V. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act [196] that the proposed rule change (SR–FINRA–2014–028) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[197]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04419 Filed 3–3–15; 8:45 am]

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[196] 15 U.S.C. 78s(b)(2).

[197] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74384; File No. SR–MSRB–2014–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rules G–1, on Separately Identifiable Department or Division of a Bank; G–2, on Standards of Professional Qualification; G–3, on Professional Qualification Requirements; and D–13, on Municipal Advisory Activities

February 26, 2015.

I. Introduction

On November 18, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of proposed amendments to MSRB Rules G–1, on separately identifiable department or division of a bank; G–2, on standards of professional qualification; G–3, on professional qualification requirements; and D–13, on municipal advisory activities (the ''proposed rule change''). The proposed rule change was published for comment in the **Federal Register** on December 5, 2014.[3]

The Commission received five comment letters on the proposed rule change.[4] On February 5, 2015, the MSRB submitted a response to the comments on the proposed rule change [5] and filed Amendment No. 1 (''Amendment No. 1'').[6]

The Commission received two comment letters on Amendment No. 1.[7] On February 20, 2015, the MSRB submitted a response to the comments on Amendment No.1.[8] On February 25, 2015, the MSRB submitted Amendment No. 2 (''Amendment No. 2'' and together with Amendment No. 1, the ''Amendments'').[9] The Commission is publishing this notice to solicit comments on the Amendments from interested persons and is approving the proposed rule change, as modified by the Amendments, on an accelerated basis.

II. Description of the Proposed Rule Change

According to the MSRB, the purpose of the proposed rule change is to establish professional qualification requirements for municipal advisors and their associated persons and to make related changes to select MSRB rules.[10] A full description of the proposed rule change is contained in the Proposing Release.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225 (December 5, 2014) (the ''Proposing Release'').

[4] *See* Letters from Anonymous, dated December 25, 2014; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated December 26, 2014 (''SIFMA Letter''); Anonymous Attorney, on behalf of a registered investment advisor and municipal advisor (''Anonymous Attorney''), dated December 26, 2014 (''Anonymous Letter''); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI''), dated December 29, 2014 (''ICI Letter''); and Terri Heaton, President, National Association of Municipal Advisors (''NAMA''), dated January 27, 2015 (''NAMA Letter No. 1'').

[5] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated February 5, 2015 (''MSRB Response Letter No. 1'').

[6] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated February 5, 2015. Amendment No. 1 partially amends the text of the proposed rule change to revise Rules G–1(a)(ii)(B), G–3(a)(i)(A)(2) and G–3(b)(i)(B) by deleting the following clause: ''Except to the extent a person must be qualified as a municipal advisor representative to perform such services.'' The MSRB believes that it would be premature to include such clause until certain foundational rules regarding municipal advisors are approved and effective.

[7] *See* Letters from Dave A. Sanchez Attorney at Law (''Sanchez''), dated February 12, 2015 (''Sanchez Letter''); and Terri Heaton, President, NAMA, dated February 12, 2015 (''NAMA Letter No. 2'').

[8] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated February 20, 2015 (''MSRB Response Letter No. 2'' and together with MSRB Response Letter No. 1, the ''MSRB Response Letters'').

[9] *See* Letter to Secretary, Commission, from Michael Cowart, Assistant General Counsel, MSRB, dated February 25, 2015. Amendment No. 2 partially amends Amendment No. 1 to correct a technical error in a quotation of rule text.

[10] *See supra* note 3 at 2.

