

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73368; File No. SR-MSRB-2014-05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-3, on Professional Qualification Requirements, Regarding Continuing Education Requirements

October 15, 2014.

I. Introduction

On July 22, 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 Rule G-3, on professional qualification requirements, regarding continuing education requirements. The proposed rule change was published for comment in the **Federal Register** on August 5, 2014.³

The Commission received four comment letters on the proposal.⁴ On October 3, 2014, the MSRB submitted a response to these comments.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

1. Proposed Rule Change

According to the MSRB, the purpose of the proposed rule change is to improve the Firm Element continuing education requirement of MSRB Rule G-3(h)(ii) by requiring brokers, dealers and municipal securities dealers (collectively, "dealers") to conduct

annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities.⁶ In addition to such annual securities training, the MSRB has stated that the proposed rule change would also expand the definition of covered registered persons who are required to participate in such training to include registered persons who engage in a variety of municipal securities activities, regardless of whether such activities are customer-facing.⁷

The MSRB believes the proposed rule change addresses concerns that municipal securities professionals may not be receiving adequate training because dealers may not be placing a sufficiently high priority on municipal securities in their needs analysis.⁸ The MSRB believes that the municipal securities market possesses unique attributes that require particularized education and training.⁹ In addition, the MSRB has stated that dealers engaging in municipal securities activities are subject to, and as a result, must be familiar with MSRB rules that are distinct from the rules of other SROs and that are tailored to address the particularities of the municipal securities market.¹⁰ The MSRB believes that requiring dealers to conduct annual municipal securities training for registered persons who are regularly engaged in or who regularly supervise municipal securities activities would ensure the delivery of municipal securities content to those individuals who are active in the municipal securities market, while allowing dealers sufficient flexibility in delivering such content.¹¹ According to the MSRB, under the proposed rule change, dealers would continue to determine the nature of the training and would have the discretion as to content based on the specific type of municipal securities activities conducted by the firm and the individual registered person.¹²

2. Technical and Conforming Amendments

According to the MSRB, the proposed rule change includes certain technical amendments to conform other portions of Rule G-3 to the proposed rule change. First, the MSRB stated that the

proposed rule change would amend Rule G-3(h)(ii)(C) to clarify that covered registered persons must participate in the Firm Element training as required by the dealer.¹³ Second, the MSRB stated that Rule G-3(h)(ii)(B)(1) would be amended to clarify that, under the proposed rule change, supervisory training would be required for any registered principal who regularly supervises municipal securities activities.¹⁴ Lastly, the MSRB stated that Rule G-3(h)(ii)(B)(2) would be amended to explicitly require that a firm's training program include training on the municipal securities products, services and strategies offered by the dealer.¹⁵

3. Effective Date

The MSRB has proposed January 1, 2015 as the effective date for the proposed rule change to provide dealers with adequate time to include the training requirements of the proposed rule change into their annual needs analysis and written training plan.¹⁶

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

As noted previously, the Commission received four comment letters on the proposed rule change and a response letter from the MSRB.¹⁷ The commenters generally support the proposed rule change.¹⁸ However, some commenters asked for further clarification and provided suggestions to the proposed rule change.¹⁹ The MSRB believes the proposed rule change is appropriately tailored and has responded to the commenters, as discussed below.²⁰

1. Determination of Who Is Regularly Engaged in Municipal Securities Activities

FSI stated that the phrase "regularly engage in municipal securities activities" used to define the covered registered persons subject to the training is less clear than the phrase "primarily engaged in municipal securities activities" used in the MSRB's initial proposal.²¹ FSI also stated that the use of this phrase will lead to an overly broad application of the Firm Element continuing education requirements.²²

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *supra* notes 4 and 5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See MSRB Response Letter.

²¹ See FSI Letter.

²² *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-72705 (July 29, 2014), 79 FR 45529 (August 5, 2014) (the "Notice").

⁴ See Letter to Elizabeth M. Murphy, Secretary, Commission, from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated August 13, 2014 ("SIFMA Letter"); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), dated August 19, 2014 ("ICI Letter"); Michael Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated August 26, 2014 ("BDA Letter"); and David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated August 26, 2014 ("FSI Letter").

