

SECURITIES AND EXCHANGE COMMISSION
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April 12, 2024

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 9, 2024, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule G-47, on time of trade disclosure (the “proposed rule change”). The proposed rule change would codify certain existing interpretive guidance and retire certain other existing interpretive guidance, add new time of trade disclosure scenarios, and make technical clarifications.

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published on the MSRB

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

website no later than 30 days following Commission approval. The effective date will be no later than nine months following Commission approval.

The text of the proposed rule change is available on the MSRB's website at <https://msrb.org/2024-SEC-Filings>, 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

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.³

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 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;
- 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);
- Codify into Supplementary Material .03 existing interpretive guidance pertaining to market discount and to zero coupon or stepped coupon securities;
- Add a clarifying example of factor bonds as bonds that prepay principal in Supplementary Material .03(i); and

³ Dealers are also subject to Commission Rule 15l-1 under the Exchange Act (“Regulation Best Interest”) that requires broker-dealers to make certain prescribed disclosures to their retail customer, before or at the time of the recommendation, about the recommended transaction and the relationship between the retail customer and the broker-dealer. See 17 CFR 240.15l-1(a)(2)(i).

- Add three new disclosure scenarios to Supplementary Material .03.

The 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.

Disclosure of Material Information

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. It would be beneficial to the market to clarify this point in the text of MSRB Rule G-47 given that it is not the MSRB's intent for dealers to violate securities regulations.

Definition of Material Information

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. The proposed rule change would delete the language "or significant" in order to streamline and simplify the definition. The MSRB does not believe that this would materially alter the definition of material information or impose any additional burdens on dealers. The proposed rule change would make a conforming amendment in Supplementary Material .01(a) to change the word "significant" to "important."

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

The proposed rule change would codify and retire November 2016 interpretive guidance on market discount (the “Market Discount Guidance”).⁴ 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. 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. The proposed rule change would codify this information into MSRB Rule G-47 Supplementary Material .03(p). Furthermore, the proposed rule change would retire the Market Discount Guidance upon codification as the MSRB believes that it would not retain any standalone value. The MSRB believes that codifying this information into the text of MSRB Rule G-47 would facilitate compliance and consolidate the rulebook by removing redundant interpretive guidance. The MSRB notes, however, that proposed MSRB Rule G-47 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.

The proposed rule change would also codify and retain April 1982 interpretive guidance pertaining to municipal securities with zero coupons or stepped coupons (the “Zero or Stepped

⁴ 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>.

Coupon Guidance”).⁵ 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. 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.

Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

The proposed rule change would retire two pieces of interpretive guidance that the MSRB believes have become outdated. The first interpretive guidance to be retired is interpretive guidance from August 1988 (the “Conversion Cost Guidance”) 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.⁶ 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. The MSRB believes that interchangeable securities are a rare occurrence in

⁵ 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>.

⁶ 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>.

the marketplace, and as such, the MSRB believes that there is limited utility in retaining this guidance and proposes its retirement.

The second piece of interpretive guidance to be retired is guidance from March 1984 on secondary market insurance (the “Secondary Market Insurance Guidance”).⁷ 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. 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, effectively making the comparable portion of the Secondary Market Insurance Guidance superfluous. 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. However, the MSRB believes that it is no longer common practice to require such evidence of insurance for effective transference, and as a result, proposes to retire the Secondary Market Insurance Guidance.

⁷ 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>.

Add an Example of a Bond that Prepays Principal

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 proposed rule change would add factor bonds to Rule G-47 Supplementary Material .03(i) as an example of a bond that prepays principal. Factor bonds are bonds for which partial distributions are processed by a proportional return of principal to each bondholder. 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. 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 obligation currently contained in MSRB Rule G-47 that serves to remind dealers of the applicability of this provision to factor bonds.

Add Three New Disclosure Scenarios

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. Specifically, these three new scenarios are yield to worst, the unavailability of the official statement, and the fact that continuing disclosures are not available.

Yield to Worst. 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. 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.⁸ Furthermore, if the computed yield required by MSRB Rule G-15 is different than the yield at which the transaction was effected, the computed yield must also be disclosed on the confirmation.⁹ This information is typically referred to as yield to worst. 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.

Unavailability of Official Statement for New Issue Customers. 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. For purposes of this scenario, 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.¹⁰ In contrast, the potential for the lack of

⁸ 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.

⁹ See MSRB Rule G-15(a)(i)(A)(5)(c)(vii).

