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(A) the seller specifies a minimum or desired price for the securities as part of the offering, at the offering's commencement;

(B) the identities of the seller and the bidders are not disclosed prior to the conclusion of the offering; and

(C) a broker's broker negotiates between the seller and the bidders to arrive at a price acceptable to the parties.

(viii) "Predetermined parameters" means formulaic parameters based on objective pricing criteria that are: (A) reasonably designed to identify most bids that may not represent the fair market value of municipal securities that are the subject of bid-wanteds to which they are applied, (B) determined by the broker's broker in advance of the acceptance of bids in such bid-wanteds, and (C) systematically applied to all bids in such bid-wanteds. Predetermined parameters may not be based on bids submitted in the bid-wanted to which they are applied (*e.g.*, cover bids). A broker's broker may establish different predetermined parameters for different types of municipal securities.

(ix) For purposes of this rule, "seller" means the selling dealer, or potentially selling dealer, in a bid-wanted or offering and does not include the customer of a selling dealer.

(x) For purposes of Rule G-43 only, a security will be considered to have "traded" through a broker's broker when it has been purchased by the broker's broker from the seller and sold to the bidder by the broker's broker, as an intermediary.

Rule G-43 Interpretations

Notice to Dealers That Use the Services of Broker's Brokers

December 22, 2012

Introduction

In view of the important role that broker's brokers play in the provision of secondary market liquidity for municipal securities owned by retail investors, MSRB Rule G-43 sets forth particular rules to which broker's brokers are subject. Rule G-43(a)(i) provides:

Each dealer acting as a "broker's broker"[1] with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.[2]

In guidance on broker's brokers issued in 2004,[3] the MSRB noted the role of some broker's brokers in large intra-day price differentials of infrequently traded municipal securities with credits that were relatively unknown to most market participants, especially in the case of "retail" size blocks of $5,000 to $100,000. In certain cases, differences between the prices received by the selling customers as a result of a broker's broker bid-wanted and the prices paid by the ultimate purchasing customers on the same day were 10% or more. After the securities were purchased from the broker's broker, they were sold to other dealers in a series of transactions until they eventually were purchased by other customers. The abnormally large intra-day price differentials were attributed in major part to the price increases found in the inter-dealer market occurring after the broker's brokers' trades.

Rule G-43 addresses the role of broker's brokers, including their role in such a series of transactions. It is the role of the broker's broker to conduct a properly run bid-wanted or offering and thereby satisfy its duty to make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The MSRB believes that a bid-wanted or offering conducted in the manner provided in Rule G-43 will be an important element in the establishment of a fair and reasonable price for municipal securities in the secondary market. This notice addresses the roles of other transaction participants, specifically the brokers, dealers, and municipal securities dealers ("dealers") that sell, and bid for, municipal securities in bid-wanteds and offerings conducted by broker's brokers. Those selling dealers ("sellers") and bidding dealers ("bidders") also have pricing duties under MSRB rules and their failure to satisfy those duties could negate the reasonable efforts of a broker's broker to achieve fair pricing.

Duties of Bidders

Rule G-13(b)(i) provides that, in general, "no broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation represents a bona fide bid[4] for, or offer of, municipal securities by such broker, dealer or municipal securities dealer." Rule G-13(b)(ii) provides that "[n]o broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the price stated in the quotation is based on the best judgment of such broker, dealer or municipal securities dealer of the fair market value of the securities which are the subject of the quotation at the time the quotation is made."

Dealers that submit bids to broker's brokers that they believe are below the fair market value of the securities or that submit "throw-away" bids to broker's brokers do so in violation of Rule G-13. While bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices. Throw-away bids, by definition, violate Rule G-13, because throw-away bids are arrived at without an analysis by the bidder of the fair market value of the municipal security that is the subject of the bid. A conclusion by the bidder that a security must be worth "at least that much," without any knowledge of the security or comparable securities and without any effort to analyze the security's

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value is not based on the best judgment of such bidder of the fair market value of the securities within the meaning of Rule G-13(b)(ii). When the MSRB first proposed Rule G-13, it explained in a February 24, 1977 letter from Frieda Wallison, Executive Director and General Counsel, MSRB, to Lee Pickard, Director, Division of Market Regulation, Securities and Exchange Commission that, among the activities that Rule G-13 was designed to prevent was the placing of a bid that is "pulled out of the air," which is another way to describe a throw-away bid.