1. Proposed Amendments to Rule G–1

The proposed amendments to Rule G–1 includes language to provide that, for purposes of its municipal advisory activities, the term ''separately identifiable department or division of a bank'' would have the same meaning as used in 17 CFR 240.15Ba1–1(d)(4).[11]

2. Proposed Amendments to Rule G–2

The proposed amendments to Rule G–2 add a basic requirement that no municipal advisor shall engage in municipal advisory activities unless such municipal advisor and every natural person associated with such municipal advisor is qualified in accordance with the rules of the Board.[12]

3. Proposed Amendments to Rule G–3

Apprenticeship

MSRB Rule G–3 currently requires a municipal securities representative to serve an apprenticeship period of 90 days before transacting business with any member of the public or receiving compensation for such activities.[13] The MSRB believes that dealers and municipal advisors should determine the length and nature of the initial training for newly registered persons, consistent with industry feedback and the approach taken by Financial Industry Regulatory Authority (''FINRA'').[14] Accordingly, the proposed amendments to Rule G–3 eliminate the apprenticeship requirement for municipal securities representatives and, similarly, do not propose an apprenticeship requirement for municipal advisor representatives.[15]

New Registration Classifications

The proposed amendments to Rule G–3 create two new registration classifications: (i) Municipal advisor representative; and (ii) municipal advisor principal.[16]

The proposed amendments to Rule G–3 define a ''municipal advisor representative'' as a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions.[17] The proposed amendments to Rule G–3 require each municipal advisor representative to take and pass the Municipal Advisor

[11] *See* Exhibit 5 of the Amendments.

[12] *Id.*

[13] *See supra* note 3 at 9.

[14] *Id.*

[15] *Id.*

[16] *See supra* note 11.

[17] *Id.*

Representative Qualification Examination prior to being qualified as a municipal advisor representative.[18]

The proposed amendments to Rule G–3 define a ''municipal advisor principal'' as a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.[19] The proposed amendments to Rule G–3 require each municipal advisor to designate at least one municipal advisor principal.[20]

In addition, the proposed amendments to Rule G–3 require any person who ceases to be associated with a municipal advisor for two or more years (at any time after having qualified as a municipal advisor representative) to take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless a waiver is granted.[21]

MSRB Waiver

The proposed amendments to Rule G–3 and the Supplementary Material permit the MSRB to consider waiving the requirement that a municipal advisor representative or municipal advisor principal pass the Municipal Advisor Representative Qualification Examination in extraordinary cases: (1) Where the applicant participated in the development of the Municipal Advisor Representative Qualification Examination as a member of the MSRB's Professional Qualifications Advisory Committee (''PQAC''); or (2) where the applicant previously qualified as a municipal advisor representative by passing the Municipal Advisor Representative Qualification Examination and such qualification lapsed pursuant to Rule G–3(d)(ii)(B).[22]

4. Proposed Amendments to Rule D–13

Currently, Rule D–13 defines municipal advisory activities as the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act.[23] The proposed amendments to Rule D–13 incorporate Commission rules into the definition by providing that the term ''municipal advisory activities'' means, except as otherwise specifically provided by rule of the Board, the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder.[24]

5. Technical Amendments

The proposed rule change would also make minor technical amendments to select MSRB rules, such as amending Rule G–3(a)(ii) to correctly re-letter G–3(a)(ii)(D) as G–3(a)(ii)(C).[25]

6. Effective Date

The MSRB requested that the proposed rule change become effective 60 days following the date of Commission approval.[26] The MSRB stated that the effective date of the Municipal Advisor Representative Qualification Examination will be announced by the MSRB with at least 30 days notice.[27] The MSRB further stated that prospective municipal advisor representatives will have one year from the effective date of the Municipal Advisor Representative Qualification Examination to pass such examination.[28]

III. Summary of Comments Received and the MSRB's Response

The Commission received five comment letters in response to the proposed rule change (four of which provide substantive comments) and two comment letters in response to Amendment No. 1.[29] The Commission received MSRB Response Letter No. 1 in response to comments regarding the proposed rule change and MSRB Response Letter No. 2 in response to comments regarding Amendment No. 1.[30] A full description of the comments, MSRB responses, and amendments are contained in the comment letters, the MSRB Response Letters, and the Amendments, respectively.

