



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97984; File No. SR-MSRB-2023-05]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-3 to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination and Remove Waiver Provisions and to Amend MSRB Rule G-8 to Establish Related Books and Records Requirements**

July 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 21, 2023, 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 to amend MSRB Rule G-3, on professional qualification requirements to (i) remove the waiver provisions with respect to municipal advisor representative and principal qualification requirements; (ii) establish a new, criteria-based exemption to permit certain individuals to requalify as a municipal advisor representative<sup>3</sup> without reexamination; (iii) retitle and replace Supplementary Material .02, on

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Rule G-3(d)(i)(A) defines the term “municipal advisor representative” to mean a natural person associated with a municipal advisor who engages in municipal advisory activities, on the municipal advisor’s behalf, other than a person performing only clerical, administrative, support or similar functions. Rule G-3(d)(ii)(A) requires all persons

extraordinary waivers with text specifying the means for electronic delivery of the requisite notice to the MSRB regarding satisfaction of the criteria-based exemption; and (iv) make technical changes to the rule to update certain phrases and clauses. The MSRB also proposes to amend MSRB Rule G-8, on books and records, to establish accompanying recordkeeping requirements (the proposed amendments to Rules G-3 and G-8 collectively make up the “proposed rule change”). The MSRB requests that the proposed rule change be approved with a compliance date of no more than 30 days following the Commission approval date. The proposed rule change is specific to the professional qualification obligations of municipal advisors, including associated persons thereof, under Rule G-3, and does not modify any requirements to firms registered solely as brokers, dealers and/or municipal securities dealers (collectively, “dealers” and each, individually “a dealer”), or associated persons thereof.

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2023-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

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meeting the definition of a municipal advisor representative to be qualified in that capacity by taking and passing the Municipal Advisor Representative Qualification Examination (“Series 50 examination”) prior to being qualified as a municipal advisor representative. Under current Rule G-3(d)(ii)(B), any person who, after qualifying as a municipal advisor representative, ceases to be associated with a municipal advisor firm for two or more years shall re-take and pass the Series 50 examination, unless a waiver is granted from the Board in “extraordinary cases” pursuant to current Rule G-3(h)(ii).

## 1. Purpose

The MSRB is charged with setting professional qualification standards for dealers and municipal advisors. Specifically, Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.<sup>4</sup> Sections 15B(b)(2)(A)(i)<sup>5</sup> and 15B(b)(2)(A)(iii)<sup>6</sup> of the Act also provide that the Board may appropriately classify associated persons of dealers and municipal advisors and require persons in any such class to pass tests prescribed by the Board. Accordingly, over the years, the MSRB has adopted professional qualification standards to ensure that associated persons of dealers and municipal advisors attain and maintain specified levels of competence and knowledge for each qualification category.

### Description of the Proposed Rule Change

As part of the MSRB's rule book modernization initiative and in light of the industry-wide continuing education (CE) transformation initiative for broker-dealers,<sup>7</sup> the MSRB undertook a review of Rule G-3 to identify opportunities to provide individuals associated with municipal advisor firms increased regulatory flexibility with respect to maintaining their professional qualifications. To that end, the proposed rule change would create a one-time, criteria-based exemption, under Rule G-3, for former municipal advisor representatives to,

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<sup>4</sup> See 15 U.S.C. 78o-4(b)(2)(A).

<sup>5</sup> See 15 U.S.C. 78o-4(b)(2)(A)(i).

<sup>6</sup> See 15 U.S.C. 78o-4(b)(2)(A)(iii).

<sup>7</sup> As industry and market practices evolved in recent years, the MSRB, in coordination with other self-regulatory organizations, advanced rulemaking initiatives to modernize applicable professional qualification and continuing education program requirements for dealers ("CE Transformation"). See e.g., Exchange Act Release No. 95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule G-3 Continuing Education Program Requirements to Harmonize with Industry-Wide Transformation) (File No. SR-MSRB-2022-07).

without reexamination, requalify in that capacity no later than one year after their two-year lapse in qualification. Second, the proposed rule change would remove language from Rule G-3 that currently permits the Board, in extraordinary cases, to waive the reexamination requirements for municipal advisor representatives and principals. Third, the proposed rule change would make certain clarifying amendments to Rule G-3 to address an interpretive question pertaining to a lapse in qualification for an individual associated with a dually registered firm that is both a dealer and a municipal advisor. Fourth, the proposed rule change would retitle and replace the current text of Supplementary Material .02 of Rule G-3 with text specifying the means for electronic delivery of the requisite notice to the MSRB regarding satisfaction of the criteria-based exemption. Additionally, the proposed rule change would make technical amendments to Rule G-3 to update certain phrases, clauses and referenced provisions to, among other things, improve the overall readability of the rule. Finally, the proposed rule change would amend Rule G-8 to require municipal advisors to make and keep certain books and records relating to the exemption to be created under the proposed rule change, as prescribed under Rule G-3(h)(ii)(I).

A more detailed description of the proposed rule change follows.

#### Clarifying Amendments to Rule G-3(d)(ii)(B)

Currently, pursuant to Rule G-3(d)(ii)(B), on qualification requirements for municipal advisor representatives, any person who ceases to be associated with a municipal advisor<sup>8</sup> for two or more years after having qualified as a municipal advisor representative, in accordance with the rule, must take and pass the Series 50 examination prior to being qualified as a municipal advisor representative, unless a waiver is granted. Proposed amendments to this provision would provide that any person who ceases to be associated with “or engaged in municipal advisory activities on behalf of” a municipal advisor for two or more years after having qualified by examination as a municipal advisor representative (i.e., experiences a “lapse

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<sup>8</sup> For purposes of this filing and Exhibit 5, when the term “municipal advisor” is used it refers only to the firm and not associated persons of the firm.

in qualification”) must take and pass the Series 50 examination unless exempt from such requirement pursuant to Rule G-3(h)(ii), as amended by the proposed rule change.

The proposed amendments to Rule G-3(d)(ii)(B) add the new language “or engaged in municipal advisory activities on behalf of” which is intended to provide clarity on the requirement for an individual associated with a firm that is dually registered as a dealer and municipal advisor. If an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor representative<sup>9</sup> and instead engages only in municipal securities business on behalf of the firm for a period of two or more years, then that individual’s municipal advisor representative qualification would have lapsed, notwithstanding the fact that such person remains associated with a firm that is also a registered municipal advisor.<sup>10</sup> The proposed amendments to Rule G-3(d)(ii)(B) would also delete the reference to the mention of a waiver (i.e., the clause “a waiver is granted”) to clarify that such persons would need to qualify by examination as municipal advisor representatives, unless obtaining the one-time criteria-based exemption.

Relatedly, the proposed rule change would provide a technical amendment to subparagraph (d)(ii)(B) of Rule G-3 by adding the phrase “lapse in qualification” to define for purposes of the rule when a person ceases to be associated with a municipal advisor for two or

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<sup>9</sup> Pursuant to Section 15B(e)(4)(A)(i) and (ii) of the Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and Rules D-13, G-3(d)(i)(A), and G-3(d)(ii)(A), municipal advisory activities requiring qualification as a municipal advisor representative include providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or undertaking a solicitation of a municipal entity or obligated person.