Furthermore, when a dealer's bid is accepted and a transaction in the securities is executed, that transaction price (and accordingly the bid itself) will be disseminated within the meaning of Rule G-13(a)(i) on the MSRB's Electronic Municipal Market Access (EMMA®) platform within 15 minutes after the time of trade. At that point, if the bid is off-market, it will create a misperception in the municipal marketplace of the true fair market value of the security. The fact that the bid price that wins a bid-wanted or offering may well not represent the true fair market value of the security is evidenced by the trade activity observed by enforcement agencies following such auctions. Enforcement agencies have informed the MSRB that they continue to observe the same kinds of series of transactions in municipal securities that prompted the MSRB's 2004 pricing guidance. They have also informed the MSRB about their observations of other trading patterns that indicate some market participants may misuse the role of the broker's broker in the provision of secondary market liquidity and may cause retail customers who liquidate their municipal securities by means of broker's brokers to receive unfair prices.

Duties of Sellers

Dealers that use the services of broker's brokers to sell municipal securities for their customers also have significant fair pricing duties under Rule G-30 when they act as a principal. As the MSRB noted in its request for comment on Draft Rule G-43,[5]

the information about the value of municipal securities provided to a selling dealer by a broker's broker is only one factor that the dealer must take into account in determining a fair and reasonable price for its customer. In fact, in 2004, the National Association of Securities Dealers ("NASD") announced that it had fined eight dealers for relying solely on prices obtained in bid-wanteds conducted by broker's brokers, which the NASD found to be significantly below fair market value.[6] In that same year, the MSRB said that "particularly when the market value of an issue is not known, a dealer . . . may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations . . . ."

Under those circumstances where broker's brokers seeks to satisfy their fair pricing obligations in bid-wanteds conducted pursuant to Rule G-43(b), Rule G-43(b)(v) provides for notice by broker's brokers to sellers when bids in bid-wanteds are below predetermined parameters that are designed to identify possible off-market bids (e.g., those based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids received by broker's brokers in prior bid-wanteds or offerings). Once a seller has received such notice, it must direct the broker's broker as to whether to execute the trade at that price. That notice by the broker's broker and required action on the part of the seller should put the seller on notice that it must take additional steps to ascertain whether the high bid provided to it by the broker's broker is, in fact, a fair and reasonable price for the securities. Rule G-30 mandates that the seller, if acting as a principal, must not buy municipal securities from its customer at a price that is not fair and reasonable (taking any mark-down into account), taking into consideration all relevant factors, including those listed in the rule.

The MSRB notes that Rule G-8(a)(xxv)(E) requires broker's brokers to keep records when they have provided the seller with the notice described in Rule G-43(b)(v). Among the required records are the full name of the person at the seller who received the notice, the direction given by the seller firm following the notice, and the full name of the person at the seller who provided that direction.

Rule G-43(b)(i) permits a broker's broker to limit the audience for a bid-wanted at the selling dealer's direction, a practice sometimes referred to as "screening" or "filtering," because the MSRB recognizes that there may be legitimate reasons for this practice. However, the MSRB notes that such screening may reduce the likelihood that the high bid represents a fair and reasonable price. Selling dealers should, therefore, be able to demonstrate a reason that is not anti-competitive (e.g., credit, legal, or regulatory concerns), rather than trying to eliminate access by a competitor, for directing broker's brokers to screen certain bidders from the receipt of bid-wanteds or offerings. For example, a selling dealer might maintain a list of the firms it would be unwilling to accept as a counterparty and the reasons why.