1. SIFMA Letter

Professional Qualifications Examination

SIFMA believes that persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities.[31] In other words, SIFMA believes that after the effective date of the proposed rule change, the Series 52 qualification examination should be sufficient for both municipal securities representatives and municipal advisor representatives.[32]

Given the new regulatory regime for municipal advisors and the differences in the roles of municipal advisor and securities professionals, the MSRB does not believe the Series 52 examination (or the general securities representative examination that qualified municipal securities representatives before November 7, 2011) would sufficiently determine whether a municipal advisor professional meets a minimal level of competency to engage in municipal advisory activities.[33] The MSRB stated that the focus of the Series 52 examination is not on municipal advisory activities.[34] The MSRB further stated that the questions being developed for the Municipal Advisor Representative Qualification Examination target the job responsibilities of municipal advisor professionals.[35] The MSRB noted that the roles and job responsibilities of municipal advisor representatives and municipal securities representatives are distinct, and the body of law that applies to each type of professional reflects the differences in such roles and responsibilities.[36]

SIFMA is concerned that development of a new qualification examination would take an additional two to three years.[37] SIFMA states that because the Series 52 examination currently exists there would be no unnecessary delay in developing test material and administering the test, thereby avoiding an unnecessary delay in testing.[38] SIFMA also contends it would be faster and more cost efficient for municipal advisor professionals to take the Series 52 examination.[39]

The MSRB does not agree with SIFMA's assertion that developing a new qualification examination would take an additional two to three years.[40] The MSRB stated that PQAC has been working expeditiously in developing the Municipal Advisor Representative Qualification Examination.[41] The MSRB also reiterated its position that it does not believe the Series 52 examination would test the basic competency of municipal advisor professionals.[42] The MSRB believes that while it is hard to dispute that using an existing exam would be faster and less costly, such an approach would fail to demonstrate basic competency of municipal advisor

[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See supra* note 3 at 5.
[24] *See supra* note 11.
[25] *Id.*
[26] *See supra* note 3 at 10.
[27] *Id.*
[28] *Id.* at 6.
[29] *See supra* notes 4 and 7.
[30] *See supra* notes 5 and 8.
[31] *See* SIFMA Letter at 2.
[32] *Id.*
[33] *See* MSRB Response Letter No. 1 at 3.
[34] *Id.* at 3–4.
[35] *Id.* at 4.
[36] *Id.*
[37] *See* SIFMA Letter at 3.
[38] *Id.* at 4.
[39] *Id.* at 3.
[40] *See* MSRB Response Letter No. 1 at 4.
[41] *Id.*
[42] *Id.*

professionals to engage in municipal advisory activities.[43] The MSRB stated that the costs, timing, and efficiency of the proposed rule change should only be appropriately compared to reasonable regulatory alternative—a criterion the Series 52 examination does not meet.[44]

SIFMA suggests that developing a separate test for municipal advisor professionals is an inefficient process and unfairly burdens the large percentage of municipal advisor professionals who are associated with municipal securities dealers.[45]

The MSRB does not believe that such individuals would be unfairly burdened by a new test.[46] To the contrary, the MSRB believes that failing to develop a separate test for municipal advisor professionals could place individuals not associated with dealers at a competitive disadvantage and could result in an undue burden on small municipal advisors.[47] The MSRB stated that the market for municipal advisory services is separate and distinct from the market for the services of municipal securities brokers and dealers and, as such, it is both appropriate and reasonable that all professionals providing municipal advisory services should be evaluated according to identical criteria, regardless of the status of their employer.[48]

Grandfathering Current Municipal Securities Representatives

SIFMA suggests that if the MSRB decides to continue with the development of a new test for qualification as a municipal advisor representative, then associated persons currently qualified as municipal securities representatives should be grandfathered in as municipal advisor representatives, if they so choose.[49] SIFMA believes that this methodology would be consistent with other major changes to qualifications examinations.[50]

The MSRB responded by reiterating its view that grandfathering would be inconsistent with the intent of Congress.[51] The MSRB believes that requiring municipal advisor professionals to take and pass a basic qualification examination ensures that these individuals possess a minimum level of understanding of the role and responsibilities of municipal advisors and the applicable rules and regulations.[52] The MSRB stated that investors, municipal entities, and the general public will be better served by a regulatory regime that requires all municipal advisor professionals to pass the same basic competency test.[53]