¹⁰ 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 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

an official statement to 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.

Exchange Act Rule 15c2-12¹¹ requires underwriters to obtain and review an official statement for most primary offerings of municipal securities. 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 15c2-12¹²) for posting on the Electronic Municipal Market Access (“EMMA®”)¹³ website. If no official statement is posted by an underwriter to EMMA for a primary offering by the closing date, 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 15c2-12¹⁴ 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.¹⁵

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.

¹¹ 17 CFR 240.15c2-12.

¹² Id.

¹³ EMMA® is a registered trademark of the MSRB.

¹⁴ 17 CFR 240.15c2-12.

¹⁵ 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.

Under certain circumstances, 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). 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. As a result, 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.

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 security with regard to whether an official statement is unavailable or available only from the underwriter. 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,¹⁶ 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.¹⁷ Dealers that serve as underwriters for a

¹⁶ 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). 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.

¹⁷ 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).

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.

Unavailability of Continuing Disclosure. 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 Exchange Act Rule 15c2-12¹⁸ available on EMMA. Exchange Act Rule 15c2-12(b)(5)¹⁹ 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 has undertaken in a written agreement or contract to provide specified continuing disclosures to the MSRB. Exchange Act Rule 15c2-12(d)(2)(ii),²⁰ while providing an exemption from Exchange Act Rule 15c2-12(b)(5),²¹ requires a modified version of such continuing disclosure agreement or contract. In addition, Exchange Act Rule 15c2-12(d)(3)²² provides a partial exemption from Exchange Act Rule 15c2-12(b)(5)²³ but still requires a modified version of such continuing disclosure agreement or contract limited to specified event notices. This new disclosure scenario in proposed clause (t) would apply to any municipal securities of the foregoing offerings.

¹⁸ 17 CFR 240.15c2-12.

¹⁹ 17 CFR 240.15c2-12(b)(5).

²⁰ 17 CFR 240.15c2-12(d)(2)(ii).

²¹ 17 CFR 240.15c2-12(b)(5).

²² 17 CFR 240.15c2-12(d)(3).

²³ 17 CFR 240.15c2-12(b)(5).

However, certain new issue offerings are wholly exempt from or otherwise not subject to Exchange Act Rule 15c2-12(b)(5)²⁴ by virtue of paragraph (a) or subparagraph (d)(1) of Exchange Act Rule 15c2-12,²⁵ and therefore this new disclosure scenario would not apply to any municipal securities of these specific types of exempt offerings.

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.²⁶ 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. The disclosures provided on such page are generally accompanied by certain information, as applicable, provided to EMMA by the underwriter of the applicable 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.²⁷

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

²⁴ Id.

²⁵ 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 certain municipal securities outstanding on November 30, 2010 so long as they have continuously met the conditions specified therein. 17 CFR 240.15c2-12(d)(5).

²⁶ See 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>.

²⁷ See MSRB Rule G-32(b)(i)(A) and (b)(vi)(C)(1)(a).

knowledge to the contrary.²⁸ In addition, 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.

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 be included in time of trade disclosures provided to a customer. On occasion, an issuer or obligated person may undertake to provide continuing disclosures not contemplated by Exchange Act Rule 15c2-12²⁹ (sometimes referred to as voluntary continuing disclosures). 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.

Consolidate Existing Inter-dealer Time of Trade Disclosure Guidance

The proposed rule change would consolidate three pieces of existing interpretive guidance relating to inter-dealer time of trade disclosure into one standalone interpretive

²⁸ 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.

²⁹ 17 CFR 240.15c2-12.

guidance in order to better streamline time of trade disclosure guidance.³⁰ While MSRB Rule G-47 applies to customer transactions and not transactions between dealers,³¹ 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. 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 rulebook. 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.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act,³² which provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to, among other matters, transactions in municipal securities effected by dealers. Section 15B(b)(2)(C) of the Exchange Act³³ provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to

³⁰ See 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.

³¹ See MSRB Rule G-47(a).

³² 15.U.S.C. 78o-4(b)(2).

³³ 15 U.S.C. 78o-4(b)(2)(C).