<sup>10</sup> Under Exchange Act Rule 15Ba1-2, SEC Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities (“SEC Form MA-I”) is filed with the SEC to indicate natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf. See 17 CFR 240.15Ba1-2. Firms are required to promptly amend Form MA-I, pursuant to Exchange Act Rule 15Ba1-5 (17 CFR 240.15Ba1-5), in such cases where an individual ceases to engage in municipal advisory activities on behalf of a firm.

more years at any time after having qualified as a municipal advisor representative. The proposed amendments also would replace the phrase “a waiver is granted” with “exempt” to make clear that the waiver provision for extraordinary cases is being deleted and replaced with a criteria-based exemption. The technical amendment to change the word “shall” to “must” is intended to add clarity without changing the meaning of the term. Lastly, the proposed amendments would replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3.

#### Clarifying Amendments to Rule G-3(e)(ii)(A) and (B)

Currently, pursuant to Rule G-3(e)(ii)(A), on qualification requirements for municipal advisor principals, as a pre-requisite to becoming qualified as a municipal advisor principal a person must take and pass the Series 50 examination. The proposed amendments to this provision would provide that taking and passing the Series 50 examination is the pre-requisite to becoming qualified as a municipal advisor principal “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule.” The proposed amendments to Rule G-3(e)(ii)(A) add the new language “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule,” which is intended to allow for individuals previously qualified as municipal advisor principals to use the criteria-based exemption to obtain requalification with the Series 50 examination and provide clarity as to the application to such individuals. Notwithstanding the availability of the criteria-based exemption from requalification with the Series 50 examination, such municipal advisor principals would still need to take and pass the Municipal Advisor Principal Qualification Examination (“Series 54 examination”).

In addition, currently, pursuant to Rule G-3(e)(ii)(B), any person who ceases to be associated with a municipal advisor for two or more years after having qualified as a municipal advisor principal, in accordance with the rule, must take and pass the Series 50 examination and the Series 54 examination prior to being qualified as a municipal advisor principal, unless a

waiver is granted under current subparagraph (h)(ii) of this rule. Proposed amendments to this provision would provide that any person who ceases to be associated with “or engaged in municipal advisory activities on behalf of” a municipal advisor for two or more years after having qualified by examination as a municipal advisor principal must take and pass the Series 50 examination unless exempt from such requirement pursuant to Rule G-3(h)(ii), as amended by the proposed rule change.

The proposed amendments to Rule G-3(e)(ii)(B) adds the new language “or engaged in municipal advisory activities on behalf of,” which is intended to provide clarity on the requirement for an individual associated with a firm that is dually registered as a dealer and municipal advisor. For example, if an individual associated with such firm ceases to be engaged in activity requiring qualification as a municipal advisor principal and instead engages only in municipal securities business on behalf of the firm for a period of two or more years, then that individual’s municipal advisor representative and municipal advisor principal qualifications would have lapsed, notwithstanding the fact that such person remains associated with a firm that is also a registered municipal advisor. The proposed amendments to Rule G-3(e)(ii)(B) would also delete the reference to the mention of a waiver (i.e., the clause “a waiver is granted”) to clarify that such persons would need to qualify by examination as municipal advisor principals.

Relatedly, proposed amendments to Rule G-3 would contain technical amendments to Rules G-3(e)(ii)(A)(1) and G-3(e)(ii)(B). To clarify the qualification requirements specific to municipal advisor principals, as prescribed under G-3(e)(ii)(A)(1), the proposed rule change would add the phrase “unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule” to make clear municipal advisor principals have to requalify by reexamination unless such individuals have obtained the one-time exemption. The proposed rule change would delete the phrase “a waiver is granted” and replace with the clause “exempt from taking the Municipal Advisor Representative Qualification Examination” to make clear that the waiver provision for extraordinary cases is

being deleted and replaced with an exemption-based criteria for municipal advisor principals to use for requalification without reexamination for the Series 50 examination. Similarly, as previously mentioned, the word “shall” would be replaced with “must” to promote clarity; and proposed amendments would replace the reference to “subparagraph” (h)(ii) with “paragraph” (h)(ii) to create better uniformity across Rule G-3.

#### Removal of Extraordinary Waiver Provisions under Rule G-3(h)(ii)

Proposed amendments to Rule G-3(h)(ii) would remove references, in their entirety, to the ability to obtain a waiver in extraordinary cases for a former municipal advisor representative or municipal advisor principal and would replace such language with a criteria-based exemption for former municipal advisor representatives. The MSRB believes that this standard set forth within the four corners of the rule would provide greater flexibility to municipal advisor firms and their associated persons while simultaneously providing greater certainty for firms and such individuals who may wish to seek an exemption from the obligation to requalify as a municipal advisor representative by reexamination. At this time, the MSRB believes that the objective nature of the criteria-based exemption is preferable to the subjective nature of the waiver provisions in current Rule G-3(h)(ii). Additionally, the removal of the ability to seek and obtain a waiver for municipal advisor principals furthers municipal entity and obligated person protection by ensuring, through requalification by reexamination, individuals have demonstrated knowledge and skills necessary to discharge the responsibilities of a municipal advisor principal, including the vested authority for the supervision, oversight and management of firms’ municipal advisory activities and that of its associated persons.<sup>11</sup>

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<sup>11</sup> The MSRB has previously stated that the Series 54 examination is intended to ensure that a person seeking to qualify as a municipal advisor principal satisfies a specified level of competency and knowledge by measuring a candidate’s ability to apply the applicable federal securities laws, including MSRB rules to the municipal advisory activities of a municipal advisor. See Exchange Act Release No. 84341 (October 2, 2018), 83 FR 50708, 50710 (October 9, 2018) (Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G-3, on Professional Qualification Requirements, To Require Municipal Advisor Principals To Become Appropriately Qualified by Passing the Municipal Advisor Principal Qualification Examination) (File No. SR-MSRB-2018-07). In contrast,

Relatedly, proposed amendments to Supplementary Material .02, on waivers, under Rule G-3 would retitle that paragraph to “affirmation notification” and delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and would replace it with text that specifies how notice regarding use of the criteria-based exemption would be required to be submitted to the MSRB.

The proposed rule change to amend Rule G-3(h)(ii) to establish the criteria-based conditions that would be required to be met in order to qualify for an exemption are described below.

Proposed Rule Change to Adopt Rule G-3(h)(ii)(A)-(I) to Establish Conditions for Obtaining the Criteria-Based Exemption

The proposed rule change would amend Rule G-3(h)(ii) to prescribe that an individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if the specified conditions under proposed Rule G-3(h)(ii)(A)-(I) are met. Specifically, proposed amendments to adopt Rule G-3(h)(ii)(A)-(I) would establish nine specified criteria-based conditions that must be met in order for an individual (and the municipal advisor firm with which such individual is associated<sup>12</sup> or seeks to be associated) to take advantage of the exemption.

The criteria-based conditions that would be required to be met in order to qualify for an exemption are described below.

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the MSRB has previously noted that the Series 50 examination ensures a minimum level of knowledge of the job responsibilities and regulatory requirements by passing the general qualification examination. See Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225, 72227 (December 5, 2014) (Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rules G-1, on Separately Identifiable Department or Division of a Bank; G-2, on Standards of Professional Qualification; G-3, on Professional Qualification Requirements; and D-13, on Municipal Advisory Activities) (File No. SR-MSRB-2014-08).

<sup>12</sup> The MSRB notes that an individual who has associated with a municipal advisor firm may not engage in any municipal advisory activities, as defined under Rule D-13 and described in Section 15B(e)(4)(A)(i) and (ii) of the Act (15 U.S.C. 78o-4(e)(4)(A)(i) and (ii)) and the rules and regulations promulgated thereunder (*i.e.*, activities involving the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities or undertaking a

(1) The individual was previously qualified as a municipal advisor representative by taking and passing the Series 50 examination.