Economic Analysis

SIFMA believes that the cost-benefit analysis contained in in the Proposing Release was inadequate.[54] SIFMA suggests that the MSRB conduct a full cost-benefit analysis of the proposed rule change prior to its approval.[55]

The MSRB responded by stating that it considered the costs and benefits of the proposed rule change and even utilized the cost estimate per individual test taker provided by SIFMA in determining the likely initial cost to the industry and the likely ongoing expense.[56] The MSRB also refined its estimate of the initial cost based on the number of Form MA-Is filed with the SEC by registered municipal advisors (as of January 20, 2015), which the MSRB stated is not materially different from the cost estimate used in its economic analysis.[57] The MSRB believes its economic analysis was sound and that no further analysis is warranted.[58]

Continuing Education Requirement for Municipal Advisor Representatives

SIFMA suggests that the MSRB develop continuing education requirements for municipal advisor representatives.[59] SIFMA believes this concern was not addressed by the proposed rule change.[60]

The MSRB responded by stating that such suggestion is not relevant to the proposed rule change.[61] The MSRB noted that the Act requires the MSRB to provide continuing education requirements for municipal advisors and it will likely consider rulemaking on this topic in the near future.[62]

PQAC Nomination Process

SIFMA and its members believe that the process for nomination to the MSRB's PQAC should be fully transparent and the members of PQAC should be listed on the MSRB's Web site.[63] Also, SIFMA further states that it is in the best interest of every industry member to ensure that the test questions that are developed are fair, even-handed and suitable for a basic competency examination.[64]

The MSRB stated that it understands the concern raised by SIFMA and believes that its examinations are developed in a fair, even-handed and suitable manner.[65] The MSRB stated it contemplated publishing the names of PQAC members but is concerned that such transparency will undermine the test development process.[66] The MSRB believes that it is not appropriate to publish the names of PQAC members given the importance of confidentiality and the integrity of the process.[67] The MSRB further stated that it contracts with an external testing professional to ensure the overall integrity of the test development process, including the selection of PQAC members, is fair and in accordance with accepted standards for professional test development.[68] Nevertheless, the MSRB stated that it will consider providing more information about the selection process and the criteria used by the MSRB to select PQAC members.[69]

2. ICI Letter

ICI recommends that the MSRB reconsider its current approach to develop only one examination for representatives because such approach will result in use of an examination that does not sufficiently test competencies relevant to the advisory representative's business and is inconsistent with the approach taken by other self-regulatory organizations.[70] ICI suggests that the MSRB utilize at least two examinations—one for representatives of a municipal advisor whose advisory activities are limited to municipal fund securities, and one for representatives whose advice is limited to municipal securities other than municipal fund securities.[71]

The MSRB responded by stating that it believes that individuals who engage in municipal advisory activities regarding municipal fund securities should demonstrate knowledge of all of the rules and regulations governing municipal advisors.[72] The MSRB stated that these rules and regulations

[43] *Id.* 4–5.
[44] *Id.* at 5.
[45] *See* SIFMA Letter at 5.
[46] *See* MSRB Response Letter No. 1 at 5.
[47] *Id.*
[48] *Id.*
[49] *See* SIFMA Letter at 5.
[50] *Id.*
[51] *See* MSRB Response Letter No. 1 at 5.
[52] *Id.*
[53] *Id.*
[54] *See* SIFMA Letter at 6.
[55] *Id.* at 2.
[56] *See* MSRB Response Letter No. 1 at 6.
[57] *Id.*
[58] *Id.*
[59] *See* SIFMA Letter at 6.
[60] *Id.*
[61] *See* MSRB Response Letter No. 1 at 6.
[62] *Id.*
[63] *See* SIFMA Letter at 6.
[64] *Id.* at 6–7.
[65] *See* MSRB Response Letter No. 1 at 6.
[66] *Id.*
[67] *Id.* at 7.
[68] *Id.*
[69] *Id.*
[70] *See* ICI Letter at 2.
[71] *Id.*
[72] *See* MSRB Response Letter No. 1 at 7.