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 the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act³⁴ because the proposed rule change would protect investors and the public interest by ensuring that retail and other customers receive material information at or prior to the time of trade that would allow them to make an informed investment decision. Adding new requirements for dealers to disclose when an official statement is unavailable, when continuing disclosures are not available, and the yield to worst of a transaction would provide investors with material information when deciding to transact in municipal securities. Consolidating existing interpretive guidance into the text of MSRB Rule G-47 and clarifying existing rule language would promote compliance by dealers with existing requirements under MSRB Rule G-47 and thereby promote the protection of investors and the public interest. The MSRB believes that providing this material information to investors, particularly retail customers who may or may not know how or where to access this information, will assist investors by providing them with material information that could influence their investment decision.

Furthermore, the MSRB believes that consolidating its rulebook by removing interpretive guidance that is outdated or has already been incorporated into the rulebook will facilitate

³⁴ Id.

transactions in municipal securities, as well as facilitate compliance with MSRB rules, by reducing the need for industry participants to cross reference multiple sources.

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

Section 15B(b)(2)(C) of the Exchange Act³⁵ requires that MSRB rules not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change would improve the municipal securities market’s operational efficiency and promote regulatory certainty by streamlining requirements and providing dealers with a clearer understanding of regulatory obligations incorporated into rule text from the current interpretive guidance. In addition, the proposed rule change would apply equally to all dealers. Therefore, the MSRB believes the proposed rule change would not impose any burden on competition and, consequently, does not impose a burden that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In reaching this conclusion, the MSRB was guided by the MSRB’s Policy on the Use of Economic Analysis in MSRB Rulemaking.³⁶ In accordance with this policy, the MSRB evaluated the potential impacts on competition of the proposed rule change. For the purposes of this filing, the MSRB used the current iteration of MSRB Rule G-47 as the baseline to evaluate the costs and benefits for the proposed rule change, as well as other reasonable regulatory alternatives.

³⁵ Id.

³⁶ The Policy on the Use of Economic Analysis in MSRB Rulemaking is available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. In evaluating whether there was a burden on competition, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

Benefits, Costs and Effect on Competition

The proposed rule change is intended to benefit investors by requiring disclosure of additional information that is easily and readily accessible to dealers. The proposed rule change is also intended to benefit dealers by reducing their burden through clarification of the existing rule requirements and eliminating unnecessary compliance time and paperwork.

Benefits

The proposed rule change would provide several benefits for dealers and investors. First, the MSRB believes that the proposed rule change would streamline the process for dealers and clarify the existing rule so that dealers would better understand what disclosures must be disclosed to an investor at the time of trade, and thus would eliminate unnecessary compliance time and paperwork and reduce the burden on regulated entities. These include a clarification that the time of trade disclosure obligation in MSRB Rule G-47 does not require dealers to disclose material information to their customers that is intentionally withheld, based on a dealer's policies and procedures regarding insider trading. Furthermore, consolidating certain interpretive guidance and retiring six pieces of interpretive guidance would streamline the rulebook by consolidating existing guidance into the text of the rulebook and facilitate compliance by reducing the number of sources a dealer must review when complying with MSRB Rule G-47. Finally, the MSRB believes the proposed disclosure codification with three newly specified supplementary material paragraphs (continuing disclosures by an issuer, unavailability of an official statement in a new issue and the yield to worst) would benefit investors by helping to ensure that such information, which is easily and readily accessible to dealers, is disclosed to investors.

Costs

The MSRB believes that dealers would incur some costs because of the proposed rule change. These costs include the one-time upfront costs related to revising related policies and procedures as well as ongoing costs such as compliance costs associated with maintaining and updating relevant disclosures. This would be especially true for the three new time of trade disclosure obligations to be codified in MSRB Rule G-47 where dealers have a new responsibility to disclose readily accessible information to customers.³⁷ However, as current MSRB Rule G-47 already requires dealers to disclose material information to investors without specifying certain information and circumstances that could be material, it is possible that dealers may already have these specific disclosures built into their existing time-of-trade disclosure process. Regardless, the MSRB believes that this information is potentially material and therefore should be included in the time of trade disclosure obligation scenarios in MSRB Rule G-47.

