

is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).¹⁹ In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,²⁰ and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is 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-NASDAQ-2015-131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2015-131. 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 Exchange. 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-NASDAQ-2015-131 and should be submitted on or before December 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28808 Filed 11-12-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76381; File No. SR-MSRB-2015-09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, and Rule G-8, on Books and Records to Be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors, and the Deletion of Prior Interpretive Guidance

November 6, 2015.

I. Introduction

On September 2, 2015, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") 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 consisting of proposed amendments to MSRB Rule G-20 on gifts, gratuities and non-cash compensation, proposed amendments to MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance that would be codified by proposed amended Rule G-20 (the "proposed rule change").

The proposed rule change was published for comment in the **Federal Register** on September 22, 2015.³ The Commission received three comment letters on the proposed rule change.⁴ On

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 75932 (September 16, 2015), 80 FR 57240 (September 22, 2015) (the "Notice").

⁴ See Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute

¹⁹ See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," *Antitrust Law Journal*, Vol. 70, No. 3 (2003).

²⁰ It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

November 2, 2015, the MSRB submitted a response to these comments.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Existing Rule G–20 is designed, in part, to minimize the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of such organizations.⁶ According to the MSRB, the proposed rule change addresses improprieties and conflicts that may arise when municipal advisors and/or their associated persons⁷ give gifts or gratuities to employees who may influence the award of municipal advisory business.⁸ In summary, the MSRB has proposed amendments to Rule G–20 that would:

- Extend the relevant existing provisions of Rule G–20 to municipal advisors and their associated persons and to gifts given in relation to municipal advisory activities;
- Consolidate and codify interpretive guidance, including interpretive guidance published by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and adopted by the MSRB and delete prior interpretive guidance that would be codified by proposed amended Rule G–20;
- Add a new provision prohibiting a regulated entity from seeking or obtaining reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities; and
- Make several revisions that are designed to assist brokers, dealers, and municipal securities dealers (“dealers”) and municipal advisors (dealers, together with municipal advisors,

“ICI”), dated September 25, 2015 (“ICI Letter”); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated October 13, 2015 (“SIFMA Letter”); and Terri Heaton, President, National Association of Municipal Advisors (“NAMA”), dated October 16, 2015 (“NAMA Letter”).

⁵ See Letter from Michael L. Post, General Counsel—Regulatory Affairs, MSRB, dated November 2, 2015 (“MSRB Response Letter”).

⁶ See MSRB Notice 2004–17 (June 15, 2004).

⁷ MSRB Rule D–11 defines “associated persons” as follows: Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms “broker,” “dealer,” “municipal securities broker,” “municipal securities dealer,” “bank dealer,” and “municipal advisor” shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board’s rules.

⁸ See *supra* note 3 at 57240–41.

“regulated entities”) and their associated persons with their understanding of and compliance with Rule G–20.

In summary, the MSRB has proposed amendments to Rule G–8 that would:

- Extend to municipal advisors the recordkeeping requirements related to Rule G–20 that currently apply to dealers; and
- Amend the rule language contained in Rule G–8(a)(xvii)(A), (B), and (C) applicable to dealers to reflect the revisions to proposed amended Rule G–20.

Extension of Rule G–20 to Municipal Advisors and Municipal Advisory Activities

The MSRB has proposed to extend to municipal advisors and their associated persons: (i) The general dealer prohibition of gifts or gratuities in excess of \$100 per person per year in relation to the municipal securities activities of the recipient’s employer (the “\$100 limit”); (ii) the exclusions contained in the existing rule from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and (iii) the existing exclusion relating to contracts of employment or compensation for services. Proposed section (g) of Rule G–20, on non-cash compensation in connection with primary offerings, is not being extended to municipal advisors or to associated persons thereof.