The MSRB recognizes that there may be circumstances under which customers may need to liquidate their municipal securities quickly and that there are limitations on the ability of a bid-wanted or offering to achieve a price that is comparable to recent trade prices under certain circumstances, particularly in view of its timing and the presence or absence of regular buyers in the marketplace. Nevertheless, the MSRB urges sellers not to assume that their customers need to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking additional time to liquidate the securities.

Rule G-17 requires dealers, in the conduct of their municipal securities activities, to deal fairly with all persons and to not engage in any deceptive, dishonest, or unfair practice. Broker's brokers have informed the MSRB that many dealers place bid-wanteds and offerings with broker's brokers with no intention of selling the securities through the broker's brokers. Some have noted that shortly thereafter they see the

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same securities purchased by dealers for their own accounts at prices that exceed the high bid obtained by the broker's brokers by only a very small amount. Other dealers have told the MSRB that they are skeptical of many of the bid-wanteds they see, because they think the bid-wanteds are only being used for price discovery by the selling dealers and are not real. Accordingly, in many cases, they do not bid. This use of broker's brokers solely for price discovery purposes harms the bid-wanted and offering process by reducing bidders, thereby reducing the likelihood that the high bid in a bid-wanted will represent the fair market value of the securities. Additionally, it causes broker's brokers to work without reasonable expectation of compensation. For those reasons, depending upon the facts and circumstances, the use of bid-wanteds solely for price discovery purposes may be an unfair practice within the meaning of Rule G-17.

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[1] Rule G-43(d)(iii) defines a "broker's broker" as "a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker." Certain alternative trading systems are excepted from the definition of "broker's broker."

[2] A bid-wanted conducted in accordance with Rule G-43(b) will satisfy the pricing obligation of a broker's broker.

[3] MSRB Notice 2004-3 (January 26, 2004).

[4] Rule G-13(b)(iii) provides that:

a quotation shall be deemed to represent a "bona fide bid for, or offer of, municipal securities" if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.

[5] MSRB Notice 2011-18 (February 24, 2011).

[6] *See* http://www.finra.org/Newsroom/NewsReleases/2004/P011465.

Rule G-43 Amendment History (since 2003)

Release No. 34-67238 (June 22, 2012), 77 FR 38684 (June 28, 2012); MSRB Notice 2012-34 (June 25, 2012)

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Rule G-44

Supervisory and Compliance Obligations of Municipal Advisors

(a) *Supervisory System*. Each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules ("applicable rules"). Final responsibility for proper supervision shall rest with the municipal advisor. A municipal advisor's supervisory system shall provide, at a minimum, for the following:

(i) *Written Supervisory Procedures*. The establishment, implementation, maintenance and enforcement of written supervisory procedures that are reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The written supervisory procedures shall be promptly amended to reflect changes in applicable rules and as changes occur in the municipal advisor's supervisory system, and such procedures and amendments shall be promptly communicated to all associated persons to whom they are relevant based on their activities and responsibilities.

(ii) *Appropriate Principal*. The designation of one or more municipal advisory principals to be responsible for the supervision required by this rule.

(b) *Compliance Processes*. Each municipal advisor shall have in place and implement processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules, and shall conduct, no less frequently than annually, a review of the compliance policies and supervisory procedures.

(c) *Chief Compliance Officer*. Each municipal advisor shall designate one individual to serve as its chief compliance officer.

(d) *Annual Certification*. Each municipal advisor shall have its chief executive officer(s) (or equivalent officer(s)) certify in writing annually that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules. This requirement, however, shall not apply to municipal advisors that are subject to a substantially similar certification requirement of Financial Industry Regulatory Authority with respect to all applicable rules.

