

MEMO# 32435

May 4, 2020

MSRB Proposes Amendments to Its Suitability and Related Rules to Conform to SEC Reg BI

[32435]

May 4, 2020 TO: ICI Members

Bank, Trust and Retirement Advisory Committee

Broker/Dealer Advisory Committee

Internal Sales Managers Roundtable

Investment Adviser and Broker-Dealer Standards of Conduct Working Group

Municipal Securities Advisory Committee

Operations Committee

Pension Committee

Pension Operations Advisory Committee

Sales and Marketing Committee

SEC Rules Committee

Small Funds Committee

Transfer Agent Advisory Committee

Variable Insurance Products Advisory Committee SUBJECTS: Compensation/Remuneration
Compliance

Disclosure

Distribution

Fees and Expenses

Municipal Securities

Pension

Portfolio Oversight RE: MSRB Proposes Amendments to Its Suitability and Related Rules to Conform to SEC Reg BI

The Municipal Securities Rulemaking Board (MSRB) recently filed with the Securities and Exchange Commission (SEC) proposed amendments to MSRB's suitability, non-cash compensation, and related rules to make them consistent with the SEC's Regulation Best Interest ("Reg BI").[\[1\]](#) If the SEC approves the proposed amendments, it will publish them for public comment.[\[2\]](#) The effective date of any final amendments would be the Reg BI compliance date (June 30, 2020).

MSRB's proposed amendments would result in the following changes to MSRB rules:

- MSRB Rule G-19, which governs suitability of municipal securities recommendations and transactions, would apply only in circumstances in which Reg BI does not apply.^[3] Rule G-19 also would be amended to conform the quantitative suitability component of the rule to Reg BI by removing the limitation in Rule G-19 that requires a quantitative suitability determination only when a dealer has “actual or de facto control” over the customer’s account.
- MSRB Rule G-48 which, among other things, provides an exception from the customer-specific suitability obligations under Rule G-19 when dealing with sophisticated municipal market professionals (SMMPs),^[4] would make clear that the exception is available only with respect to recommendations that are subject to MSRB Rule G-19 (i.e., not subject to Reg BI).
- MSRB Rule G-20, which governs gifts, gratuities, and non-cash compensation, would require any non-cash compensation permitted by the rule to also be consistent with the limitations of Reg BI.^[5]
- MSRB Rules G-8 and G-9, which govern recordkeeping, would be amended to harmonize their requirements with the SEC’s recordkeeping requirements with respect to Reg BI and Form CRS.

MSRB reminds members that, if the proposed amendments are approved, while dealers would not have an obligation to comply with the proposed rule changes until the June 30th effective date, the current versions of MSRB Rules G-8, G-9, G-19, G-20, and G-48 will remain applicable until the amendments’ effective date.

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endnotes

^[1] See <http://www.msrb.org/~media/Files/SEC-Filings/2020/MSRB-2020-02.ashx>.

^[2] The public comment period will be 21 days following publication of the proposed amendments in the *Federal Register*. ICI does not plan to comment on the proposed amendments.

^[3] MSRB explains this would result in MSRB Rule G-19 applying only to: (1) recommendations to customers that are not “retail customers,” as defined by Reg BI, and (2) recommendations to any customers by bank dealers. MSRB plans to issue a request for comment on whether it should apply the requirements of Reg BI to bank dealers through further amendments to MSRB rules.

^[4] An SMMP is defined in MSRB Rule D-15 to include: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person or entity with total assets of at least \$50 million. A person must also satisfy additional conditions under the rule to be considered an SMMP.

[5] MSRB also proposes to rescind a 1982 interpretation of Rule G-20, which provides that sales contests offered by an underwriter to participating members of a syndicate constitute compensation for services and, therefore, must meet the requirements of the then-current version of MSRB Rule G-20. MSRB explains that, depending on the facts and circumstances, such sales contests may be inconsistent with Reg BI.

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