

Under rule G-8, the only information which must be obtained in such circumstances for the account to which the transaction is confirmed is the name and address of the account, information which would have to be obtained in any event in order to transmit the confirmation. Since the investment advisor itself is the customer, the other items of customer account information set forth in rule G-8(a)(xi) need not be obtained for the investment advisor's client. The customer account information applicable to institutional accounts, however, must be obtained with respect to the investment advisor. Also, the account records required by rule G-8(a)(ii) would not be required to be maintained for the investment advisor's client, although such records would have to be maintained with respect to the account of the investment advisor.

A municipal securities professional is not required to ascertain the name and address of the beneficial owner or owners of an account if such information is not voluntarily furnished. Subparagraph G-8(a)(xi)(G) applies only when an order is entered on behalf of another person and the transaction is to be confirmed directly to the other person.

A recent court decision, *Rolf v. Blyth Eastman Dillon & Co. Inc., et al.* issued on January 17, 1977, in the United States District Court, Southern District of New York, may have important implications with respect to the obligations generally of securities professionals to beneficial owners of accounts, especially to clients of investment advisors. We commend your attention to this decision, which has been appealed.

#### **Rule G-8(c) — Non-Clearing Municipal Securities Brokers and Municipal Securities Dealers**

Rule G-8(c) provides that a non-clearing municipal securities broker or municipal securities dealer is not required to make and keep the books and records prescribed by rule G-8 if they are made and kept by a clearing broker, dealer, bank or clearing agency. Accordingly, to the extent that records required by rule G-8 are maintained for a municipal securities broker or municipal securities dealer by a clearing agent, the municipal securities broker or municipal securities dealer does not have to maintain such records. A non-clearing municipal securities broker or municipal securities dealer is still responsible for the accurate maintenance and preservation of the records if they are maintained by a clearing agent other than a clearing broker or dealer, and should assure itself that the records are being maintained by the clearing agent in accordance with applicable recordkeeping requirements of the Board.

In the case of a bank dealer, clearing arrangements must be approved by the appropriate regulatory agency for the bank dealer. The bank regulatory agencies are each considering the adoption of procedures to approve clearing arrangements. It is contemplated that these procedures will require the inclusion of certain provisions in clearing agreements, such as an undertaking by the clearing agent to maintain the bank dealer's records in compliance with rules G-8 and G-9, and will specify the mechanics for having such arrangements considered

and approved. The bank regulatory agencies indicate that they will advise bank dealers subject to their respective jurisdictions on this matter in the near future.

In the case of a securities firm, Commission approval is required for all clearing arrangements with entities other than a broker, dealer or bank. The Commission has recently proposed an amendment to its rule 17a-4 which would eliminate the need to obtain Commission approval of clearing arrangements with such other entities, provided that certain specified conditions are met. If the proposed rule is adopted, the Board would make a corresponding change in rule G-8.

If an agent clears transactions, but transmits copies of all records to the municipal securities broker or municipal securities dealer, and these records are preserved by the municipal securities broker or municipal securities dealer in accordance with rule G-9, the clearing arrangement is not subject to the rule G-8(c).

#### **Rule G-9(b)(viii)(C) — Preservation of Written Communications**

Subparagraph (C) of rule G-9(b)(viii) requires municipal securities brokers and municipal securities dealers to preserve for three years all written communications received or sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities.

The communications required to be preserved by this provision relate to the conduct of a firm's activities with respect to municipal securities. Accordingly, such documents as internal memoranda regarding offerings or bids, letters to or from customers and other municipal securities professionals regarding municipal securities, and research reports must be preserved. Documents pertaining purely to administrative matters, such as vacation policy and the like, would not have to be preserved for purposes of the rule.

#### **Notice of Interpretation Concerning Records of Certificate Numbers of Securities Cleared by Clearing Agents**

October 10, 1986

Rule G-8(a)(i) requires that dealers maintain records of original entry that include certificate numbers of all securities received or delivered. The Board has received inquiries whether a dealer must maintain in its records of original entry the certificate numbers of securities that are received or delivered by a clearing agent on behalf of the dealer or whether it is permissible for the clearing agent to maintain records of the certificate numbers for the dealer.

The Board has concluded that, for transactions in which physical securities are cleared by a clearing agent, records of the certificate numbers of the securities required by rule G-8(a)(i) may be maintained by the agent on behalf of the dealer if the dealer obtains an agreement in writing from the agent

in which the following conditions are specified: (i) a complete and current record of certificate numbers of physical securities cleared by the agent will be maintained on behalf of the dealer by the agent; (ii) the agent will preserve such record, and will provide such record to the dealer promptly upon request, in a manner allowing the dealer to comply with Board rule G-9 on maintenance and preservation of records. The Board emphasizes that a dealer allowing a clearing agent to maintain records of certificate numbers on its behalf continues to be responsible for the accurate maintenance and preservation of such records in conformance with the Board's recordkeeping rules.