generally will apply to all municipal advisors, regardless of the product that is the subject of the advice provided.[73] As such, the MSRB believes that all municipal advisors should have knowledge of the regulatory framework and the basic obligations of municipal advisors.[74]

ICI stated that it recognizes its recommendation of two examinations may impose additional burdens, however, ICI believes such approach is consistent with the manner in which self-regulatory organizations have long implemented examination requirements.[75] ICI further stated that there is a long-standing self-regulatory organization practice of developing discrete examinations based on the nature of the business conducted.[76]

The MSRB responded by noting that self-regulatory organizations have developed a number of qualification examinations; however, most of these examinations are focused on the role of the investment professional, such as compliance officer (Series 14), investment adviser (Series 65), operations professional (Series 99), research analyst (Series 86 and 87), equity trader (Series 55), financial and operations principal (Series 27), general securities principal (Series 24), general securities sales supervisor (Series 9 and 10), and general securities representative (Series 7).[77] The MSRB stated that for each of these examinations, a test taker may be required to demonstrate knowledge of a variety of products, consistent with the role of the individual; even where an examination is limited a candidate is expected to be familiar with a variety of products.[78] Consequently, the MSRB believes its approach to the Municipal Advisor Representative Qualification Examination is consistent with its prior practice and the practice of other self-regulatory organizations.[79]

3. Anonymous Letter

Anonymous Attorney believes that individuals who are Chartered Financial Analyst (''CFA'') charterholders should be exempt from the proposed Municipal Advisor Representative Qualification Examination requirement in the manner suggested by the CFA Institute (''CFAI'') in the CFAI's response to MSRB Regulatory Notice 2014–08.[80] CFAI proposed that the examination requirement be constructed in a modular fashion with one component focusing on the knowledge of business and the second component devoted to the rules and regulations of the municipal securities market.[81] CFAI also requested that CFA charterholders be granted a waiver from the examination component focusing on the knowledge of business.[82] Anonymous Attorney believes that separating the examination into two modules can be undertaken with minimal effort.[83] Anonymous Attorney also stated that the examination requirement is burdensome and concluded that such examination could drive some CFA charterholders out of the municipal advisory business.[84]

The MSRB stated that it recognizes the requirements established by CFAI for CFA charterholders and understands that fixed income securities are covered on its examinations.[85] However, the MSRB explained that the Municipal Advisor Representative Qualification Examination will focus on the role and responsibilities of municipal advisor professionals and the rules and regulations governing their conduct.[86] The MSRB highlighted that the Municipal Advisor Representative Qualification Examination will not solely test a candidate's knowledge of municipal securities.[87] In addition, the MSRB stated that Anonymous Attorney has not provided any evidence that the CFA examinations (Levels I, II or III) test an individual's knowledge of the role and responsibilities of a municipal advisor.[88] The MSRB believes the assertion that CFA charterholders may be driven out of the market because of the new test is purely speculative.[89] The MSRB further stated that Anonymous Attorney offers no information regarding the number of CFA charterholders that are engaged in municipal advisory activities or why they would be in any different position than individuals who passed other qualification examinations.[90] Given that the costs and time associated with receiving and maintaining a CFA charter exceed any reasonable estimate of the costs to complete a new municipal advisor examination, the MSRB stated its expectation that the new exam would add only marginally to a CFA charterholder's professional qualification expenses.[91] For the foregoing reasons, the MSRB does not believe that a modular examination for municipal advisor professionals would be appropriate.[92]