(2) The individual maintained the municipal advisor representative qualification for a period of at least three consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisor firm(s).

(3) Such qualification lapsed pursuant to proposed amended Rule G-3(d)(ii)(B) and no more than one year has passed since such lapse in qualification.

(4) The individual has not engaged in activities requiring qualification as a municipal advisor representative<sup>13</sup> during the individual's lapse in qualification.

(5) The individual is not subject to any events or proceedings that resulted in a regulatory action disclosure report, a civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report or termination disclosure report on SEC Form MA-I.<sup>14</sup>

(6) The individual has not previously obtained the exemption from requalification by examination described in the proposed amended Rule G-3(h)(ii).<sup>15</sup>

(7) Prior to engaging in municipal advisory activities on behalf of the municipal advisor firm with which the individual is to associate (or reassociate), as evidenced by the filing of SEC Form MA-I, the municipal advisor firm provided, and the individual completed, CE covering, at minimum, the subject areas of: (i) the principles of fair dealing; (ii) the applicable regulatory

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solicitation of a municipal entity or obligated person), until such time that the individual has satisfied the conditions set forth under the rule.

<sup>13</sup> See Rule G-3(d)(i)(A).

<sup>14</sup> The MSRB included these types of disclosures in the exemption criteria, as opposed to other types of disclosures required by SEC Form MA-I, because these relate most closely to violations of municipal advisor-related or investment-related regulations, rules, or industry standards of conduct.

<sup>15</sup> Should an individual's municipal advisor representative qualification lapse again after such person obtains the criteria-based exemption, that individual would be required to requalify by taking and passing the Series 50 examination.

obligations under Rules G-20, on gifts and gratuities, G-37, on political contributions and prohibitions on municipal securities business and municipal advisory business, G-40, on advertising by municipal advisors, and G-8, on books and records to be made and maintained; (iii) for non-solicitor municipal advisors, the core conduct standards under Rule G-42, including the fiduciary duty obligations owed to municipal entity clients, or for solicitor municipal advisors, the core obligations of Rule G-46; and (iv) any changes to applicable securities laws and regulations, including applicable MSRB rules that were adopted since the individual was last associated with a municipal advisor.

(8) Prior to engaging in municipal advisory activities on behalf of the municipal advisor firm with which the individual is to associate (or reassociate), as evidenced by the filing of an SEC Form MA-I, the municipal advisor firm provided, and the individual reviewed the compliance policies and procedures of the municipal advisor firm.

(9) Upon satisfaction of the conditions set forth in the paragraphs above, the municipal advisor firm filed a completed SEC Form MA-I with the SEC with respect to such individual. Within 30 days of the acceptance<sup>16</sup> of a completed SEC Form MA-I identifying such individual as engaging in municipal advisory activities on behalf of the municipal advisor firm, the municipal advisor firm provided the notification (“affirmation notification”) electronically to the MSRB that the individual met the criteria in order to be exempt from the requalification requirements of Rule G-3(d)(ii)(B) following a lapse in qualification.

The affirmation notification would be required to be on firm letterhead and include the following information:

1. The municipal advisor firm’s MSRB ID number;
2. The first and last name of the individual seeking to obtain the exemption;
3. The individual’s FINRA Central Registration Depository (CRD) number if applicable;

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<sup>16</sup> The SEC does not make the form acceptance date publicly available, but this information is made available to the form submitter as part of the form filing process.

4. The start date of the individual's association (or reassociation) with the municipal advisor firm;
5. An affirmative statement that the municipal advisor has undertaken a diligent effort to reasonably conclude that the individual met the applicable requirements set forth in proposed amended Rule G-3(h)(ii);
6. An affirmative statement attesting that the municipal advisor firm provided both the requisite CE and the municipal advisor's compliance policies and procedures to the individual for review along with the date the individual completed the CE and review of the municipal advisor's compliance policies and procedures provided by the municipal advisor firm;
7. The date the municipal advisor firm filed SEC Form MA-I (and the date of its acceptance) on behalf of the individual as required under subparagraph (h)(ii)(I); and
8. A signature by the individual seeking to obtain the criteria-based exemption and a signature by a municipal advisor principal of the municipal advisor firm each attesting the accuracy of certain content set forth in the affirmation notification. Specifically, the individual must sign the affirmation notification attesting that the conditions outlined in proposed amended Rule G-3(h)(ii)(A) through (H) were met. And, a municipal advisor principal must sign the affirmation notification, on behalf of the municipal advisor firm, attesting that, based on the exercise of reasonable diligence, the conditions outlined in proposed amended Rule G-3(h)(ii)(A) through (I) were met.<sup>17</sup>

Additionally, the affirmation notification required to be provided to the MSRB within 30 days of the acceptance of a completed SEC Form MA-I, pursuant to subparagraph (h)(ii)(I) of

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<sup>17</sup> The MSRB notes that the respective individual and firm signature requirements are intended to differentiate and confirm the distinct responsibilities and obligations of the individual seeking to obtain the criteria-based exemption and those of the municipal advisor firm itself, as evidenced by the signature of a municipal advisor principal on behalf of the municipal advisor firm.

this rule would be required to be sent to [Compliance@msrb.org](mailto:Compliance@msrb.org), in accordance with proposed amended Supplementary Material .02 of Rule G-3.

The conditions are designed to ensure that individuals seeking to obtain the exemption (i.e., requalification without reexamination) have and maintain the baseline level of knowledge and experience, and have exhibited conduct aligned with being a fiduciary, which is in furtherance of municipal entity and obligated person protection. The MSRB believes that the criteria outlined above balance the goal of providing reasonable regulatory flexibility with the demands of the fiduciary standard applicable to municipal advisors. For example, the requirement that individuals were duly qualified as a municipal advisor representative for at least three consecutive years prior to, for example, seeking other career opportunities in related capacities (i.e., working for a dealer or municipal entity) or stepping away for family obligations ensures that a reasonable level of professional experience has been established before an individual can obtain the exemption. In contrast, this period is not so long as to hinder the ability, at a given point, for an individual to, for example, temporarily engage in other meaningful roles within the municipal securities industry or to step away due to family obligations.

At the same time, these conditions are designed to enhance an individual's familiarity with regulatory and business developments that occurred while they were not associated with a municipal advisor firm, before reengaging in municipal advisory activities, but are not so unduly burdensome as to hinder reassociation. The requirement to provide the MSRB with notice of individuals who have obtained the exemption (i.e., by submitting the affirmation notification to the MSRB) is designed to facilitate transparency and provide an audit trail regarding an individual's status as a municipal advisor representative. The MSRB will use the affirmation notification, as described in the proposed amended Rule G-3(h)(ii)(I), to help identify qualified municipal advisor representatives and keep the list of such representatives updated on the

MSRB's website.<sup>18</sup> Additionally, the conditions pertaining to requisite filings with the SEC also provide an audit trail and permit the entities charged with examination and enforcement authority to confirm compliance with relevant obligations.