**See also:**

**Rule G-12 Interpretation — Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems**, March 26, 2001.

**Rule G-17 Interpretation — Notice Concerning Application of Board Rules to Put Option Bonds**, September 30, 1985.

**Rule G-27 Interpretation — Supervisory Procedures for the Review of Correspondence with the Public**, March 24, 2000.

**Rule G-32 Interpretations — Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32**, November 19, 1998.

- **Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers**, November 20, 1998.

### **Interpretive Letters**

**Syndicate records: sole underwriter.** This is in response to your letter regarding rule G-8 on recordkeeping. You note that rule G-8(a)(viii) requires the managing underwriter of a syndicate to maintain certain records pertaining to syndicate transactions. You ask if this rule applies to an underwriter in a sole underwriting.

Rule G-11(a)(viii) defines a syndicate as an account formed by two or more persons for the purpose of purchasing, directly or indirectly, all or any part of a new issue of municipal securities from the issuer, and making a distribution thereof. Since a sole underwriting does not involve a syndicate, rule G-8(a)(viii) does not apply to sole underwritings. Of course, the sole underwriter must maintain other required records for transactions in the new issue. *MSRB interpretation of May 12, 1989.*

**Syndicate records: participations.** This will acknowledge receipt of your letter of November 24, 1981 concerning certain of the requirements of Board rule G-8(a)(viii) regarding syndicate records to be maintained by managers of underwritings of new issues of municipal securities.

You note that this provision requires, in pertinent part, that,

[w]ith respect to each syndicate..., records shall be maintained ... showing ... the name and percentage of participation of each member of the syndicate or account...

You inquire whether this provision necessitates the designation of an actual percentage or decimal participation, or, alternatively,

whether a listing of the ... dollar participation [of each member] ... along with [the] aggregate par value of the syndicate meets the requirement ... of the Rule.

The rule should not be construed to require in all cases an indication of a numerical percentage for each member's participation, if other information from which a numerical percentage can easily be determined is set forth. The method you propose, showing the par value amount of the member's participation, is certainly acceptable for purposes of compliance with this provision of the rule. *MSRB interpretation of December 8, 1981.*

**Recordkeeping by introducing brokers.** Your letter of September 16, 1982, has been referred to me for response. In your letter you indicate that your firm functions as an "introducing broker", and, in such capacity, effects an occasional transaction in municipal securities. You inquire as to the recordkeeping requirements applying to a firm acting in this capacity, and you also inquire as to the possibility of an exemption from the Board's rules, in view of the extremely limited nature of your municipal securities business.

As you recognize, the provision Board rule G-8 on recordkeeping with particular relevance to introducing brokers is section (d), which provides as follows:

A municipal securities broker or municipal securities dealer which, as an introducing municipal securities broker or municipal securities dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker, dealer or municipal securities dealer, and which promptly transmits all customer funds and securities to the clearing broker, dealer or municipal securities dealer which carries all of the accounts of such customers, shall not be required to make and keep *such books and records prescribed in this rule as are customarily made and kept by a clearing broker, dealer or municipal securities dealer and which are so made and kept*; and such clearing broker, dealer or municipal securities dealer shall be responsible for the accurate maintenance and preservation of such books and records. (emphasis supplied)

As you can see, this provision states that the introducing broker need not make and keep those records which are "customarily made and kept by" the clearing dealer, as long as the clearing dealer does, in fact, make and keep those records. The introducing broker is still required, however, to make and keep those records which are not "customarily made and kept by" the clearing firm.

The majority of the specific records you name in your letter fall into the latter category of records which are not customarily made and kept by the clearing firm and therefore remain the responsibility of the introducing broker. Your firm would, therefore, be required to make the records of customer ac-

count information required under rule G-8(a)(xi), with all of the itemized details of information recorded on such records. Your firm would also be required to maintain the records of agency and principal transactions (“order tickets”) required under rules G-8(a)(vi) and (vii) respectively. In both cases, however, if, for some reason, the clearing firm does make and keep these records, your firm would not be required to make and keep duplicates.

In the case of the requirement to keep confirmation copies, it is my understanding that the clearing firm generally maintains such records. If the clearing firm to which you introduce transactions follows this practice and maintain copies of the confirmations of such transactions, you would not be required to maintain the same record.

In adopting each of these recordkeeping requirements the Board concluded that the information required to be recorded was the minimum basic data necessary to ensure proper handling and recordation of the transaction and customer protection. I note also that these requirements parallel in most respects those of Commission rule 17a-3, to which you are already subject by virtue of your registration as a broker/dealer.