(e) *Exemption for Federally Regulated Banks*. A municipal advisor that is a bank or separately identifiable department or division of a bank as defined in Securities Exchange Act Rule 15Ba1-1(d)(4) shall, to the extent it engages in municipal advisory activities in the exercise of any fiduciary powers as defined in 12 C.F.R. Section 9.2(g) or substantially identical powers, be exempt from this rule and Rule G-8(h)(v)(A)-(E) if such municipal advisor certifies in writing annually that it is, with respect to such activities, subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of this rule and the books and records requirements of Rule G-8(h)(v)(A)-(E).

(f) *Definition*. "Municipal advisor," for purposes of this rule, shall mean a person registered or required to be registered as a municipal advisor under section 15B of the Act and rules and regulations thereunder.

Supplementary Material:

.01 Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLE programs (*i.e*., a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities.

.02 Written Supervisory Procedures. A municipal advisor's written supervisory procedures shall take into consideration, among other things, the advisor's size; organizational structure; nature and scope of municipal advisory activities; number of offices; the disciplinary and legal history of its associated persons; the likelihood that associated persons may be engaged in relevant outside business activities; and any indicators of irregularities or misconduct (*i.e*., "red flags"). In the case of a municipal advisor with any associated persons permitted under all applicable law to supervise their own activities, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.

.03 Small Municipal Advisors. A municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system under this rule. The rule allows the designation of one person to be responsible for supervision, and allows the tailoring of written supervisory procedures based on, among other things, an advisor's size.

.04 Appropriate Principal. Designated supervisory principals must be vested with the authority to carry out the supervision for which they are responsible and have sufficient knowledge, experience and training to understand and effectively discharge their responsibilities. They also must have the authority to implement the established written supervisory procedures and take any other action necessary to fulfill their responsibilities. Even if not so designated, whether a person has responsibility for supervision under this rule depends on whether, under the facts and circumstances of a particular case, that person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.

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.05 Review of Compliance Policies and Supervisory Procedures. The reviews under paragraph (b) of this rule should, at a minimum, consider any compliance matters that arose since the previous review, any changes in the municipal advisory activities of the municipal advisor or its affiliates, and any changes in applicable rules that might suggest a need to revise the written compliance policies or supervisory procedures. Although paragraph (b) specifically requires reviews to be conducted at least annually, municipal advisors should consider the need, in order to comply with all of the other requirements of this rule, for interim reviews.

.06 Chief Compliance Officer. A chief compliance officer has a unique and integral role in the administration of a municipal advisor's compliance processes. A chief compliance officer is a primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts in order to comply with applicable rules. To fulfill this role, a chief compliance officer should have competence in the process of (1) gaining an understanding of the services and activities that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the applicable rules and standards of conduct pertaining to such services and activities based on experience and/or consultation with others; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with applicable rules and standards of conduct; and (4) developing programs to test compliance with the municipal advisor's policies and procedures. It is the intention of this rule to foster regular and significant interaction between senior management and the chief compliance officer regarding the municipal advisor's comprehensive compliance program. The chief compliance officer may be a principal of the firm or a non-employee of the firm. If a non-employee, then the person designated as chief compliance officer must have the competence described above and the municipal advisor retains ultimate responsibility for its compliance obligations.

.07 Responsibility for Compliance Functions. The chief compliance officer, and any compliance officers that report to the chief compliance officer, shall have responsibility for and perform the compliance functions contemplated by this rule. Nothing in this rule, however, is intended to limit or discourage the participation by any of the employees of the municipal advisor in any aspect of the municipal advisor's compliance program.

.08 Ability of Chief Compliance Officer to Hold Other Positions. The requirement to designate a chief compliance officer does not preclude that person from holding any other positions within the municipal advisor, including serving in any position in senior management or being designated as a supervisory principal, provided that person can discharge the duties of chief compliance officer in light of all of the responsibilities of any other positions.

.09 Effect of Annual Certification on Business Line Responsibility. The Board recognizes that supervisors with business line responsibility are accountable for the discharge of a municipal advisor's compliance policies and written supervisory procedures. The signatory to the certification required by this rule is certifying only as to having processes in place to establish, maintain, review, test and modify the municipal advisor's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.