4. NAMA Letter No. 1

NAMA supports the efforts of the MSRB to set professional qualification standards for municipal advisor professionals.[93] NAMA believes the MSRB has taken the most cost-effective approach at this time.[94] Additionally, NAMA supports the decision by the MSRB to have a uniform competency requirement for all persons deemed to be municipal advisor representatives regardless of whether such persons have passed other examinations (such as the Series 52 or Series 7 examinations).[95] Consistent with the proposed rule change, NAMA does not believe that the MSRB should grandfather individuals who have passed such examinations.[96] NAMA suggests, however, that the MSRB continue to evaluate the feasibility and wisdom of supplemental or targeted subject matter examinations.[97]

The MSRB does not believe that a supplemental or targeted subject area examination approach is appropriate.[98] The MSRB believes it has a demonstrated commitment to seeking ways to improve regulatory efficiency generally and would be open to assessing alternative approaches to the assessment of professional qualifications once the municipal advisor regulatory framework is fully implemented.[99]

5. Sanchez Letter and NAMA Letter No. 2

Sanchez expressed concern that Amendment No. 1 will effectively create an exemption for municipal securities representatives who engage in financial advisory and consultant services for issuers in connection with the issuance of municipal securities (the ''subject activity'') from having to pass the Municipal Advisor Representative Qualification Examination to qualify as municipal advisor representatives.[100] Similarly, NAMA expressed concern that Amendment No. 1 would provide municipal securities representatives

[73] *Id.*
[74] *Id.*
[75] *See* ICI Letter at 3–4.
[76] *Id.*
[77] *See* MSRB Response Letter at 7–8.
[78] *Id.*
[79] *Id.* at 8.
[80] *See* Anonymous Letter No. 1 at 1.
[81] *Id.*
[82] *Id.*
[83] *Id.* at 2.
[84] *Id.* at 3.
[85] *See* MSRB Response Letter No. 1 at 8.
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.* at 8–9.
[92] *Id.* at 9.
[93] *See* NAMA Letter No. 1 at 1.
[94] *Id.* at 2.
[95] *Id.* at 1.
[96] *Id.* at 2.
[97] *Id.*
[98] *See* MSRB Response Letter No. 1 at 9.
[99] *Id.*
[100] *See* Sanchez Letter at 1.

who engage in the subject activity an exemption from having to pass the Municipal Advisor Representative Qualification Examination because the subject activity would be considered municipal securities representative activity.[101] NAMA also stated that Amendment No. 1 expands the definition of municipal advisory activity, as provided by the Act and Commission rules, because it appears to allow dealers and bank dealers to engage in municipal advisory activity without proper registration.[102]

The MSRB responded by clarifying that Amendment No. 1 would not have the effect of limiting, and was not intended to limit, the applicability of the municipal advisor regulatory regime, including MSRB rules governing the municipal advisory activities of municipal advisors, or to alter the definition of municipal advisory activities.[103] The MSRB noted that the determination of whether an individual is engaged in municipal advisory activities is based on the scope of the individual's activities, and not the individual's status.[104] The MSRB stated that due to such principle, a dealer and its associated persons could simultaneously be subject to MSRB rules applicable to dealers and MSRB rules applicable to municipal advisors.[105]

The MSRB stated that Amendment No. 1 would retain the current language in the MSRB professional qualification rules to prevent any confusion regarding the application of MSRB rules governing dealers to the financial advisory activities of municipal securities representatives while MSRB rules governing municipal advisors are developed and implemented and until the MSRB makes any future determinations regarding the application of such rules.[106] The MSRB further stated that any individual engaged in or supervising municipal advisory activities must comply with the professional qualification requirements for municipal advisor representatives, which will include at a future date the taking and passing of the Municipal Advisor Representative Qualification Examination.[107] The MSRB also represented that Amendment No. 1 has no bearing on the definition of municipal advisory activities.[108]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by the Amendments, as well as the comments received, and the responses by the MSRB to such comments. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act, which provides that the MSRB's rules shall provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless . . . such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[109] Section 15B(b)(2)(A) of the Act also provides that, in connection with the definition and application of such standards, the MSRB may appropriately classify municipal advisors and their associated persons, specify that all or any portion of such standards shall be applicable to any such class, and require persons in any such class to pass an examination regarding such standards of competence.[110] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act because the proposed rule change requires individuals who engage in or supervise municipal advisory activities to pass a professional qualification examination which is an established means for determining the basic competency of individuals in a particular class. The Commission believes that requiring prospective municipal advisor representatives to pass a basic qualification examination will protect investors, municipal entities, and obligated persons by ensuring such representatives have a basic understanding of the role of a municipal advisor representative and the rules and regulations governing such individuals.