With respect to your inquiry regarding an exemption from the Board’s requirements, I must advise that the Board does not have the authority to grant such exemptions. The Securities and Exchange Commission does have the authority to grant such an exemption in unusual circumstances. Any letter regarding such an exemption should be directed to the Commission’s Division of Market Regulation. *MSRB interpretation of September 21, 1982.*

**Securities record.** In your letter, you question the application of Board rule G-8(a)(iii) and, in particular, the requirement that “such [securities] records shall consist of a single record system,” to a situation in which a securities firm maintains such records organized by ownership of the securities. It is my understanding that the firm in question maintains records showing securities in the firm’s trading account, and offsetting positions long and short, and separate records showing securities owned by customers and the offsetting location for those securities.

Rule G-8(a)(iii) requires, in part

[r]ecords showing separately for each municipal security all positions ... carried by such municipal securities broker or municipal securities dealer for its account or for the account of a customer...

Therefore, securities records should be maintained by security, although this can be accomplished by separate sheets showing positions in that security held for trading or investment purposes and positions owned by customers. A record organized by customer, showing several securities and offsetting positions held by that customer, is not acceptable for purposes of rule G-8(a)(iii).

With respect to your question regarding the multiple maturity provision of rule G-8(a)(iii), the relevant position of the rule states

multiple maturities of the same issue of municipal securities, as well as multiple coupons of the same maturity, may be shown on the same record, provided that adequate secondary records exist to identify separately such maturities and coupons.

Therefore, the securities to be shown on a single securities record must be identical as to issue date or maturity date. Securities which are identical as to issuer may be shown on a single securities record only if the securities have either the same issue date or the same maturity date, and if adequate secondary records exist to identify separately the securities grouped on the record. *MSRB interpretation of April 8, 1978.*

**Maintenance of securities record.** I refer to your letter of April 9, 1979 concerning rule G-8(a)(iii), which requires the maintenance of a securities record. This letter is intended to address your questions concerning that provision.

Rule G-8(a)(iii) requires every municipal securities dealer to make and keep

records showing separately for each municipal security all positions (including, in the case of a municipal securities dealer other than a bank dealer, securities in safekeeping) carried by such municipal securities dealer for its own account or for the account of a customer (with all “short” trading positions so designated), the location of all such securities long and the offsetting position to all such securities short, and the name or other designation of the account in which each position is carried.

Rule G-8(a)(iii) further provides that “[s]uch records shall consist of a single record system...,” and that “...a bank dealer shall maintain records of the location of securities in its own trading account.”

The purpose of the requirement to maintain a “securities record” is to provide a means of securities control, ensuring that all securities owned by the dealer or with respect to which the dealer has outstanding contractual commitments are accounted for in the dealer’s records. To achieve this purpose, the record is commonly constructed in “trial balance” format, with information as to the “ownership” of securities reflected on the “long,” or debit side, and information as to the location on the “short,” or credit side of the record. The record therefore serves a different function from the subsidiary records, such as the “fail” records, required to be maintained under other provisions of the rule. The subsidiary records reflect the details of particular securities transactions; the securities record assures that a municipal securities dealer’s over-all position is in balance.

In your letter you inquire specifically whether this record can be constructed through the use of duplicate copies of subsidiary records. The rule requires a system of records organized by security, showing all positions in such security. Record

systems organized by position or locations, showing all securities held in such position or location, cannot serve the same balancing and control function.

The securities record, however, does not have to be maintained on a single sheet or ledger card per security. Although this is the most common means of maintaining a securities record, certain municipal securities dealers prepare segments of the record in different physical locations, bringing the segments together at the close of the business day to compose the securities record. This practice is permissible under the rule.

Finally, you have inquired regarding the possibility of maintaining the securities record on a unit system basis. Records in such a system are kept in the form of a group of documents or related groups of documents, most often files of duplicate confirmations. The maintenance of the securities record on such a basis would be acceptable provided that the required information is clearly and accurately reflected and there is an adequate basis for audit. I would note, however, that utilization of a unit system would probably only be feasible for a municipal securities dealer with very limited activity.

I hope this letter is helpful to you in responding to inquiries from your members. If you or any of your members have any further questions regarding this matter, please do not hesitate to contact us. *MSRB interpretation of April 16, 1979.*

**Securities control.** Your letter dated February 24, 1978, has been referred to me for response. In addition, I understand that you have had several subsequent telephone conversations about your question. In these conversations, you describe the procedures for securities control followed by your bank's dealer department.