Relatedly, technical amendments to Rule G-3(h) would retitle the header from "Waiver of Qualification Requirements" to "Waiver of and Exemption from Qualification Requirements" to promote clarity. Technical amendments to Rule G-3(h)(ii) replace the introductory sentence "The requirements of paragraph (d)(ii)(A) and (e)(ii)(A) may be waived by the Board in extraordinary cases for a municipal advisor representative or municipal advisor principal" with the new introductory sentence "An individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if all of the following conditions are met" for purposes of setting forth the enumerated criteria outlined under the provision.

Finally, as previously mentioned, the proposed amendments to Supplementary Material .02, on waivers, under Rule G-3 would retitle the paragraph header from "Waivers" to "Affirmation Notification" and delete the entirety of that supplementary material, which currently pertains to extraordinary waivers, and would replace it with text that specifies how the firm would submit to the MSRB the affirmation notification asserting that the criteria-based exemption has been met.

#### Timing for Completing the Requisite CE, Review of Compliance Policies and Procedures, and Making the Requisite Form Filings

The MSRB has consistently stated that individuals should take and pass the Series 50 examination before completing the necessary form filings to become associated persons of municipal advisor firms or before registering as municipal advisor firms.<sup>19</sup> As a result, an

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<sup>18</sup> The MSRB publishes a list of registered municipal advisors and qualified municipal advisor professionals (available at: <https://www.msrb.org/Municipal-Advisors>).

<sup>19</sup> See Question 17 of "FAQs on Municipal Advisor Professional Qualification and Examination Requirements" (available at: <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf>).

individual associating with a municipal advisor firm and 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 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.

Whereas, 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;<sup>20</sup>

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<sup>20</sup> 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<sup>21</sup> and file the form electronically with the MSRB;<sup>22</sup> and

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

#### Proposed Amendments Related to G-8, on Books and Records to Be Made and Maintained

Proposed amendments to Rule G-8, on books and records, would add recordkeeping obligations designed to help facilitate and document compliance with proposed amendments to Rule G-3. Specifically, the proposed rule change would add new paragraph (C) to subsection (h)(vii) of Rule G-8 requiring municipal advisor firms to make and maintain the following records to evidence compliance with the requirements of Rule G-3(h)(ii)(A)-(I):

- A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., copy of the print-out of the individual exam results<sup>23</sup> or exam result certification letter provided by the MSRB);
- Documentation supporting the municipal advisor firm's exercise of reasonable diligence in determining that the conditions outlined in Rule G-3(h)(ii)(A) through (I) were met in making the required affirmation notification in accordance with Rule G-3(h)(ii)(I)(8) (e.g., copies of relevant SEC form filings reviewed; records related to continuing

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<sup>21</sup> The MSRB Registration Manual is available at <https://www.msrb.org/sites/default/files/MSRB-Registration-Manual.pdf>.

<sup>22</sup> 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.

<sup>23</sup> See Question 11 of "FAQs on Municipal Advisor Professional Qualification and Examination Requirements" (available at: <https://www.msrb.org/sites/default/files/FAQ-MSRB-Series-50-Exam.pdf>) in which the MSRB reminds individuals that the test center will provide a print-out of individuals' exam results.

education provided and completed; compliance policies and procedures provided and reviewed; and attestations or other documentation to support such a determination);

- A copy of the affirmation notification sent to the MSRB as required by Rule G-3(h)(ii)(I); and
- A record evidencing that the affirmation notification was made in the prescribed manner and within the required period of time as described in Rule G-3(h)(ii)(I) (e.g., automatic email delivery receipt).

As aforementioned, the proposed rule change outlining the specific recordkeeping requirements supports the municipal advisor principal's supervision, review and sign-off that the conditions for the exemption have been met, which supports regulatory compliance.

Relatedly, technical amendments to Rule G-8(h)(vii) would retitle the paragraph header from "Records Concerning Compliance with Continuing Education Requirements" to "Records Concerning Compliance with Professional Qualification Requirements of Rule G-3" to clarify the broader recordkeeping obligations and documentation requirements proposed in draft amendments to Rule G-8(h)(vii) that are accompanying proposed rule changes to Rule G-3(h)(ii). The other technical changes would reposition the word "and" and make other minor grammatical changes to the items in the series to aid readability.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,<sup>24</sup> which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate for the protection of municipal entities or obligated persons; and Section 15B(b)(2)(C) of the Act,<sup>25</sup> which provides that the MSRB's rules shall, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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<sup>24</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>25</sup> 15 U.S.C. 78o-4(b)(2)(C).

principles of trade, to foster cooperation and coordination among regulators, and, in general, to protect municipal entities, obligated persons, and the public interest.

Under Section 15B(b)(2)(A) of the Act,<sup>26</sup> the proposed rule change is appropriate and in the public interest because more efficient, effective and flexible professional qualification requirements for municipal advisor representatives will lead to a broader applicant pool from which municipal advisor firms may hire. A broader municipal advisor representative applicant pool is in the public interest and will help protect municipal entities or obligated persons because such pool can improve the quality of municipal advisor representative candidates and increase diversity in the industry. By expanding the potential number of municipal advisor representative candidates, a firm may have greater choice in hiring qualified individuals. For example, individuals that may disassociate with a municipal advisor firm may determine to associate with a dealer in a public finance banker capacity or to work for a municipal entity. Such individuals may receive valuable and directly applicable experience from a different vantage point in the industry that would augment their prior and future experience as a municipal advisor representative upon reassociating with a municipal advisor firm. This difference in perspective and experience could put such municipal advisor representative candidates in a position to provide more informed advice than they may otherwise have provided.

Similarly, a broader applicant pool increases the likelihood of greater diversity among municipal advisor representatives who can bring new perspectives to their work and the advice that they provide to their municipal entity and obligated person clients. Additionally, by hiring well-qualified candidates, firms can build bench strength and work to leverage institutional knowledge; thereby enhancing the informed advice provided to a municipal advisor firm's municipal entity and obligated person clients.

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<sup>26</sup> 15 U.S.C. 78o-4(b)(2)(A).

At the same time, the proposed rule change requires the satisfaction of conditions that establish safeguards and ensure that only qualified candidates may seek to obtain the criteria-based exemption from requalification, thereby furthering municipal entity and obligated person protection and the public interest. Specifically, the stated criteria of at least three years of experience before eligibility for the criteria-based exemption and no more than three years since ceasing to be associated with a municipal advisor firm is in furtherance of municipal entity and obligated person protection because these criteria support individuals maintaining their baseline level of experience and competence. The MSRB believes that the three-year thresholds, as opposed to a longer or shorter period, appropriately support the ability to establish a necessary and meaningful level of proficiency as a municipal advisor representative prior to obtaining the exemption. In contrast, while ensuring that such regulatory flexibility is available for a limited period of time, on a one-time basis, individuals retain the value of that established proficiency and can more readily adapt to changes in market practices or regulatory requirements upon reengaging in a municipal advisor representative capacity.

#### Prevention of Fraudulent and Manipulative Acts and Practices

In accordance with Section 15B(b)(2)(C) of the Act,<sup>27</sup> the proposed rule change also would continue to prevent fraudulent and manipulative acts and practices by ensuring that municipal advisor representatives meet competence, training, experience and qualification standards, and such protections would not be diminished by the proposed rule change. As noted above, the stated criteria of at least three years of experience before eligibility for the exemption and no more than three years since ceasing to be associated with a municipal advisor firm support individuals in maintaining their baseline level of experience and competence. In addition, the proposed rule change would require individuals seeking to obtain the exemption to, upon associating (or reassociating) with a municipal advisor firm, receive relevant and updated

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<sup>27</sup> 15 U.S.C. 78o-4(b)(2)(C).

core training pertaining to regulatory obligations under applicable securities laws and regulations, including MSRB rules, which furthers the prevention of manipulative acts and practices. The MSRB believes that the three-year thresholds coupled with the more robust CE training requirements continue to support the establishment of the necessary experience, competence, and training, which in turn serves to help prevent fraudulent and manipulative practices and protect municipal entities, obligated persons, and the public interest.