Rule G-44 Amendment History (since 2003)

Release No. 34-78622 (August 22, 2016), 81 FR 58989 (August 26, 2016); MSRB Notice 2016-20 (August 12, 2016)

Release No. 34-73415 (October 23, 2014), 79 FR 64423 (October 29, 2014); MSRB Notice 2014-19 (October 24, 2014)

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Rule G-45

Reporting of Information on Municipal Fund Securities

(a) *Form G-45 Reporting Requirements*. Each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools shall report to the Board the information relating to such offering required by Form G-45 by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and December 31 and in the manner prescribed in the Form G-45 procedures below and as set forth in the Form G-45 Manual; provided, however, that performance data shall be reported annually by no later than 60 days following the end of the reporting period ending on December 31. Each submitter shall indicate on Form G-45 the identity of each underwriter that has identified itself as such and on whose behalf the information is submitted.

(b) *Form G-45 Reporting Procedures*.

(i) All submissions of information required under this rule shall be made by means of Form G- 45 submitted in a designated electronic format to the Board in such manner, and including such items of information, as specified herein, in Form G-45 and in the Form G-45 Manual.

(ii) Form G-45 shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to the procedures set forth in the Form G-45 Manual. The failure of a submission agent designated by the underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) *Form G-45 Manual*. The Form G-45 Manual is comprised of the specifications for reporting of information required under this rule, the user guide for submitting Form G-45, and other information relevant to reporting under this rule. The Form G-45 Manual is located at www.msrb.org and may be updated from time to time with additional guidance or revisions to existing documents.

(d) *Definitions*.

(i) The term "asset class" shall mean domestic equities, international equities, fixed income products, commodities, insurance products, bank products, cash or cash equivalents or other product types.

(ii) The term "benchmark" shall mean an established index or a blended index that combines the benchmarks for each of the underlying mutual funds or other investments held by an investment option during the relevant time period weighted according to the allocations of those underlying mutual funds or other investments and adjusted to reflect any changes in the allocations and the benchmarks during the relevant time period.

(iii) The term "contributions" shall mean all deposits into the plan or investment option but shall not include reallocations.

(iv) The term "designated electronic format" shall mean the format specified in the Form G-45 Manual.

(v) The term "distributions" shall mean the withdrawal of funds from a plan or investment option, but shall not include reallocations.

(vi) The term "investment option" shall mean an option, as described in a plan disclosure document or supplement thereto, available to account owners in a plan to which funds may be allocated.

(vii) The term "marketing channel" shall mean the manner by which municipal fund securities that are not local government investment pools are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with an underwriter (commonly known as "advisor-sold") or through a website, or toll-free telephone number or other direct means (commonly known as "direct-sold").

(viii) The term "performance" shall mean total returns of the investment option expressed as a percentage, net of all generally applicable fees and costs.

(ix) The term "plan" shall mean a college savings plan or program established by a state, or agency or instrumentality of a state, to operate as a Qualified Tuition Program in accordance with Section 529 of the Internal Revenue Code.

(x) The term "program manager" shall mean an entity that enters into a contract directly with the trustee of the plan to provide, directly or indirectly through service providers, investment advisory and management services, administration and accounting functions, and/or marketing and other services related to the day-to-day operation of the plan.

(xi) The term "primary offering" shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7).

(xii) The term "reallocation" shall mean the withdrawal of funds from one investment option in a plan and deposit of the same funds into one or more investment options in the same plan, such as where an account owner selects a different investment option or funds are moved from one age-band to another as beneficiaries approach college age.

(xiii) The term "underlying investment" shall mean a registered investment company, unit investment trust, or other investment product in which an investment option invests.

(xiv) The term "underwriter" shall mean a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8), of municipal fund securities that are not local government investment pools.