Briefly, as we understand your procedures, the dealer department records all certificate numbers of municipal securities received or delivered by the department. This information is recorded in a manner which relates the physical receipt and delivery of specific certificates to specific transactions. Once in safekeeping, the certificates are kept in a vault, and filed by issue, rather than filed separately by account, chronologically, or by transaction. In your letter, you inquired whether this system of filing in the vault raises problems of compliance with Board rule G-8.

Since your bank records in records of original entry the certificate numbers upon receipt and delivery of municipal securities by your dealer department, it appears that your system satisfies the requirement under rule G-8(a)(i) that such information be recorded on the "record of original entry." The safekeeping procedures used by the bank are specifically excluded from the scope of the rule under the provisions of paragraph G-8(a)(iii), which requires

[r]ecords showing...all positions (including, in the case of a municipal securities broker or municipal securities dealer other than a bank dealer, securities in safekeeping)...

Therefore, based on the information you have provided, we believe that your system is in compliance with the applicable provisions of rule G-8. *MSRB interpretation of April 10, 1978.*

**Customer account information.** I am writing in response to your letter of May 25, 1982 concerning the maintenance of customer account information records in connection with certain orders placed with you by a correspondent bank. In your letter you indicate that a correspondent bank periodically purchases securities from your dealer department for the accounts of specified customers. The confirmations of these transactions are sent to the correspondent bank, with a statement on each confirmation designating, by customer name, the account for which the transaction was effected. No confirmations or copies of confirmations are sent to the customers identified by the correspondent bank. You inquire whether customer account information records designating these customers as the "beneficial owners" of these accounts need be maintained by your dealer department.

As you know, rule G-8(a)(xi) requires a municipal securities dealer to record certain information about each customer for which it maintains an account. Subparagraph (G) of such paragraph requires that this record identify the

name and address of beneficial owner or owners of such account if other than the customer *and transactions are to be confirmed to such owner or owners...*(emphasis added)

If the transactions are not to be confirmed to the customers identified as the owners of the accounts for which the transactions are effected, then such information need not be recorded.

In the situation you cite, therefore, the names of the customers need not be recorded on the customer account information record. *MSRB interpretation of June 1, 1982.*

**Use of electronic signatures.** This is in response to your letter and a number of subsequent telephone conversations regarding your dealer department's proposed use of a bond trading system. The system is an online, real-time system that integrates all front and back office functions. The system features screen input of customer account and trading information which would allow the dealer department to eliminate the paper documents currently in use. The signature of the representative introducing a customer account, required to be recorded with customer account information by rule G-8, and the signature of the principal signifying approval of each municipal securities transaction, required by rule G-27, would be performed electronically, *i.e.*, by input in a restricted data field. The signature of the principal approving the opening of the account, required by rule G-8, will continue to be performed manually on a printout of the customer information.<sup>1</sup>

Rule G-8(a)(vi) and (vii) require dealers to make and keep records for each agency and principal transaction. The records may be in the form of trading tickets or similar documents. In addition, rule G-8(a)(xi), on recordkeeping of customer account information, requires, among other things, the signature of the representative introducing the account and the principal

indicating acceptance of the account to be included on the customer account record. Rule G-27(c)(ii)<sup>[\*]</sup> requires, among other things, the prompt review and written approval of each transaction in municipal securities. In addition, the rule requires the regular and frequent examination of customer accounts in which municipal securities transactions are effected in order to detect and prevent irregularities and abuses. The approvals and review must be made by the designated municipal securities principal or the municipal securities sales principal. Rule G-9(e), on preservation of records, allows records to be retained electronically provided that the dealer has adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies.

The Board recognizes that efficiencies would be obtained by the replacement of paper files with electronic data bases and filing systems and generally allows records to be retained in that form.<sup>2</sup> Moreover, as dealers increasingly automate, there will be more interest in deleting most physical records. Electronic trading tickets and auto-mated customer account information satisfy the recordkeeping requirements of rule G-8 as long as such information is maintained in compliance with rule G-9(e).

The Board and your enforcement agency are concerned, however, that it may be difficult to verify a representative's signature on opening the account or a principal's signature approving municipal securities transactions or periodically reviewing customer accounts if the signatures are noted only electronically. Your enforcement agency has advised us of its discussions with you. Apparently, it is satisfied that appropriate security and audit procedures can be developed to permit the use of electronic signatures of representatives and principals and ensure that such signatures are verifiable. Thus, the Board has determined that rules G-8 and G-27 permit the use of electronic signatures when security and audit procedures are agreed upon by the dealer and its appropriate enforcement agency. Whatever procedures are agreed upon must be memorialized in the dealer's written supervisory procedures required by rule G-27. *MSRB Interpretation of February 27, 1989.*

<sup>1</sup> In addition, you noted in a telephone conversation that the periodic review of customer accounts required by rule G-27(c)(ii)<sup>[\*]</sup> also will be handled electronically using the principal's electronic signature to signify approval.