The MSRB believes that dealers would not incur any, or only negligible, costs from proposed changes such as codifying existing interpretive guidance into MSRB Rule G-47, since dealers are presumably already in compliance with the existing interpretive guidance and relevant MSRB rules. The MSRB believes that dealers may also have additional costs associated with recordkeeping in relation to the disclosure requirements. Overall, the MSRB believes the

³⁷ In a comment letter responding to the MSRB's request for comment described below, one commenter expressed concern about the costs of implementing the three proposed new specified time of trade disclosure obligations. Specifically, smaller dealers "tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue." See Letter from Michael Decker, Senior Vice President, Bond Dealers of America, dated April 17, 2023, at 2.

aggregate upfront and ongoing costs relative to the baseline would be minor, and the expected aggregate benefits to investors and dealers accumulated over time should exceed the total costs.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change would be applicable to all dealers and is not expected to erode protection for investors and issuers. The proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing dealers with a clearer understanding of regulatory obligations that are incorporated into the rule text. Although the benefits to investors discussed above would require dealers to incur some additional costs, at present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for all market participants would outweigh the upfront costs of revising policies and procedures as well as the ongoing compliance costs borne by dealers. The MSRB does not expect that the proposed rule change would impose a burden on competition for dealers, as the upfront costs are expected to be relatively minor for all dealers while the ongoing costs are expected to be proportionate to the size and trading activities of each dealer. In addition, the proposed rule change would apply equally across all dealers.

Reasonable Regulatory Alternatives

The MSRB considered and assessed two reasonable regulatory alternatives but determined the proposed rule change is superior to these alternatives. One alternative the MSRB considered was for MSRB Rule G-47 to pivot to an entirely principles-based approach when determining what information is considered material and therefore must be disclosed to investors at or before the time of trade. An entirely principles-based approach would provide an

overarching objective for dealers to consider when determining whether specific information should be provided at the time of trade but would not provide specific examples of situations where, depending on the facts and circumstances, information could be material. By comparison, dealers currently are provided with a list of fifteen specific scenarios contained in MSRB Rule G-47 Supplementary Material .03 that could be material, depending on the facts and circumstances, to assist them in their compliance efforts, and the proposed rule change would add three additional disclosure scenarios. The MSRB determined the alternative to adopt an entirely principles-based approach to be inferior to the proposed rule change, which would provide dealers with the latitude to make a judgement on what is material while also offering specific examples. This alternative would also defeat the original purpose of creating MSRB Rule G-47 in 2013 to consolidate the previously issued guidance into rule language without substantively changing the existing obligations.

Another alternative the MSRB considered was to restructure MSRB Rule G-47 to provide a detailed and prescriptive listing of required time of trade disclosures without the primary principles-based requirement set forth in MSRB Rule G-47(a). This alternative would eliminate any gray area that may currently exist because compliance personnel currently must weigh the general principle set forth in MSRB Rule G-47(a) with the Supplementary Material and any applicable interpretative guidance.³⁸ While the proposed rule change would maintain the existing obligation of dealers to make a judgement on what is material, the alternative would increase the

³⁸ In response to the original request for comment in 2013 to create MSRB Rule G-47, which included both a principles-based requirement for material disclosures as well as a list of potential scenarios, one commenter stated that the structure of the proposed rule text was “unnecessarily ambiguous.” See Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 12, 2013, at 2, available at <https://www.msrb.org/sites/default/files/RFC/2013-04/BDA.pdf>.

risk of information material to investors not being disclosed if such information does not fall within the listed items of disclosure, thereby reducing investor protection. As a result, the MSRB deemed these alternatives as inferior to the proposed rule change.

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

The MSRB sought comment on draft amendments to MSRB Rule G-47 in a request for comment that was published on February 16, 2023 (the “Request for Comment”).³⁹ The MSRB received seven comment letters in response to the Request for Comment.⁴⁰

In addition to items related to MSRB Rule G-47 on time of trade disclosure, the Request for Comment solicited comment on time of trade disclosure obligations with respect to 529 savings plans as well as on draft amendments to MSRB Rule D-15, defining the term sophisticated municipal market professional. Comments received in response to time of trade disclosure obligations with respect to 529 savings plans as well as those received in response to

³⁹ See MSRB Notice 2023-02, Request for Comment Regarding a Retrospective Review of the MSRB’s Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (February 16, 2023) available at <https://www.msrb.org/sites/default/files/2023-02/2023-02.pdf>.