⁵ See Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated October 3, 2014 ("MSRB Response Letter"), available at <http://www.sec.gov/comments/sr-msrb-2014-05/msrb201405-5.pdf>.

⁶ See *supra* note 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The MSRB does not agree.²³ The MSRB believes the new phrase provides dealers with the flexibility to determine who must participate in the Firm Element continuing education program, so long as the dealers have a reasonable basis for determining which registered persons regularly engage in or supervise municipal securities activities.²⁴ Instead of promulgating a prescriptive rule, the MSRB believes that dealers should have the flexibility to tailor their municipal securities training based on their size, organizational structure, and scope of business activities.²⁵ According to the MSRB, dealers are best suited to evaluate their municipal securities activities and determine who is regularly engaged in such activities and therefore must participate in the annual training.²⁶

2. Documenting Methodology To Identify Covered Registered Persons

ICI suggested that the MSRB expressly include in Rule G-3 a requirement that dealers maintain written documentation of their methodology for determining who must participate in the Firm Element continuing education.²⁷

The MSRB responded by noting that there is a current requirement in Rule G-3(h)(ii)(B) that dealers conduct a needs analysis and develop a written training plan.²⁸ The MSRB would expect dealers, as part of such needs analysis, to evaluate their training needs and document in their written training plans their methodology for determining who should be trained.²⁹

3. Harmonization of FINRA and MSRB Firm Element Requirements

FSI and SIFMA raised concerns regarding the perceived de-harmonization between the proposed amendments to Rule G-3(h)(ii) and FINRA Rule 1250(b).³⁰ According to the MSRB, the proposed rule change would differ from FINRA's continuing education rule in that it would require annual municipal securities training for certain registered persons.³¹

The MSRB believes such training is important because, currently, registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities, may receive insufficient or no municipal securities

training.³² According to the MSRB, the proposed rule change will help ensure the delivery of municipal securities content to such registered representatives.³³ In addition, the MSRB believes the proposed rule change would better align the MSRB and FINRA Firm Element continuing education requirements with regard to registered individuals who do not have direct contact with customers.³⁴ The MSRB stated that the proposed rule change would extend the MSRB Firm Element continuing education requirement to certain registered persons who do not have direct contact with customers, consistent with the approach taken by FINRA.³⁵

4. Effective Date of the Proposed Rule Change

SIFMA requested clarification regarding the January 1, 2015 effective date, and in particular whether dealers have until December 2015 to complete the annual training requirement as provided in the proposed rule change.³⁶

The MSRB responded by clarifying that while the effective date of the proposed rule change would be January 1, 2015, dealers would be in compliance if they completed their Firm Element continuing education by December 31, 2015 and annually thereafter.³⁷

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters. 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 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 meets such standards of operational capability and

such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets 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.³⁸ The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(A) in that the proposed rule will ensure that registered persons who regularly engage in municipal securities activities and supervisors who regularly supervise municipal securities activities will receive annual municipal securities training.

Additionally, the proposed rule is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.³⁹ The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because requiring Firm Element continuing education for registered persons who regularly engage in municipal securities activities and supervisors who regularly supervise municipal securities activities is essential for the protection of investors, municipal entities and the public interest. Furthermore, continuing education will help ensure that individuals regularly participating in the municipal securities market will stay abreast of: new municipal securities features, products and risks; changes to applicable regulatory regimes; and innovations in market practices.

In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. Specifically, the Commission does not believe that the proposed rule change would impose any burden on

²³ See MSRB Response Letter.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See ICI Letter.

²⁸ See MSRB Response Letter.

²⁹ *Id.*

³⁰ See FSI Letter and SIFMA Letter.

³¹ See MSRB Response Letter.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See SIFMA Letter.

³⁷ See MSRB Response Letter.

³⁸ 15 U.S.C. 78o-4(b)(2)(A).