<sup>2</sup> See rule G-9(e).

[\*] [Currently codified at Rule G-27(c)(i)(G)(2).]

**Records of original entry.** Your letter dated October 13, 1978, has been referred to me for response. In your letter you inquire whether a certain method of keeping "records of original entry" is satisfactory for purposes of the requirement to maintain "current" books and records. In particular, you suggest that such records could be maintained by means of a "unit" or "ticket" system during the period from trade date to settlement date, and then recorded on a blotter as of the settlement date.

As indicated to you, such a method of preserving these records is acceptable, provided that all information required to be shown is clearly and accurately reflected in both forms of the record, and both forms provide adequate audit controls. *MSRB interpretation of October 26, 1978.*

**Records of original entry.** This will acknowledge receipt of your letter of June 13, 1979, concerning the requirement under Board rule G-8 for records of original entry. In your letter you discuss a "Bond Register" used by your firm, which is organized by security, and presents on separate cards all transactions in particular securities arranged in chronological order. You inquire whether this is satisfactory for purposes of the Board's recordkeeping rule.

The "record of original entry" required under rule G-8(a)(i) is intended to reflect all transactions effected by a municipal securities dealer on a particular day, all transactions cleared on such day, and all receipts and disbursements of cash on such day. The record is intended to provide a complete review of the dealer's activity for the day in question. It is therefore necessary that the record be organized by date. A record organized by security would not serve the purposes of a record of original entry as envisioned in the Board's rule. *MSRB interpretation of August 9, 1979.*

**Records of original entry: unit system.** This will acknowledge receipt of your letter of November 20, 1981 concerning compliance with certain of the provisions of Board rule G-8 through the use of a "unit system" method of recordkeeping. In your letter you indicate that the bank wishes to maintain the record of original entry required under rule G-8(a)(i) in the form of a collection of duplicate copies of confirmations filed in transaction settlement date order; in addition, you enclose a copy of the confirmation form used by the bank. You inquire whether maintaining the record in this manner would be satisfactory for purposes of the rule.

In a July 29, 1977 interpretive notice on rule G-8 the Board stated:

Under rule G-8, records may be maintained in a variety of ways, including a unit system of recordkeeping. In such a system, records are kept in the form of a group of documents or related groups of documents....

A unit system of recordkeeping is an acceptable system for purposes of rule G-8 if the information required to be shown is clearly and accurately reflected and there is an adequate basis for audit. This would require in most instances that each record in a unit system be arranged in appropriate sequence, whether chronological or numerical, and fully integrated into the over-all recordkeeping system for purposes of posting to general ledger accounts.

Therefore, the type of recordkeeping system you propose may be used for purposes of compliance with rule G-8 if (1) the records show, in a clear and accurate fashion, all of the information that is required to be shown, and (2) the records are maintained in a form that provides an adequate basis for audit by bank employees or examiners. It is my understanding

that recordkeeping systems similar to that which you propose have been inspected by banking regulatory authorities during examinations of other bank municipal securities dealer departments, and have been found to meet these two criteria.

In your letter you indicate that the confirmation form used by your bank “contains all the information needed” to meet the recordkeeping requirement. Our review of your form indicates that this is not the case. The rule requires the record of original entry to contain

an itemized daily record of all purchases and sales of municipal securities, all receipts and deliveries of municipal securities (including bond or note numbers and, if the securities are in registered form, an indication to such effect), all receipts and disbursements of cash with respect to transactions in municipal securities, [and] all other debits and credits pertaining to transactions in municipal securities ... The records of original entry shall show the name or other designation of the account for which each such transaction was effected (whether effected for the account of such municipal securities broker or municipal securities dealer, the account of a customer, or otherwise), the description of the securities, the aggregate par value of the securities, the dollar price or yield and aggregate purchase or sale price of the securities, accrued interest, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

The confirmation form you enclosed does not appear to provide a space for notation of “the name or other designation of the account for which [the] transaction was effected.” This information is distinct from “the name or other designation of the person from whom purchased ... or to whom sold ...” (which would appear in the “name and address” portion of your form) and requires an indication of the account, whether it be the bank’s trading inventory or portfolio, or the contra-principal on an agency transaction, in which the securities were held prior to a sale or will be held subsequent to a purchase. For example, if the bank sells \$100,000 par value securities from its trading account to “Mr. Smith”, the record of original entry would reflect that this transaction was effected for the account of the [bank’s] trading account. A subsequent sale of these securities effected as agent for the customer would be reflected on the record of original entry as for the account of “Mr. Smith.”