⁴⁰ Comment letters were received from: AKF Consulting: Letter from Andrea Feirstein, Managing Director, and Mark Chapleau, Senior Consultant, dated April 20, 2023; Bond Dealers of America (“BDA”): Letter from Michael Decker, Senior Vice President, dated April 17, 2023 (the “BDA Letter”); College Savings Plan Network: Letter from Rachel Biar, Nebraska Assistant State Treasurer, NEST 529 College Savings Program Director, Chairman, College Savings Plans Network, dated April 17, 2023; Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated July 21, 2023; Curtis McLane, dated April 19, 2023; my529: Letter from Richard K. Ellis, Executive Director, dated April 17, 2023; and Securities Industry and Financial Markets Association (“SIFMA”): Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, dated April 17, 2023 (the “SIFMA Letter”). Comment letters are available at <https://www.msrb.org/sites/default/files/2023-04/All-Comments-to-Notice-2023-02.pdf>.

the draft amendments to MSRB Rule D-15 will be addressed through separate initiatives. The BDA Letter and SIFMA Letter were directly responsive to the proposed rule change and the two letters are summarized below by topic, with MSRB responses provided.

Material Information

The Request for Comment solicited comments on draft rule text that would clarify that MSRB Rule G-47(a) does not require dealers to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

SIFMA specifically states that it appreciates the MSRB clarifying that it is not the MSRB's intent to require dealers to violate dealer processes that have been established to facilitate compliance with another obligation in order to comply with MSRB Rule G-47.⁴¹ SIFMA also states that the technical clarification described in the proposed rule change is largely helpful and alleviates potential sources of confusion.⁴²

The MSRB agrees with SIFMA that the intent of MSRB Rule G-47 is not to require dealers to violate their policies and procedures designed to address insider trading and related securities laws in order to comply with MSRB Rule G-47, and the proposed rule change will make this clear on its face.

⁴¹ See SIFMA Letter at 4.

⁴² See SIFMA Letter at 7.

Codify Existing Interpretive Guidance on Market Discount, Zero Coupon and Stepped Coupon Securities

The Request for Comment solicited comments on draft rule text that would codify existing interpretive guidance on market discount, zero coupon, and stepped coupon securities into MSRB Rule G-47 Supplementary Material .03 as features of a security that may be material in specific scenarios and therefore trigger a time of trade disclosure.

The BDA Letter states that BDA is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47 as many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.⁴³ SIFMA, however, states that it is concerned about the increase in scope of time of trade disclosure and requiring disclosure about zero coupon and stepped coupon bonds could obfuscate material information.⁴⁴ SIFMA also expresses concern that the provision of more detailed information about market discount beyond notification of the existence of a discount could constitute the provision of tax advice.⁴⁵

The time of trade disclosures relating to market discount, zero coupon or stepped coupon securities are currently contained within interpretive guidance. Therefore, dealers should be on notice as to the potential materiality of these security features. The MSRB believes that consolidating material time of trade disclosure scenarios into MSRB Rule G-47 would be a benefit to the market. Furthermore, while information on market discount, zero coupon or

⁴³ See BDA Letter at 1.

⁴⁴ See SIFMA Letter at 3-4.

⁴⁵ Id.

stepped coupon securities may be obvious to market professionals, it is less likely to be obvious to retail investors toward which MSRB Rule G-47 is primarily oriented. However, in connection with disclosure related to market discount, dealers would not be required pursuant to the provisions of the proposed rule change to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice.

Retire Existing Interpretive Guidance on Conversion Costs and Secondary Market Insurance

The Request for Comment solicited comments on retiring existing interpretive guidance relating to conversion costs and secondary market insurance. The Request for Comment noted that the substance of the Conversion Cost Guidance relating to interchangeable securities is not a common occurrence in the marketplace anymore and therefore should be retired. The Request for Comment noted that this guidance is currently reflected in MSRB Rule G-47 Supplementary Material .03(e). The Request for Comment also noted that the Secondary Market Insurance Guidance states that the fact that a security has been insured or arrangements for insurance have been initiated will affect the market price of the security and is material and must be disclosed to a customer at or before execution of a transaction in the security. Additionally, the Secondary Market Insurance Guidance explained 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. The Request for Comment noted that the MSRB believes that it is not common practice to require such evidence of insurance for effective transference.

SIFMA states that it agrees that evidence of insurance generally is not required to be attached to a security for effective transfer and that there are no aspects of the guidance that the MSRB proposes to retire that should be retained in any way.⁴⁶ BDA states that it is generally not

⁴⁶ See SIFMA Letter at 7.

opposed to the proposed rule change as it relates to MSRB Rule G-47 as many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.⁴⁷

The MSRB agrees with SIFMA and BDA that the guidance to be retired in the proposed rule change would not impose significant burdens and that the guidance no longer retains utility due to its current codification within MSRB Rule G-47 or the fact that it has become outdated.