#### Protection of Municipal Entities, Obligated Persons, and the Public Interest

Consistent with Section 15B(b)(2)(C) of the Act<sup>28</sup> and the above discussion, the proposed rule change would continue to protect municipal entities, obligated persons and the public interest because municipal advisor representatives would be required to obtain CE pertaining to specified topics and regulatory obligations under applicable securities laws and regulations, including MSRB rules in order to requalify as a municipal advisor professional. Additionally, such individuals would not be able to obtain the criteria-based exemption if they either engaged in activities requiring qualification as a municipal advisor representative during their lapse in qualification or they are subject to any events or proceedings that resulted in a regulatory action disclosure report, a civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report or terminations disclosure report on the SEC Form MA-I. These conditions help ensure that basic municipal entity and obligated person protections remain in place while also providing municipal advisor representatives flexibility to pursue other meaningful roles within the municipal securities industry or to step away for other reasons; and benefits municipal advisor firms by providing the increased ability to attract qualified talent.

As noted above, a broader municipal advisor representative applicant pool is in the public interest and will help protect municipal entities and obligated persons because it can improve the

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Id.

quality of municipal advisor representative candidates and increase diversity in the municipal advisory industry, all of which could enhance the quality of advice provided to municipal entity and obligated person clients.

Finally, the MSRB believes that the removal of the ability of a municipal advisor representative or principal to apply to the Board and, potentially, receive a waiver from the obligation to requalify by reexamination would further protect municipal entities and obligated persons. As discussed, the proposed rule change would replace such ability with the criteria-based exemption. However, it would not extend such exemption to municipal advisor principals because the MSRB believes principals should be subject to additional regulatory requirements given their supervisory, oversight, and management duties, and the current criteria-based exemption does not contemplate such rigor and heightened regulatory requirements. In practice, the MSRB has not received or granted waiver requests for municipal advisor principals. Requiring all municipal advisor principals to requalify by reexamination following a lapse in qualification ensures municipal entity and obligated person protection by necessitating that municipal advisor principals satisfy a specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, in order to perform their duties.<sup>29</sup>

#### Fostering Cooperation and Coordination

Proposed amendments to Rule G-8, on books and records, would add specific recordkeeping obligations designed to help facilitate and document compliance with proposed amendments to Rule G-3. Specifically, the proposed amendments would add a new paragraph

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<sup>29</sup> As discussed in the section below regarding burden on competition, current Rule G-3(e)(ii)(C) permits solo-practitioners (or individuals associating or re-associating with a firm and designated as a principal) who are qualified as municipal advisor representatives to function as municipal advisor principals for up to 120 days before having to take and pass the Series 54 examination. In concert with the proposed rule change, these provisions would allow such individuals to start their own firm, requalify as municipal securities representatives without reexamination, and then qualify as municipal advisor principals.

(C) to subsection (h)(vii) of Rule G-8 that would require municipal advisor firms to make and maintain records to evidence their due diligence to ensure compliance with the criteria-based exemption by individuals seeking to obtain the exemption, and of the affirmation notification provided to the MSRB required by proposed amendments to Rule G-3(h)(ii)(I). The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act<sup>30</sup> because the specific documentation obligation and related books and records obligations stemming from the proposed amendments to Rule G-8(h)(vii)(C) would foster cooperation by providing examining authorities with the necessary information to assist them in examining for and evaluating compliance with the criteria-based exemption. The MSRB further believes that the rigor of such review by examining authorities for compliance with the prescribed recordkeeping obligations would foster municipal entity and obligated person protection because municipal advisor firms would take due care to ensure compliance with the qualification standards under the criteria-based exemption and that only such individuals that satisfy such exemption are engaging in municipal advisor activities. Lastly, as aforementioned, the MSRB believes that the proposed amendments to Rule G-8(h)(vii)(C) would help create an audit trail to assist examination and enforcement authorities in their examination for compliance with the criteria-based exemption, fostering cooperation and coordination between regulatory authorities.

#### Promote Just and Equitable Principles of Trade

The technical amendments outlined throughout are consistent with the provisions of Section 15B(b)(2)(C) of the Act<sup>31</sup> in that they promote just and equitable principles of trade by ensuring that Rules G-3 and G-8 remain accurate, clear and understandable for the municipal advisory community.

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

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<sup>30</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>31</sup> Id.

Section 15B(b)(2)(C) of the Act<sup>32</sup> 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 Act. Furthermore, Section 15B(b)(2)(L)(iv) of the Act<sup>33</sup> requires that rules adopted by the MSRB not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. The MSRB does not believe that the proposed amendments to Rule G-3 and Rule G-8 would impose any unnecessary or inappropriate burden or impact on competition, as they would provide additional flexibility and certainty to those seeking to associate with municipal advisor firms as municipal advisor representatives and to municipal advisor firms, thereby, enhancing the hiring of qualified, experienced individuals; and they would also support evidencing compliance with the criteria-based exemption.

In determining whether the standards under Section 15B(b)(2)(C)<sup>34</sup> and (b)(2)(L)(iv)<sup>35</sup> of the Act related to burden on competition and burden on small municipal advisors have been satisfied, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.<sup>36</sup> In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed amendments to Rule G-3 and Rule G-8. The proposed amendments to Rule G-3 would create a criteria-based exemption for individuals to requalify in a municipal advisor representative capacity without reexamination after a lapse in qualification.

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<sup>32</sup> Id.

<sup>33</sup> 15 U.S.C. 78o-4(b)(2)(L)(iv).

<sup>34</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>35</sup> 15 U.S.C. 78o-4(b)(2)(L)(iv).

<sup>36</sup> 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 Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

The proposed rule change would remove language from Rule G-3 that currently permits municipal advisor professionals to seek a waiver from the MSRB from the requirement to requalify by reexamination in extraordinary cases. Additionally, the proposed rule change would make accompanying amendments to Rule G-8 to establish books and records requirements related to the criteria-based exemption. The proposed amendments to Rule G-3 and accompanying amendments to Rule G-8 are intended to offer flexibility, provide additional certainty, and eliminate the extraordinary nature of the waiver process for individuals and municipal advisor firms without reducing protection for municipal entity and obligated person clients who expect that municipal advisor professionals have satisfied professional qualification standards. Specifically, proposed amendments to Rule G-3 would afford an individual whose qualification as a municipal advisor representative has lapsed the opportunity to forego requalification by reexamination if certain, specified conditions are met.