I note also that, in addition to a record of purchase and sale transactions (which could easily be maintained in the form of duplicate copies of confirmations), the record of original entry must contain information about transactions cleared on the date of the record as well as cash disbursements and receipts. Your letter does not indicate how your bank would comply with these latter requirements. As you may be aware, other banks using unit recordkeeping systems use additional copies of the confirmation as “clearance” records, with information on receipts and deliveries of securities and movements

of cash noted on these copies. These “clearance” records are then aggregated with the purchase and sale records to form a complete record of original entry.

In summary, the method of maintaining a record of original entry which your bank proposes can be used to comply with the requirements of the rule. Certain aspects of the information required by the rule are not contained on the document you propose to use, however, and provision would have to be made for inclusion of these items in the records before the system you propose would be satisfactory for compliance with the rule’s requirements. *MSRB interpretation of November 24, 1981.*

**Records of original entry; accessibility of records.** As I indicated to you in my previous letter of February 1, 1982, your inquiry of January 21, 1982 was referred to the committee of the Board charged with responsibility for interpreting the requirements of Board rules G-8 and G-9 on books and records. That committee has authorized my sending you this response.

In your letter you indicate that during the course of an examination of your bank’s municipal securities dealer department by the Office of the Comptroller of the Currency certain criticisms were made by the examiners regarding the recordkeeping system used by your bank. In particular, the examiners noted that the “record of original entry” maintained by the bank did not contain seven specified items of information,<sup>1</sup> and expressed the view that customer account records more than one year old were not “maintained and preserved in an easily accessible place” within the meaning of rule G-9. You disagree with the examiner’s interpretation of “easily accessible.” Further, while conceding that the specified items of information are not contained on the record, you indicate that this information is readily available upon specific inquiry to the bank’s system data base, and express the view that this should be sufficient for purposes of compliance with Board rule G-8. You request the Board’s views on these subjects.

As a general matter we would hesitate to disagree with the opinion expressed by an on-site examiner concerning the auditability of records maintained by a municipal securities dealer. The examiner is, of course, in direct contact with the matter in question, and has access to the full details of the situation, rather than an abstraction or summary of the particulars. Accordingly, we are unable to express a view that the examiner’s criticisms are incorrect in the specific circumstances you describe.

With respect to the particular questions which you raise, we note that rule G-8 does require that all of the specified information appear on the record or system of records designated as the dealer’s “record of original entry.” It is not sufficient that the dealer has the capability of researching specific items, or constructing a record upon request from information maintained in other formats. The record of original entry is intended to provide a journal of all of the basic details of a

dealer's activity on a given day. A record that can only be put together on request, or that is missing basic details of information, is not sufficient for this purpose.

We note also that, in reviewing the attachments to your letter, it appears that the absence of several of the specified items of information would be easy to rectify—institution of controls to prevent duplication of customer and security abbreviations would appear to resolve the problems with these details, and a system of grouping transaction input could be devised so that trades for different trade dates are not shown on the same blotter. Similarly, bond or note numbers could be designated on transaction tickets maintained as an augmentation of the computerized records; the attachments indicate that you already maintain such tickets as part of an existing unit system.

With respect to the question of accessibility, we note that this is generally construed by the examining authorities to mean accessibility within 24 or 48 hours. If a system could be devised whereby requests from the dealer department for aged customer account records could be given priority and processed on an expedited basis, this might rectify the problem you describe. *MSRB interpretation of April 27, 1982.*

<sup>1</sup> Dollar price or yield, trade date, name of contra party (due to use of abbreviations), security identification (due to use of abbreviations), designation of account for which transaction was effected, bond or note numbers, and designation if securities were registered.

**Time of receipt and execution of orders.** This is in response to your March 3, 1987 letter regarding the application of rule G-8, on recordkeeping, to [name deleted]'s (the "Bank") procedure on time stamping of municipal securities order tickets. You note that it is the Bank's policy to indicate on order tickets the date and time of receipt of the order and the date and time of execution of the order. You note, however, that when the order and execution occur simultaneously, it is your procedure to time stamp the order ticket once. You ask for Board approval of this policy.

Rule G-8(a)(vi) provides in pertinent part for a "memorandum of each agency order . . . showing the date and time of receipt of the order . . . and the date of execution and to the extent feasible, the time of execution . . ." Rule G-8(a)(vii) includes a similar requirement for principal transactions with customers. As noted in a Board interpretive notice on recordkeeping, the phrase "to the extent feasible" is intended to require municipal securities professionals to note the time of execution of each transaction except in extraordinary circumstances when it might be impossible to determine the exact time of execution. However, even in those unusual situations, the rule requires that at least the approximate time be noted.<sup>1</sup> This rule parallels SEC rule 17a-3(a)(6) and (7) on record-keeping.