Rule G-45 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

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Release No. 34-78622 (August 22, 2016), 81 FR 58989 (August 26, 2016); MSRB Notice 2016-20 (August 12, 2016)

Release No. 34-75454 (July 15, 2015), 80 FR 43148 (July 21, 2015); MSRB Notice 2015-09 (June 30, 2015)

Release No. 71598 (February 21, 2014), 79 FR 11161 (February 27, 2014); MSRB Notice 2014-03 (February 24, 2014)

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Rule G-47

Time of Trade Disclosure

(a) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing 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 material information about the security that is reasonably accessible to the market.

(b) Definitions.

(i) "Established industry sources" shall include the MSRB's Electronic Municipal Market Access ("EMMA"®) system, rating agency reports, and other sources of information relating to municipal securities transactions generally used by brokers, dealers, and municipal securities dealers that effect transactions in the type of municipal securities at issue.

(ii) "Material information": 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.

(iii) "Reasonably accessible to the market" shall mean that the information is made available publicly through established industry sources.

Supplementary Material:

.01 Manner and Scope of Disclosure.

(a) The disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment.

(b) The public availability of material information through EMMA, or other established industry sources, does not relieve brokers, dealers, and municipal securities dealers of their obligation to make the required time of trade disclosures to a customer.

(c) A broker, dealer, or municipal securities dealer may not satisfy its disclosure obligation by directing a customer to an established industry source or through disclosure in general advertising materials.

(d) Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

.02 Electronic Trading Systems. Brokers, dealers, and municipal securities dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other brokers, dealers, and municipal securities dealers.

.03 Disclosure Obligations in Specific Scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

(a) *Variable rate demand obligations*. A description of the basis on which periodic interest rate resets are determined and the role of the remarketing agent.

(b) *Auction rate securities*. Features of the auction process that likely would be considered significant by a reasonable investor and the basis on which periodic interest rate resets are determined. Additional facts that may also be considered material are the duration of the interest rate reset period, information on how the "all hold" and maximum rates are determined, any recent auction failures, and other features of the security found in the official documents of the issue.

(c) *Credit risks and ratings*. The credit rating or lack thereof, credit rating changes, credit risk of the municipal security, and any underlying credit rating or lack thereof.

(d) *Credit or liquidity enhanced securities*. The identity of any credit enhancer or liquidity provider, terms of the credit facility or liquidity facility, and the credit rating of the credit provider or liquidity provider, including potential rating actions (e.g., downgrade).

(e) *Insured securities*. The fact that 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.

(f) *Original issue discount bonds*. The fact that a security bears an original issue discount since it may affect the tax treatment of a municipal security.

(g) *Securities sold below the minimum denomination*. The fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination. See also Rule G-15(f).

(h) *Securities with non-standard features*. Any non-standard feature of a municipal security. Additionally, if price/yield calculations are affected by anomalies due to a non-standard feature, this also may be material information about the transaction that must be disclosed to the customer.

(i) *Bonds that prepay principal*. The fact that the security prepays principal and the amount of unpaid principal that will be delivered on the transaction.

(j) *Callable securities*. The fact that a municipal security may be redeemed prior to maturity in-whole, in-part, or in extraordinary circumstances, including sinking fund calls and bonds subject to detachable call features.

(k) *Put option and tender option bonds*. Information concerning the put option or tender option features.

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(l) *Stripped coupon securities*. Facts concerning the underlying securities which materially affect the stripped coupon instruments. The unusual nature of these securities and their tax treatment warrants special efforts to provide written disclosures.

(m) *The investment of bond proceeds*. Information on the investment of bond proceeds.

(n) *Issuer's Intent to Prerefund*. An issuer's intent to prerefund an issue.

(o) *Failure to make continuing disclosure filings*. Discovery that an issuer has failed to make filings required under its continuing disclosure agreements.

.04 Processes and Procedures. Brokers, dealers, and municipal securities dealers must implement processes and procedures reasonably designed to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer.