Although the proposed amendments to Rule G-3 and Rule G-8 would be applied equally to all individuals seeking to associate with municipal advisor firms and to all such municipal advisor firms, the MSRB acknowledges potential burdens on competition for small or solo-practitioner municipal advisor firms with respect to the exemption's CE requirements and because the exemption does not extend to municipal advisor principals. As a result, although all firms would benefit from the proposed rule change for municipal advisor representatives, solo-practitioners and smaller municipal advisor firms may experience a smaller benefit than larger municipal advisor firms due to the fact the exemption would not extend to those seeking to associate and function in a principal-level capacity. However, as discussed in detail below, the MSRB believes the proposed amendments to Rule G-3 and Rule G-8 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act<sup>37</sup> or a regulatory burden on small municipal advisors that is not necessary or appropriate in

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<sup>37</sup> 15 U.S.C. 78o-4(b)(2)(C).

the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.<sup>38</sup>

#### Benefits, Costs and Effect on Competition

The main benefit of proposed amendments to Rule G-3 and Rule G-8 would be to create a criteria-based exemption and related recordkeeping requirements. The MSRB considered the economic impact associated with the proposed amendments to Rule G-3 relative to the baseline, which is the current extraordinary waiver provision and assessed incremental changes in the benefits and costs in a proposed future state with a criteria-based exemption for municipal advisor representatives.

The MSRB believes that the proposed rule change provides multiple benefits to the eligible population of individuals seeking to associate with municipal advisor firms as municipal advisor representatives, and municipal advisor firms without impairing the protections afforded to municipal entity and obligated person clients of municipal advisor firms. First, by increasing the amount of time in which an individual may maintain their qualification as a municipal advisor representative without reexamination, the proposed rule change provides flexibility for certain individuals to, for example, explore other career opportunities in the municipal securities industry or to step away to address life events, such as childcare or pursue higher education. As a result, the criteria-based exemption provided by the proposed rule change may increase demand for individuals seeking to reassociate in a municipal advisor representative capacity without having to retake the Series 50 examination.

The proposed rule change would require CE that includes coverage of specific subject areas and regulatory topics, which would ensure the most useful and up-to-date training is provided to individuals who wish to take advantage of the proposed exemption, therefore benefiting municipal entity and obligated person clients who may receive municipal advisory services from the firms with which such persons are associated. Furthermore, the proposed rule

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<sup>38</sup> 15 U.S.C. 78o-4(b)(2)(L)(iv).

change reduces uncertainty for individuals seeking to requalify by providing clarity on the specific criteria needed to requalify without reexamination; and therefore, expedites the period by which such individuals can begin to engage in municipal advisory activities. In addition, municipal advisor firms would be better positioned to assess a potential hire's qualifications by evaluating the conditions specified in the proposed rule change. Finally, while Rule G-3 does not currently require a minimum number of years of past experience to reassociate with a municipal advisor firm within the specified two-year period, the MSRB believes establishing eligibility criterion of at least three consecutive years of past experience to qualify for the criteria-based exemption promotes municipal entity and obligated person protection by ensuring individuals have an established baseline level of knowledge and experience.

The MSRB believes there is the potential for one-time upfront costs for municipal advisor firms related to revising CE training materials and existing compliance policies and procedures to facilitate compliance with the proposed amendments to Rule G-3 and Rule G-8. However, these associated costs should be minor (see Table 1). Additionally, under the criteria individuals and municipal advisor firms must meet to obtain the exemption, there may be additional ongoing cost components to firms associated with conducting due diligence when rehiring a previously qualified municipal advisor representative and administering the specified CE required to meet the exemption. The MSRB estimates the aforementioned cost components at approximately four hours incrementally (see Table 1), given that some current costs already exist associated with CE and performing due diligence in the baseline state. However, for municipal advisor firms that do not hire an individual with a lapsed qualification, there would be minimal additional costs incurred. Lastly, individuals who are away from the industry for more than three years would be required to take and pass the Series 50 examination again under the proposed rule change, as the waiver request provisions, available only in extraordinary cases, would no longer

be available. However, given the limited use of the waiver process currently,<sup>39</sup> the MSRB does not believe the elimination of this option would have a significant impact on individuals seeking to reassociate in a municipal advisor representative capacity.

Table 1. Estimated Incremental Compliance Costs for each Municipal Advisor Firm<sup>40</sup>

Cost Components	Assumed Hourly Rate	Number of Hours	Cost Per Firm
<b>Upfront Cost</b>			
a) Revision of Policies and Procedures	\$ 536	3	\$ 1,608
b) Training	\$ 616	1	\$ 616
<b>Ongoing Cost</b>			
a) Due Diligence and Continuing Education	\$ 502	4	\$ 2,008

Reasonable Alternative Approaches and Effects on Competition

One alternative the MSRB considered was to update the qualification requirements of Rule G-3(d)(ii)(B)<sup>41</sup> by changing the existing time for when a person ceases to be associated

<sup>39</sup> To date, the MSRB has received only two waiver requests. The two requests were specific only to waiving the Series 50 examination (i.e., not a Series 54 examination waiver request), with one of the waivers being received following the publication of MSRB Notice 2022-13. See MSRB Notice 2022-13 (Request for Comment on Draft Amendments to Create an Exemption for Municipal Advisor Representatives from Requalification by Examination) (“RFC”) (December 1, 2022) (available at: <https://msrb.org/sites/default/files/2022-11/2022-13.pdf>).

<sup>40</sup> The hourly rate data was gathered from the 2013 SEC’s Final Rule on Registration of Municipal Advisors. See Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67594, 67609 (November 12, 2013) (File No. S7-45-10). The data reflects the 2023 hourly rate level after adjusting for the annual wage inflation rate of 2% between 2013 and 2021. See The Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries Private Industry (available at: <https://fred.stlouisfed.org/series/ECIWAG>). The MSRB uses a blended hourly rate in each category of costs when a task can be performed by different levels of professionals. For example, while the revision of compliance policies and procedures can be conducted by either an in-house attorney (average hourly rate \$521) or outside counsel (average hourly rate \$550), the MSRB chooses the blended hourly rate of \$536 for this analysis. Similarly, for training, the MSRB uses the average rate for a Chief Compliance Officer and a compliance attorney; and for ongoing costs, the MSRB uses the hourly rate for a compliance attorney. The number of hours for each task is based on the MSRB’s internal estimate.

<sup>41</sup> As previously mentioned, Rule G-3(d)(ii)(B) currently provides, “Any person who ceases to be associated with a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph

with a municipal advisor firm from two to five years, instead of from two to three years as currently proposed. Although neither the alternative nor the proposed rule change would permit the granting of a waiver regardless of the time period, individuals would be given greater flexibility when making decisions to temporarily cease their association with municipal advisor firms and can have certainty that they can reassociate with a more limited compliance burden for themselves and the municipal advisor firms.<sup>42</sup> Moreover, a five-year absence from the municipal advisory business could result in a more significant gap in knowledge and experience, and an individual who returns after such an absence may not be fully aware of the latest regulatory and industry changes. The MSRB believes those individuals who cease to engage in municipal advisory activities for more than three years may benefit from retaking the Series 50 examination, which is designed to ensure a baseline level of knowledge exists about rules and regulations, and the regulatory framework in which such individuals operate, as well as to protect municipal entity and obligated person clients who may rely on advice from qualified municipal advisor representatives.

Another alternative the MSRB considered was, instead of requiring CE to include coverage of specific subject areas and topics, an individual would complete catch-up CE for the relevant time period such person ceased association with a municipal advisor firm in order to satisfy the exemption's criteria. The MSRB determined that this alternative would be challenging for solo-practitioners looking to establish a municipal advisor firm because such individuals would not have previous training materials readily available, potentially creating a burden on competition between a solo-practitioner and individuals seeking to join (or reassociate with) existing firms. The MSRB notes that while such solo-practitioners may not have developed CE

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(d)(ii)(A) shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless a waiver is granted pursuant to subparagraph (h)(ii) of this rule.”