Thus, rule G-8(a)(vi) and (vii) required agency and principal orders to be time stamped upon receipt and upon execution. The requirement is designed to allow the dealer and the appropriate examining authority to determine whether the dealer has complied with rule G-18, on execution of transactions, and rule G-30, on pricing. Rule G-18 states that when a dealer

is "executing a transaction in municipal securities for or on behalf of a customer as an agent, it shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions." Rule G-30(a) states that a dealer shall not effect a principal transaction with a customer except at a fair and reasonable price, taking into consideration all relevant factors including the fair market value of the securities at the time of the transaction. It is impossible to determine what the prevailing market conditions were at the time of the execution of the order if the date and time of execution are not recorded. In addition, it is important to time stamp the receipt and execution of an order so that a record can be maintained of when the order is executed.

Thus, even when the order and execution occur simultaneously, rule G-8 requires that two time stamps be included on order tickets. *MSRB interpretation of April 20, 1987.*

<sup>1</sup> See [Rule G-8 Interpretation — ] Interpretive Notice on Recordkeeping (July 29, 1977) [reprinted in *MSRB Rule Book*].

**Contract sheets.** This will respond to your letter of May 28, 1987, and confirm our telephone conversation of the same date concerning recordkeeping of "contract sheets." You ask whether dealers are required by Board rules G-8 and G-9 to maintain records of "contract sheets" of municipal securities transactions.

Rule G-8(a)(ix) requires dealers to maintain records of all confirmations of purchases and sales of municipal securities, including inter-dealer transactions. Rule G-12(f), in certain instances, requires interdealer transactions to be compared through an automated comparison system operated by a clearing agency registered with the Securities and Exchange Commission, rather than by physical confirmations.<sup>1</sup> These automated comparison systems generate "contract sheets" to each party of a trade, which confirm the existence and the terms of the transaction.

This will confirm my advice to you that such contract sheets are deemed to be confirmations of transactions for purposes of rule G-8(a)(ix). Thus, dealers are required to include contract sheets in their records of confirmations and, under rule G-9(b) (v), are required to maintain these records for no less than three years.<sup>2</sup> *MSRB interpretation of June 25, 1987.*

<sup>1</sup> Rule G-12(c) governs the content of and procedures for sending physical confirmations.

<sup>2</sup> You also ask about the interpretation of rules 17a-3 and 17a-4 under the Securities Exchange Act. The Board is not authorized to interpret these Securities and Exchange Commission rules. You may wish to contact the SEC for guidance on this matter.

**See also:**

**Rule G-36 Interpretive Letter — Multiple underwriters, *MSRB interpretation of January 30, 1998***

### **Rule G-8 Amendment History (since 2003)**

[Release No. 34-80699 \(May 16, 2017\)](#), [82 FR 23394 \(May 22, 2017\)](#); [MSRB Notice 2017-10 \(May 17, 2017\)](#)

[Release No. 34-79801 \(January 13, 2016\), 82 FR 7898 \(January 23, 2017\); MSRB Notice 2017-03 \(January 18, 2017\)](#)

[Release No. 34-76381 \(November 6, 2015\), 80 FR 70271 \(November 13, 2015\); MSRB Notice 2015-21 \(November 9, 2015\)](#)

[Release No. 34-76753 \(December 23, 2015\), 80 FR 81614 \(December 30, 2015\); MSRB Notice 2016-03 \(January 13, 2016\)](#)

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

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

[Release No. 34-70532 \(September 26, 2013\), 78 FR 60956 \(October 2, 2013\); MSRB Notice 2013-20 \(September 27, 2013\)](#)

[Release No. 34-69249 \(March 28, 2013\), 78 FR 20156 \(April 3, 2013\); MSRB Notice 2013-09 \(April 1, 2013\)](#)

[Release No. 34-68472 \(December 19, 2012\), 77 FR 76146 \(December 26, 2012\); MSRB Notice 2012-64 \(December 24, 2012\)](#)

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

[Release No. 34-62755 \(August 20, 2010\), 75 FR 52793 \(August 27, 2010\); MSRB Notice 2010-31 \(August 26, 2010\)](#)

[Release No. 34-62715 \(August 13, 2010\), 75 FR 51128 \(August 18, 2010\); MSRB Notice 2010-26 \(August 15, 2010\)](#)

[Release No. 34-61381 \(January 20, 2010\), 75 FR 4126 \(January 26, 2010\); MSRB Notice 2010-01 \(January 22, 2010\)](#)

[Release No. 34-59873 \(May 6, 2009\), 74 FR 22780 \(May 14, 2009\); MSRB Notice 2009-16 \(April 28, 2009\)](#)