Rule G-47 Interpretation

Interpretive Notice Regarding Rule G-47, on Time of Trade Disclosure — Disclosure of Market Discount

November 22, 2016

Overview

MSRB Rule G-47, on time of trade disclosure, requires brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose to their customers, at or prior to the time of trade, all material information known about the transaction, as well as material information about the municipal security that is reasonably accessible to the market. The MSRB has previously provided interpretive guidance, now codified in supplementary material to Rule G-47, on specific types of information that is material where specific scenarios occur and requires time of trade disclosure. Rule G-47, however, emphasizes that this list of specific disclosures is not exhaustive, and that other information may be material to a customer and required to be disclosed. The MSRB is publishing this notice to state its interpretation that the fact that a municipal security bears market discount is material information that must be disclosed to a customer under Rule G-47.

Market Discount

When a municipal security is acquired in the secondary market for less than par value, the security may have "market discount." The amount of market discount is equal to the excess, if any, of the stated redemption price at maturity over the basis of the security immediately after its purchase by the investor. Market discount occurs when the value of a municipal security declines after its issue date — which often may occur due to a rise in interest rates. The fact that a municipal security bears market discount may significantly affect its tax treatment. Under federal tax law, for bonds purchased after April 30, 1993, the market discount is taxed at the investor's ordinary income tax rate, rather than the capital gains rate.[1]

Original Issue Discount Bonds. Market discount is calculated differently for original issue discount (OID) bonds. An OID bond is a bond that was sold at the time of issue at a price that included an original issue discount. The original issue discount is the amount by which the bond's stated redemption price at maturity exceeded its public offering price at the time of its original issuance and, for a tax-exempt municipal security, is generally treated as tax-exempt interest.[2]

Market discount exists for an OID bond when the bond is acquired in the secondary market for less than its revised or adjusted issue price. The revised or adjusted issue price for an OID bond is equal to the bond's original issue price plus the accrued OID up to the date of purchase. The amount of market discount is equal to the excess, if any, of the revised issue price over the basis of the bond immediately after its purchase by the investor.

De Minimis Rule. Bonds with a de minimis amount of market discount are subject to more favorable tax treatment than bonds with a non-de minimis amount of market discount. Under the de minimis rule, if the amount of market discount is less than one-fourth of 1% (.0025) of the stated redemption price of the bond multiplied by the number of complete years from the date of purchase to the date of maturity, the market discount is de minimis and is generally taxed as a capital gain, rather than ordinary income.

Market Discount Disclosure at or Prior to Time of Trade

As noted, Rule G-47 requires dealers to disclose to their customers, at or prior to the time of trade, "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market."[3] This disclosure obligation applies whether the transaction is unsolicited or recommended, and whether it is a primary offering or secondary market transaction. Information is considered to be material under Rule G-47 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 MSRB has previously stated, and codified as supplementary material to Rule G-47, that the fact that a municipal security bears an original issue discount is material information that dealers are obligated to disclose, because it may affect the tax treatment of the security.[4] Significantly, in explaining this interpretation of the MSRB's rules, the MSRB noted that appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction. The MSRB also noted its concern that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the discount

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is tax-exempt, and might therefore, for example, sell the security at an inappropriately low price (*i.e.,* a price not reflecting the tax-exempt portion of the discount).

Similarly, the MSRB is concerned that, absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the market discount is taxable as ordinary income, and therefore might, for example, purchase the securities at an inappropriately high price (*i.e.*, a price not reflecting the potentially higher tax rate applicable to the discount). The existence of market discount may impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond. As a result, the MSRB believes that the fact that a security has market discount is material information that is required to be disclosed to a customer under Rule G-47 at or prior to the time of trade.

[1] Tax treatment and the amount of market discount and original issue discount (if any) are determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.

[2] For more information about original issue discount bonds, *see* MSRB, About Original Issue Discount Bonds, available at: http://www.msrb.org/msrb1/pdfs/Original-Issue-DiscountBonds.pdf.

