 CFR 240.15Ba1-2(a) and (b).

v) complete MSRB Form A-12, on registration, in accordance with the instructions outlined in the MSRB Registration Manual and file the form electronically with the MSRB;⁷ and

vi) submit the requisite affirmation notification to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I.

The MSRB anticipates publishing a compliance resource in close proximity to the rule's compliance date. The compliance resource would restate the sequence of events that must be undertaken to satisfy the criteria-based exemption and address additional questions outside the scope of this proposal related to professional qualification and continuing education standards, and registration requirements for municipal advisors and dealers.

NAMA also encouraged the MSRB to extend the proposed rule change's criteria-based exemption for municipal advisor representatives to municipal advisor principals, noting that this would "help all-sized firms coordinate compliance and registration responsibilities," and solo-practitioners would benefit from being able to "begin their practice within the required time frame and meet other requirements."⁸ In the absence of extending the criteria-based exemption to municipal advisor principals, NAMA urged the MSRB to include in the above-referenced compliance resource an explanation as to how municipal advisors can obtain and comply with the criteria-based exemption for the Series 50 examination and meet the requirements to also act in the capacity of a municipal advisor principal.

As noted in the filing, the MSRB carefully considered such an extension to the municipal advisor's principal role and determined that similar relief should not be extended because the heightened supervisory, oversight and management responsibilities of municipal advisor principals render such an exemption inappropriate. Additionally, the MSRB articulated that, even if such relief were appropriate, additional, more stringent requirements would be necessary in consideration of these broader obligations, resulting in two different standards and additional regulatory complexity. Thus, the MSRB believes that extending the proposed rule change to municipal advisor principals is not warranted.

Relatedly, as noted in the proposed rule change, Rule G-3(e)(ii)(C) permits an individual who is duly qualified as a municipal advisor representative and has been designated by the municipal advisor firm as a municipal advisor principal a period of 120 days, after being designated, to take and pass the Municipal Advisor Principal Qualification Examination ("Series 54 examination"). This provision allows individuals qualified as municipal advisor representatives, including those seeking to be solo-practitioners, to function in the principal-level capacity for a limited time before taking and passing the Series 54 examination. The MSRB will also include additional materials related to this provision in its upcoming compliance resource.

⁷ Pursuant to Rule A-12, on registration, a municipal advisor must register with the MSRB before engaging in municipal advisory activities; prior to their MSRB registration, they must register with the SEC and have such registration approved.

⁸ NAMA Letter.

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More generally, the MSRB will continue engaging with stakeholders to support implementing the proposed rule change.

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If you have any questions, please feel free to contact me at 202-838-1500.

Sincerely,



Ernesto A. Lanza
Chief Regulatory and Policy Officer