Additionally, Section 15B(b)(2)(L)(iii) of the Act provides that the MSRB's rules shall provide professional standards with respect to municipal advisors.[111] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iii) of the Act because it would establish professional standards for those individuals engaged in or supervising municipal advisory activities by requiring such individuals to demonstrate a basic competency regarding the role of municipal advisor representatives and the rules and regulations governing the conduct of such persons.

Section 15B(b)(2)(L)(iv) of the Act requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.[112] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act. While the proposed rule change would affect all municipal advisors, including small municipal advisors, it is a necessary and appropriate regulatory burden in order to establish the baseline competence of those individuals engaged in municipal advisory activities. Establishing a baseline competence is necessary for the protection of investors, municipal entities, and obligated persons. The Commission also believes such baseline competence is in the public interest because it promotes compliance with the rules and regulations governing the conduct of municipal advisors.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.[113] The Commission believes that the proposed rule change includes accommodations that help promote efficiency. Specifically, the MSRB has provided a one-year grace period for passing the examination. As noted by the MSRB, the grace period provides

[101] *See* NAMA Letter No. 2 at 1.

[102] *Id.* at 1–2.

[103] *See* MSRB Response Letter No. 2 at 2.

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.* at 2–3.

[108] *Id.* at 3.

[109] 15 U.S.C. 78*o*–4(b)(2)(A).

[110] *Id.*

[111] 15 U.S.C. 78*o*–4(b)(2)(L)(iii).

[112] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[113] 15 U.S.C. 78c(f).

municipal advisor representatives with sufficient time to study and take the examination without causing an undue disruption to the business of the municipal advisor. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all municipal advisor representatives who engage in municipal advisory activities. Furthermore, the Commission believes that the potential burdens created by the proposed rule change are to be likely outweighed by the benefits of establishing baseline professional qualification standards and promoting compliance with the rules and regulations governing the conduct of municipal advisors. The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation.

As noted above, the Commission received five comment letters on the proposed rule change and two comment letters on Amendment No. 1. The Commission believes that the MSRB considered carefully and responded adequately to the comments and concerns regarding the proposed rule change and Amendment No. 1. For the reasons noted above, including those discussed in the Amendments and the MSRB Response Letters, the Commission believes that the proposed rule change, as amended by the Amendments, is consistent with the Act.

V. Solicitation of Comments on the Amendments

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

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2014–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2014–08 and should be submitted on or before March 25, 2015.

VI. Accelerated Approval of the Proposed Rule Change as Modified by the Amendments

The Commission finds good cause for approving the proposed rule change, as amended by the Amendments, prior to the 30th day after the date of publication of notice in the **Federal Register.** Amendment No. 1 partially amends the text of the proposed rule change to revise Rules G–1(a)(ii)(B), G–3(a)(i)(A)(2), and G–3(b)(i)(B) by deleting the following clause: ''Except to the extent a person must be qualified as a municipal advisor representative to perform such services.'' [114] Amendment No. 2 partially amends Amendment No. 1 to correct a technical error in a quotation of rule text.[115]

The MSRB believes Amendment No. 1 will clarify and ensure that municipal securities representatives or principals who engage in the subject activity remain covered by applicable dealer regulations until such time as the MSRB may determine that such activities are appropriately covered by the developing municipal advisor regulatory framework.[116] The MSRB believes Amendment No. 2 would make a mere technical correction.[117] The MSRB does not believe Amendment No. 2 raises significant new issues or alters the substance of the proposed rule change.[118]