³⁹ 15 U.S.C. 78o-4(b)(2)(C).

competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers who engage in municipal securities activities. The proposed rule change does nothing more than specify that, in developing an annual training plan based on the firm's need analysis, the dealer must include municipal securities training for those individuals who are regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities. The proposed rule change does not set forth any quantitative or qualitative requirements regarding the training that must be provided and grants dealers flexibility to develop Firm Element training based on the nature of their business activities. In addition, the Commission believes, that the proposed rule change addresses the need to ensure adequate training for municipal securities professionals and would likely improve the municipal securities market and its efficient operation. Furthermore, the Commission believes that the potential burdens created by the proposed rule change are to be likely outweighed by the benefits.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁰ that the proposed rule change (SR-MSRB-2014-05) be, and hereby is, approved.⁴¹

For the Commission, pursuant to delegated authority.

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73363; File No. SR-BATS-2014-038]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Rules 11.9 and 21.1 of BATS Exchange, Inc. To Add Price Adjust Functionality

October 15, 2014.

I. Introduction

On August 26, 2014, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange

Commission ("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 to amend Exchange Rules 11.9 and 21.1 to add Price Adjust functionality to the Exchange's equities and options trading platforms. The proposed rule change was published for comment in the **Federal Register** on September 4, 2014.³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend BATS Rule ("Rule") 11.9 to add a new, optional Price Adjust functionality to the Exchange's cash equities trading platform ("BATS Equities").⁴ Consistent with its practice of offering similar functionality for the Exchange's equity options trading platform ("BATS Options") as it does for BATS Equities, the Exchange also has proposed to amend Rule 21.1 to add Price Adjust functionality to BATS Options.⁵ On both BATS Equities and BATS Options, the Price Adjust functionality would have to be elected by a User⁶ in order to be applied by the Exchange.

BATS Equities

Currently, the Exchange offers price sliding to ensure compliance with Regulation NMS and Regulation SHO for BATS Equities, as well as price sliding for BATS Options to ensure compliance with rules analogous to Regulation NMS adopted by the Exchange and other options exchanges. With respect to price sliding offered to ensure compliance with Regulation NMS ("display-price sliding"), under the Exchange's current rules for BATS Equities, if, at the time of entry, a non-rotatable order would lock or cross a Protected Quotation⁷ displayed by

another trading center, the Exchange ranks (and in the case of a cross, re-prices) such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.⁸ The Exchange currently offers display-price sliding functionality to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book ("BATS Book"). Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (e.g., a BATS Post Only Order), then the Exchange will cancel the incoming order unless it is permitted to remove liquidity upon entry.⁹

Under the proposed Price Adjust process, by contrast, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market or the Exchange will be ranked and displayed at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).¹⁰ Thus, the proposed Price Adjust process differs from the Exchange's current display-price sliding process in two main ways. First, the Price Adjust process would both rank *and* display such an order at one minimum price variation below the current NBO or above the current NBB

Offer" means "a Bid or Offer in an options series, respectively, that: (A) Is disseminated pursuant to the OPRA Plan; and (B) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange." An "Eligible Exchange" is defined in Rule 27.1 as means "a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection."

⁸ See Rule 11.9(g)(1).

⁹ The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. See Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. See Rule 11.9(c)(7).

¹⁰ See proposed Rule 11.9(g)(2)(A).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72945 (August 28, 2014), 79 FR 52790 ("Notice").

⁴ See proposed Rule 11.9(g).

⁵ See proposed Rules 21.1(i) and (j).

⁶ As defined in Rule 1.5(cc), a User is "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

⁷ As defined in Rule 1.5(t), applicable to BATS Equities, a "Protected Quotation" is "a quotation that is a Protected Bid or Protected Offer." In turn, the term "Protected Bid" or "Protected Offer" means "a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association." As defined in BATS Rule 27.1, applicable to BATS Options, a "Protected Quotation" is "a Protected Bid or Protected Offer." In turn, the term "Protected Bid" or "Protected

⁴⁰ 15 U.S.C. 78s(b)(2).

⁴¹ 17 CFR 200.30-3(a)(12).