<sup>42</sup> As noted above, an individual may obtain the criteria-based exemption under the proposed rule change only once.

training materials addressing all of the prescribed subject matters; such firms would be able to utilize “off-the-shelf content” or widely available industry educational materials (to the extent such materials meet the requirements set forth in the proposed rule change), which would be a less burdensome approach than creating new CE materials.<sup>43</sup> Thus, the MSRB has deemed the proposed rule change as superior to potential alternative approaches, including for small municipal advisor firms or solo-practitioners.

As previously noted, while an individual and a firm seeking to associate such an individual in the capacity of a municipal advisor principal may receive fewer benefits, still, all municipal advisor firms would benefit from the proposed rule change allowing individuals to requalify in the capacity of municipal advisor representatives.<sup>44</sup> The MSRB acknowledges that there may be a potential burden on competition on solo-practitioners or small municipal advisor firms because the criteria-based exemption does not extend to municipal advisor principals. Specifically, individuals seeking to act as a municipal advisor principal would still have to take and pass the Series 54 examination in order to engage in principal-level activities. Rule G-3(e)(ii)(C) affords temporary relief to an individual (and the municipal advisor firm with which such individual associates) who is qualified as a municipal advisor representative, but is functioning in the capacity of a municipal advisor principal, for a period of 120 days after becoming designated as a municipal advisor principal, to take and pass the Series 54

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<sup>43</sup> The MSRB has previously noted that the CE requirements for municipal advisors affords municipal advisors the flexibility to deliver CE in the most convenient and effective manner possible based on the firms’ business model. In addition, the MSRB noted industry trade associations may be a good source of CE training materials, in addition to podcasts, webinars and educational materials developed by the MSRB. See Exchange Act Release No. 80327 (March 29, 2017), 82 FR 16449, 16454 (April 4, 2017) (Notice of Filing of a Proposed Rule Change to Rule G-3, on Professional Qualification Requirements, and Rule G-8, on Books and Records, To Establish Continuing Education Requirements for Municipal Advisors and Accompanying Recordkeeping Requirements) (File No. SR-MSRB-2017-02).

<sup>44</sup> The MSRB notes, pursuant to Rule G-3(e)(ii), on qualification requirements, the Series 50 examination is a pre-requisite to becoming qualified as a municipal advisor principal.

examination. As a result, all such persons, including those persons seeking to be solo-practitioners and seeking to associate with small (or larger) municipal advisor firms would be able to function in the principal-level capacity for a limited period of time before having to take and pass the Series 54 examination.

Municipal advisor principals are subject to additional regulatory standards given their supervisory, oversight and management duties and the MSRB believes that requiring all municipal advisor principals to requalify by reexamination following a lapse in qualification helps to ensure municipal entity and obligated person protection. Specifically, notwithstanding the fact that small municipal advisor firms may experience a smaller benefit than larger firms, the MSRB believes that reexamination is necessary for all individuals seeking to function in a principal-level capacity. The process of reexamination ensures that the specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, is sufficiently demonstrated. Accordingly, in light of these considerations, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act<sup>45</sup> or a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.<sup>46</sup>

At present, the MSRB cannot evaluate the magnitude of the efficiency gains or losses quantitatively, but believes the overall benefits accumulated over time for market participants would outweigh the minimal upfront and ongoing costs associated with the proposed amendments to Rule G-3 and Rule G-8. The proposed amendments to Rule G-3 would make it easier for individuals seeking to requalify as municipal advisor representatives to reassociate

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<sup>45</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>46</sup> 15 U.S.C. 78o-4(b)(2)(L)(iv).

with a municipal advisor firm and for municipal advisor firms to recruit experienced professionals. In addition, the increased number of skilled professionals furthers capital formation because municipal entity and obligated person clients would have ranging areas of expertise to select from when utilizing the services of municipal advisor representatives. Finally, the MSRB believes the proposed amendments to Rule G-3 and Rule G-8 improve the municipal securities market's operational efficiency and promote regulatory certainty by providing individuals with a specific exemption process to requalify as municipal advisor representatives and to begin engaging in municipal advisory activities on behalf of municipal advisor firms.

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

As previously mentioned, the MSRB sought public comment on draft amendments to Rule G-3 in an RFC published on December 1, 2022.<sup>47</sup> The MSRB received three comment letters in response to the RFC.<sup>48</sup> The comments are summarized below by topic and MSRB responses are provided.

General Support for the Proposed Rule Change

All three commenters agreed with the MSRB's assertion that the proposed rule change would benefit, more than burden, municipal advisor firms and would provide increased regulatory flexibility and certainty for municipal advisor representatives and municipal advisor firms. Commenters generally agreed with the requirements for obtaining the criteria-based exemption, including the three-year-minimum-maximum thresholds, as well as the obligation

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<sup>47</sup> See supra note 38.

<sup>48</sup> See Letters from Chris Charles, President, Wulff, Hansen & Co. ("Wulff Hansen Letter"), dated December 29, 2022; Susan Gaffney, Executive Director, National Association of Municipal Advisors ("NAMA Letter"), dated January 30, 2023; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA Letter"), dated January 30, 2023. All comment letters are available at <https://www.msrb.org/sites/default/files/2023-03/All-Comments-to-Notice-2022-13.pdf>.

that a municipal advisor firm submit a notice to the MSRB affirming an individual's eligibility for the exemption by having met the criteria enumerated in the proposed rule change.

#### Continuing Education Criteria

The draft amendments reflected in the RFC would have required that upon associating with a municipal advisor firm, an individual would complete CE consistent with the requirements of current Rule G-3(i)(ii)(B) for the period of time since the individual was last associated with a municipal advisor firm ("CE catch-up requirement"), as part of the criteria-based exemption. In response, NAMA requested clarification on the proposed CE catch-up requirements. NAMA also sought clarification as to how such CE catch-up requirement would be expected to be delivered. NAMA specifically questioned how a solo-practitioner starting their own municipal advisor firm could obtain the exemption since there would be no prior, firm-administered continuing education to deliver to satisfy the CE catch-up requirement.<sup>49</sup> SIFMA also commented that requiring an individual to merely catch up on a firm's previously administered continuing education upon re-entry to the industry may, in practice, result in repetitive, outdated, or confusing information.<sup>50</sup>

In response, the MSRB revised the proposal to make the exemption's CE criteria more practicable and streamlined, so that it is not dependent on previously administered CE. As reflected in the proposed rule change, CE would be required to include coverage of specified subject areas and topics, set forth in the proposal, rather than mandating the completion of previously issued CE for the period of time since the individual seeking to obtain the criteria-based exemption was last associated with a municipal advisor firm.

The MSRB believes that these revisions provide a more practical approach for an individual to comply with the CE requirements in order to qualify for the criteria-based

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<sup>49</sup> NAMA Letter at 3-4.

<sup>50</sup> SIFMA Letter at 2.

exemption, in that it allows municipal advisor firms to ensure the most useful and up-to-date CE is provided to the individual. At the same time, the revisions would be more workable for solo-practitioners, particularly those establishing a new firm that's never been registered. Since such firms were not previously in existence, they would not have previous CE to provide to take advantage of the draft criteria-based exemption. The revisions, reflected in the proposed rule change, permit such individuals to take advantage of the criteria-based exemption and mitigates the potential for a burden on competition that may otherwise exist between solo-practitioners and those seeking to associate (or reassociate) with an established municipal advisor firm. Finally, the revised approach would permit municipal advisor firms to tailor the required CE training materials to the individual seeking the criteria-based exemption, consistent with the enumerated topic areas in the proposed rule change, to better ensure the most relevant information is covered.