Add Factor Bonds as an Example of a Bond that Prepays Principal

The Request for Comment solicited comments on a technical amendment to add factor bonds as an example of a type of bond that prepays principal under MSRB Rule G-47 Supplementary Material .03(i). The Request for Comment noted that MSRB Rule G-47 Supplementary Material .03(i) already covers bonds that prepay principal as a feature that could trigger the time of trade disclosure obligation.

The SIFMA Letter states that SIFMA is concerned about the proposed increase in scope of time of trade disclosures and that requiring time of trade disclosure about items such as factor bonds would add compliance risks and burdens.⁴⁸ BDA states that it is generally not opposed to the proposed rule change as it relates to MSRB Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens.⁴⁹

⁴⁷ See BDA Letter at 1.

⁴⁸ See SIFMA Letter at 3-4.

⁴⁹ See BDA Letter at 1.

MSRB Rule G-47 Supplementary Material .03(i) already lists bonds that prepay principal as a disclosure scenario. Adding factors bonds as an example of a bond that prepays principal does not add any new burden or disclosure scenario, as factor bonds are bonds that prepay principal and therefore are already within the scope of this provision. Furthermore, while this information may be obvious to market professionals, it is less likely to be obvious to retail investors toward which MSRB Rule G-47 is primarily oriented.

Three New Disclosure Scenarios

The Request for Comment solicited comments on the addition of three new disclosure scenarios to MSRB Rule G-47 Supplementary Material .03. Specifically, the three new disclosure scenarios discussed in the Request for Comment were the unavailability of the official statement, whether the issuer is required to make continuing disclosures, and yield to worst.

SIFMA states that it is concerned that the proposed increase in scope of time of trade disclosures and requiring time of trade disclosure about the availability of an official statement and yield to worst calculations would add compliance risks and burdens, and that time of trade disclosure of obvious information, on the contrary, obfuscates material information.⁵⁰

Furthermore, SIFMA states that the list of time of trade disclosures has become overbroad and unnecessarily increases risks to dealers without providing material benefit to issuers and investors and urged the MSRB to reconsider the changes that add these additional time of trade disclosures.”⁵¹ BDA states that the addition of three new disclosure scenarios would impose costs on dealers to update written supervisory procedures and obtain additional sources for this

⁵⁰ See SIFMA Letter at 3-4.

⁵¹ See SIFMA Letter at 4.

information.⁵² BDA goes on to state that while the marginal compliance costs associated with the proposed rule change may be relatively small, it would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule which cumulatively would impose significant costs to dealers.⁵³

The MSRB appreciates the concerns raised by SIFMA and BDA. However, the MSRB believes that unavailability of the official statement, the fact that continuing disclosures are not available and yield to worst are all material information that would impact an investor's decision to transact in specific municipal securities, and therefore should be included in the time of trade disclosures. Furthermore, while there could be additional costs for dealers to comply with the new disclosure scenarios, the MSRB believes that the costs would be minimal and not outweigh the need to disclose material information to investors.

In response to the concerns raised by SIFMA and BDA, the MSRB narrowed the scope of the disclosure scenario relating to the unavailability of the official statement as it was described in the Request for Comment. The proposed rule change would limit this disclosure scenario to sales to customers of new issue municipal securities which would be consistent with current requirements under MSRB Rule G-32.

Obtaining Information about a Security from a Customer

The Request for Comment solicited comments on draft rule text that would have required a dealer purchasing a municipal security from a customer to obtain sufficient information about

⁵² See BDA Letter at 1-2.

⁵³ See BDA Letter at 2.

the securities that is not otherwise readily available to the market so that it can accurately describe the securities when the dealer reintroduces them into the market.

In response, SIFMA states that it believes this guidance to be outdated and that the information environment in the municipal securities market is fundamentally different today than when the original guidance was published, thanks in large measure to the work of the MSRB and its EMMA website.⁵⁴

The MSRB acknowledges that the information environment is dramatically different today as compared to when the original guidance was published, including in particular the broad availability to the public of information through the EMMA website. Therefore, the MSRB did not include this language in the proposed rule change.

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.

⁵⁴ See SIFMA Letter at 3.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2024-03 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-2024-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. Do not include personal identifiable information in submissions; you should submit only

information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2024-03 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, pursuant to delegated authority.⁵⁵

Vanessa A. Countryman,

Secretary.

⁵⁵ 17 CFR 200.30-3(a)(12).