As previously noted, Sanchez and NAMA expressed concern that Amendment No. 1 will effectively provide an exemption for currently qualified municipal securities representative from having to take and pass the Municipal Advisor Representative Qualification Examination.[119] NAMA also believes that the Amendment No. 1 expands the definition of municipal advisory activity because it appears to allow dealers and bank dealers to engage in municipal advisory activity without proper registration.[120] The MSRB responded by clarifying that Amendment No. 1 would not have the effect of limiting, and was not intended to limit, the applicability of the municipal advisor regulatory regime, including MSRB rules governing the municipal advisory activities of municipal advisors, or to alter the definition of municipal advisory activities.[121] According to the MSRB, Amendment No. 1 would retain the current language in the MSRB professional qualification rules to prevent any confusion regarding the application of MSRB rules governing dealers to the financial advisory activities of municipal securities representatives while MSRB rules governing municipal advisors are developed and implemented.[122]

The Commission believes that the revisions in Amendment No. 1 are being made to address the perception of a regulatory gap and are consistent with the purpose of the proposed rule change. The Commission believes that the revision in Amendment No. 2 is being made to correct a technical error. The Commission does not believe the revisions included in the Amendments raise significant new issues or alter the substance of the proposed rule change because the proposed rule change will retain the current rule language in Rules G–1(a)(ii)(B), G–3(a)(i)(A)(2), and G–3(b)(i)(B). Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by

[114] *See supra* note 6.

[115] *See supra* note 9.

[116] *See supra* note 6.

[117] *See supra* note 9.

[118] *Id.*

[119] *See supra* note 7.

[120] *See* NAMA Letter No. 2 at 1–2.

[121] *See* MSRB Response Letter No. 2 at 2.

[122] *Id.*

the Amendments, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[123] that the proposed rule change (SR–MSRB–2014–08), as modified by the Amendments, be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[124]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04431 Filed 3–3–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74380; File No. SR–EDGA–2015–12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.11, Routing to Away Trading Centers, To Delete References to the ROLF Routing Option, Which Routed Orders to LavaFlow ECN

February 26, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend Rule 11.11, Routing to Away Trading Centers, to delete references to the ROLF routing option, which routed orders to LavaFlow ECN.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.11, Routing to Away Trading Centers, to delete references under subparagraphs (7) and (15) to the ROLF routing option, which routed to LavaFlow ECN. These changes are being proposed in response to LavaFlow ECN ceasing market operations on Friday, January 30, 2015. Under Rule 11.11(g)(7), an order utilizing the ROLF routing option first checked the System[5] for available shares and was then routed to the LavaFlow ECN. If shares remained unexecuted after being routed, they were cancelled, unless otherwise instructed by the User.[6] In addition, under Rule 11.11(g)(15), a User was able to couple the Post to Away option and ROLF routing option. The grouping of the Post to Away and ROLF routing options instructed the System to route and post the order on LavaFlow ECN. As of February 2, 2015, the Exchange, via BATS Trading, the Exchange's affiliated routing broker-dealer, was no longer able to route orders to LavaFlow ECN because it ceased operations. As a result, the Exchange no longer offers the ROLF routing option nor permit [sic] it to be coupled with a Post to Away routing option. Therefore, the Exchange proposes to delete the ROLF routing option under Rule 11.11(g)(7) as well as a reference to the ROLF routing option under Rule 11.11(g)(15).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the ROLF routing option will no longer be available to all Users. The proposed change is in response to LavaFlow ECN ceasing market operations on Friday, January 30, 2015. As of February 2, 2015, the Exchange, via BATS Trading, was no longer able to route orders to LavaFlow ECN and, therefore, proposes to delete references to the ROLF routing option under Rules 11.11(g)(7) and (15). The proposal is intended to make the Exchange's rules clearer and less confusing for investors by eliminating a routing option that is no longer available; thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather avoid investor confusion by eliminating a routing option that is no longer made available by the Exchange.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[123] 15 U.S.C. 78s(b)(2).

[124] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[6] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).