#### Mechanics of Exemption Requirements

The draft amendments reflected in the RFC would have required that, prior to the individual engaging in municipal advisory activities on behalf of the municipal advisor firm, the firm file a completed SEC Form MA-I on behalf of the individual seeking to obtain the exemption and provide electronic notification to the MSRB that the individual has met the criteria to be exempt from the qualification requirements under the rule.

NAMA commented that further clarification would be beneficial as to timing for completing the CE requirements, when SEC Form MA-I is to be filed, and when the relevant affirmation notification is due to the MSRB.<sup>51</sup> In addition, NAMA suggested that a compliance resource explaining how a solo-practitioner can initially enter or re-enter the municipal securities industry before formally completing the requisite forms to establish a municipal advisor firm (and to associate such individual with the municipal advisor firm) would be beneficial.

Relatedly, SIFMA requested that the MSRB consider compliance resources to assist regulated

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<sup>51</sup> NAMA Letter at 1.

entities (and their associated persons) in understanding the relevant professional qualification and CE requirements, particularly for firms dually registered as a dealer and municipal advisor.<sup>52</sup>

In response, the MSRB revised the proposal (as reflected in the proposed rule change) to address the timing and sequence of satisfying the exemption's criteria, the filing of SEC Form MA-I (and SEC Form MA, as applicable), and the submission of the affirmation notification to the MSRB. Additionally, the MSRB anticipates publishing a compliance resource in close proximity to the compliance date of the rule in response to comments from NAMA and SIFMA, which would highlight the regulatory obligations for municipal advisors and dealers with respect to professional qualification standards, CE requirements, and related registration matters.

#### Greater Harmonization with FINRA Rules and Related Requirements for Broker-Dealers

SIFMA and NAMA expressed the desire for greater harmonization between the criteria set forth in the draft amendments and the qualification maintenance provisions available to broker-dealers, specifically those under FINRA rules, to reduce regulatory burdens for individuals who serve in multiple registered capacities.<sup>53</sup> The standards related to qualification maintenance for dealers (and their associated persons) were adopted by the MSRB in October 2022.<sup>54</sup> However, there are currently no such prescribed qualification maintenance standards<sup>55</sup> (e.g., required annual CE or requisite hours) for municipal advisor representatives equivalent to the prescribed qualification maintenance standards for municipal securities professionals of dealers.

The proposed rule change seeks to provide municipal advisor representatives with greater flexibility than they have today, which also will provide some parity with the flexibility afforded

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<sup>52</sup> SIFMA Letter at 2.

<sup>53</sup> SIFMA Letter at 1-2; NAMA Letter at 5.

<sup>54</sup> See Exchange Act Release No. 95684 (September 7, 2022), 87 FR 56137 (September 13, 2022) (File No. SR-MSRB-2022-07).

<sup>55</sup> See Rules G-3(a)(ii)(C), G-3(b)(ii)(C), G-3(b)(iv)(B)(3), G-3(c)(ii)(C) and G-3(i)(i)(C) for qualification maintenance standards applicable to dealers.

to dealers. However, the MSRB is mindful of the distinctions between dealers and municipal advisors, including the differences in the applicable qualification maintenance standards as well as the application of a federal fiduciary duty for municipal advisors, but not dealers. After careful consideration, the MSRB continues to believe that the proposed rule change reflects the appropriate balance of flexibility for individuals seeking to requalify without reexamination and for their associated municipal advisor firms with the MSRB's municipal entity protection mandate, as well as the fiduciary duty owed by municipal advisors to their municipal entity clients. The MSRB does not believe that further harmonization with the maintenance qualification standard for dealers (and their associated persons) is appropriate given the distinct nature of municipal advisory activities, including the fiduciary duty owed by municipal advisors to municipal entity clients. In contrast, while dealers are obligated under Rule G-17 to deal fairly with all persons, including municipal entities and obligated persons, they generally engage in arm's-length transactions with such clients and have financial and other interests that may differ from them; therefore, the MSRB believes the three-year mandatory experience requirement and three-year maximum out-of-the-industry requirement recognize the uniqueness of the regulatory framework. Hence, the MSRB determined not to revise the draft proposal to be more consistent with qualification maintenance standards available to dealers.

#### Application of Exemption to Municipal Advisor Principals

Commenters expressed a belief that the criteria-based exemption from requalification by reexamination should be extended to include municipal advisor principals.<sup>56</sup> After careful consideration, the MSRB continues to believe that such relief should not be extended to municipal advisor principals because the supervisory, oversight and management duties of municipal advisor principals make an exemption from requalification by reexamination inappropriate. Even if such an exemption were contemplated, it would require additional, more

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<sup>56</sup> NAMA Letter at 4-5; SIFMA Letter at 2; and Wulff Hansen Letter at 3.

stringent criteria than those proposed for municipal advisor representatives to appropriately reflect the heightened responsibilities of a municipal advisor principal. This would result in two different standards and thus additional regulatory complexity in this area.

However, as noted above in relation to the impact of the proposal on solo-practitioners and small municipal advisor firms, solo-practitioners (and individuals associating or re-associating with a firm and designated as a principal) may avail themselves of the provisions under current Rule G-3(e)(ii)(C), which in concert with the proposed rule change, make it possible for a solo-practitioner to start their own firm, requalify as a municipal advisor representative without reexamination and function as a municipal advisor principal for a limited period of time (i.e., 120 days) before having to take and pass the Series 54 examination. Relatedly, for an individual who was once qualified as a municipal advisor principal and who is associating or re-associating with a municipal advisor firm and is expected to take on a principal-level role at the firm, such individual would be able to function in the principal-level capacity for the aforementioned limited period of time before having to take and pass the Series 54 examination.

#### Other Comments Considered

Wulff Hansen objected to the criterion that would have prohibited an individual seeking the exemption from engaging in municipal advisory activities during a lapse in qualification. Wulff Hansen noted that such a prohibition does not recognize that the SEC permits certain individuals to engage in municipal advisory activities without registration because they qualify for an exclusion or exemption from registration requirements, for example, the underwriter exclusion, as prescribed under Section 15B(e)(4)(C) of the Act (15 U.S.C. 78o-4(e)(4)(C)).<sup>57</sup> In response to this comment, the revisions reflected in the proposed rule change clarify that an

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<sup>57</sup> Wulff Hansen Letter at 1.

individual must not have engaged in activities requiring qualification as a municipal advisor representative during the individual's lapse in qualification.

Wulff Hansen also suggested that the MSRB retain the ability to grant waivers for individuals in highly exceptional circumstances that do not qualify for the criteria-based exemption set forth in the draft amendments.<sup>58</sup> The MSRB believes that retention of such a waiver process is unnecessary in light of how few waiver requests the Board has received.<sup>59</sup> Additionally, as discussed above, the MSRB believes that municipal advisor principals should be required to take and pass the requisite qualification examination in light of the heightened responsibilities performed by such persons. Finally, the MSRB believes that retention of such a waiver provision would result in less objective and predictable requalification standards than those provided for 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.

### 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:

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<sup>58</sup> Id. at 2.

<sup>59</sup> Supra note 37.

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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2023-05 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-2023-05. 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-2023-05 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.<sup>60</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>60</sup> 17 CFR 200.30-3(a)(12).