[3] MSRB Rule G-47(a). However, under MSRB Rule G-48, on transactions with sophisticated municipal market professionals, a dealer is relieved of the obligation to disclose to a sophisticated municipal market professional or SMMP material information that is reasonably accessible to the market. *See* Rule G-48(a). Accordingly, dealers do not have an obligation to disclose to SMMPs the existence of market discount.

[4] *See* MSRB Rule G-47, Supplementary Material .03(f); *see also* Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts—Disclosure of Original Issue Discount Bonds (January 5, 2005); Rules G-12 and G-15, Comments Requested on Draft Amendments on Original Issue Discount Securities, MSRB Reports, Vol. 4, No. 6 (May 1994) at 7.

Rule G-47 Amendment History (since 2003)

Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014); MSRB Notice 2014-07 (March 12, 2014)

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Rule G-48
Transactions with Sophisticated Municipal Market Professionals

A broker, dealer, or municipal securities dealer's obligations to a customer that it reasonably concludes is a Sophisticated Municipal Market Professional, or SMMP, as defined in Rule D-15, shall be modified as follows:

(a) *Time of Trade Disclosure*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-47 to ensure disclosure of material information that is reasonably accessible to the market.

(b) *Transaction Pricing*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-30(b)(i) to take action to ensure that transactions meeting all of the following conditions are effected at fair and reasonable prices:

(i) the transactions are non-recommended secondary market agency transactions;

(ii) the broker, dealer, or municipal securities dealer's services with respect to the transactions have been explicitly limited to providing anonymity, communication, order matching, and/or clearance functions; and

(iii) the broker, dealer, or municipal securities dealer does not exercise discretion as to how or when the transactions are executed.

(c) *Suitability*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-19 to perform a customer-specific suitability analysis.

(d) *Bona Fide Quotations*. The broker, dealer, or municipal securities dealer disseminating an SMMP's "quotation" as defined in Rule G-13, which is labeled as such, shall apply the same standards regarding quotations described in Rule G-13(b) as if such quotations were made by another broker, dealer, or municipal securities dealer.

(e) *Best Execution*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-18 to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the SMMP is as favorable as possible under prevailing market conditions.

Rule G-48 Interpretation

Interpretive Notice on the Application of MSRB Rules to Transactions in Managed Accounts

December 1, 2016

Background

Representatives of brokers, dealers and municipal securities dealers (collectively, "dealers") have increasingly inquired about the application of certain Municipal Securities Rulemaking Board (MSRB) rules to managed accounts in which a registered investment adviser ("RIA") is exercising discretion to buy and sell municipal securities on behalf of the account holder. Specifically, dealers have asked whether, with respect to these transactions, they are expected to:

1) Provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (*i.e*., the RIA's client), particularly if the dealer does not know the identity of the investor; and

2) Obtain a customer affirmation from such an investor for purposes of qualifying the person, separately, as a sophisticated municipal market professional ("SMMP") under MSRB Rule D-15, and owing the modified obligations under MSRB Rule G-48, on transactions with SMMPs, if the RIA is itself an SMMP.[1]

This notice provides background information on the relevant rules, analyzes the questions presented and provides interpretive guidance in response.

Relevant Rules

The principal rules relevant to these interpretive questions are Rules G-47, D-15, and G-48.

MSRB Rule G-47 — Time of Trade Disclosure

Rule G-47 sets forth the general time-of-trade disclosure obligation applicable to dealers. Specifically, pursuant to Rule G-47, a dealer cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. The rule applies regardless of whether the transaction is unsolicited or recommended, occurs in a primary offering or the secondary market, and is a principal or agency transaction. The disclosure can be made orally or in writing.

Information is "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 rule defines "reasonably accessible to the market" as information that is made available publicly through "established industry sources."[2] Finally, the rule defines "established industry sources" as including EMMA, rating agency reports, and other sources of information generally used by dealers that effect transactions in the type of municipal securities at issue. Under these standards, "material information" encompasses a complete description of the security, which includes a description of the features that would likely be considered significant by a reasonable investor, and facts that are material to assessing potential risks of the investment.