[Release No. 34-58154 \(July 15, 2008\), 73 FR 42388 \(July 21, 2008\); MSRB Notice 2008-32 \(July 22, 2008\)](#)

[Release No. 34-57750 \(May 1, 2008\), 73 FR 25815 \(May 7, 2008\); MSRB Notice 2008-22 \(May 2, 2008\)](#)

[Release No. 34-57463 \(March 11, 2008\), 73 FR 14292 \(March 17, 2008\); MSRB Notice 2008-10 \(February 20, 2008\)](#)

[Release No. 34-55792 \(May 22, 2007\), 72 FR 29564 \(May 29, 2007\); MSRB Notice 2007-16 \(May 25, 2007\)](#)

[Release No. 34-51737 \(May 24, 2005\), 70 FR 31552 \(June 1, 2005\); MSRB Notice 2005-25 \(May 3, 2005\)](#)

[Release No. 34-51534 \(April 12, 2005\), 70 FR 20194 \(April 18, 2005\); MSRB Notice 2005-18 \(March 21, 2005\)](#)

[Release No. 34-52555 \(October 3, 2005\), 70 FR 59106 \(October 11, 2005\); MSRB Notice 2005-52 \(October 5, 2005\)](#)



## Rule G-9

### Preservation of Records

(a) *Records to be Preserved for Six Years.* Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) the records of original entry described in rule G-8(a)(i);

(ii) the account records described in rule G-8(a)(ii);

(iii) the securities records described in rule G-8(a)(iii);

(iv) the records concerning primary offerings described in rule G-8(a)(viii), provided, however, that such records need not be preserved for a syndicate or by a sole underwriter that, in either case is not successful in purchasing an issue of municipal securities;

(v) the customer complaint records described in rule G-8(a)(xii);

(vi) if such broker, dealer or municipal securities dealer is subject to rule 15c3-1 under the Act, the general ledgers described in paragraph (a)(2) of rule 17a-3 under the Act;

(vii) the record, described in rule G-27(b)(ii), of each person designated as responsible for supervision of the municipal securities activities of the broker, dealer, or municipal securities dealer and the designated principal's supervisory responsibilities, provided that such record shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation;

(viii) the records to be maintained pursuant to rule G-8(a)(xvi); provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness;

(ix) the records regarding information on gifts and gratuities and employment agreements required to be maintained pursuant to rule G-8(a)(xvii); and

(x) the records required to be maintained pursuant to rule G-8(a)(xviii); and

(xi) the records concerning secondary market trading account transactions described in rule G-8(a)(xxiv), provided, however, that such records need not be preserved for a secondary market trading account which is not successful in purchasing municipal securities;

(xii) the records required to be maintained pursuant to rule G-8(a)(xxv);

(xiii) the records required to be maintained pursuant to rule G-8(a)(xxvi); and

(xiv) the records required to be maintained pursuant to Rule G-8(g)(iii).

(b) *Records to be Preserved for Four Years.* Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than four years; pro-

vided, however, that each municipal securities dealer that is a bank or subsidiary or department or division of a bank shall preserve the following records for a period of not less than three years:

(i) the subsidiary records described in rule G-8(a)(iv);

(ii) the records of put options and repurchase agreements described in rule G-8(a)(v);

(iii) the records relating to agency transactions described in rule G-8(a)(vi);

(iv) the records of transactions as principal described in rule G-8(a)(vii);

(v) the copies of confirmations and other notices described in rule G-8(a)(ix);

(vi) the customer account information described in rule G-8(a)(xi), provided that records showing the terms and conditions relating to the opening and maintenance of an account shall be preserved for a period of at least six years following the closing of such account;

(vii) if such broker, dealer or municipal securities dealer is subject to rule 15c3-1 under the Act, the records described in subparagraphs (a)(4)(iv) and (vi) and (a)(11) of rule 17a-3 and subparagraphs (b)(5) and (b)(8) of rule 17a-4 under the Act;

(viii) the following records, to the extent made or received by such broker, dealer or municipal securities dealer in connection with its business as such broker, dealer or municipal securities dealer and not otherwise described in this rule:

(A) check books, bank statements, canceled checks, cash reconciliations and wire transfers;

(B) bills receivable or payable;

(C) all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities;

(D) all written agreements entered into by such broker, dealer or municipal securities dealer, including agreements with respect to any account; and

(E) all powers of attorney and other evidence of the granting of any authority to act on behalf of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(ix) all records relating to fingerprinting which are required pursuant to paragraph (e) of rule 17f-2 under the Act;

(x) all records relating to Rule G-32 required to be retained as described in rule G-8(a)(xiii);

(xi) the records to be maintained pursuant to rule G-8(a)(xv);