(i) General Prohibition of Gifts or Gratuities in Excess of \$100 per Year

The MSRB has proposed section (c) of Rule G–20 which extends to a municipal advisor and its associated persons the provision that currently prohibits a dealer and its associated persons, in certain circumstances, from giving directly or indirectly any thing or service of value, including gratuities (“gifts”), in excess of \$100 per year to a person (other than an employee of the dealer). The prohibited payments or services by a regulated entity or associated persons would be those provided in relation to the municipal securities activities or municipal advisory activities of the employer of the recipient (other than an employee of the regulated entity).

(ii) Exclusions From the \$100 Limit

The MSRB has proposed section (d) of Rule G–20 which extends to a municipal advisor and its associated persons the provision that excludes certain gifts from the \$100 limit of

proposed section (c) as long as the conditions articulated by proposed section (d) and the relevant subsection, as applicable, are met. Section (d) states that gifts, in order to be excluded from the \$100 limit, must not give rise to any apparent or actual material conflict of interest.

Proposed section (d) of Rule G–20 includes subsections (d)(i) through (d)(iv) and (d)(vi) which consolidate and codify interpretive guidance that the MSRB provided in MSRB Notice 2007–06 (the “2007 MSRB Gifts Notice”).⁹ The 2007 MSRB Gifts Notice’s interpretive guidance also included FINRA guidance that the MSRB had adopted by reference.¹⁰ Further, proposed subsection (d)(v) would codify FINRA interpretive guidance relating to bereavement gifts that the MSRB previously had not adopted.¹¹

The MSRB has proposed subsection (d)(i) of Rule G–20 which extends to a municipal advisor and its associated persons the current exclusion of a gift of meals or tickets to theatrical, sporting, and other entertainment given by a dealer or its associated persons from the \$100 limit if they are a “normal business dealing.” Such exclusion is subject to the limitations as described in proposed subsection (d)(i).

Proposed subsections (d)(ii) through (d)(iv) establish three categories of gifts that were previously excluded from the \$100 limit under the category of “reminder advertising” in the rule language regarding “normal business dealings” in existing section (b) of Rule G–20. The MSRB has proposed to delete the concept of “reminder advertising” from the “normal business dealings” exclusion under current paragraph (b). This amendment would clarify the types of gifts in the nature of reminder advertising that would be excluded from the \$100 limit. These changes conform draft amended paragraph (d) with current FINRA interpretive guidance that the MSRB has stated applies to Rule G–20.¹² These three categories are:

- Gifts commemorative of a business transaction, such as a desk ornament or

⁹ See Dealer Payments in Connection with the Municipal Issuance Process, MSRB Notice 2007–06 (Jan. 29, 2007).

¹⁰ See 2007 MSRB Gifts Notice (reminding dealers of the application of Rule G–20 and Rule G–17 in connection with certain payments made and expenses reimbursed during the municipal bond issuance process, and stating that the National Association of Securities Dealers, Inc.’s (“NASD”) guidance provided in NASD Notice to Members 06–69 (Dec. 2006) to assist dealers in complying with NASD Rule 3060 applies as well to comparable provisions of Rule G–20).

¹¹ See *supra* note 3 at 57242.

¹² *Id.* at 57241.

Lucite tombstone (proposed subsection (d)(ii));

- de minimis gifts, such as pens and notepads (proposed subsection (d)(iii)); and

- promotional gifts of nominal value that bear an entity's corporate or other business logo and that are substantially below the \$100 limit (proposed subsection (d)(iv)).

Proposed subsection (d)(v) of Rule G–20 excludes bereavement gifts which are reasonable and customary for the circumstances from the \$100 limit.

According to the MSRB, proposed subsection (d)(v) of Rule G–20 codifies FINRA interpretive guidance currently applicable to dealers relating to bereavement gifts that the MSRB previously had not adopted.¹³

Finally, the MSRB has proposed subsection (d)(vi) of Rule G–20 which excludes personal gifts given upon the occurrence of infrequent life events, such as a wedding gift or a congratulatory gift for the birth of a child. According to the MSRB, this proposed subsection consolidates and codifies the FINRA personal gift guidance currently applicable to dealers.¹⁴

The “frequency” and “extensiveness” limitations applicable to proposed subsection (d)(i) of Rule G–20 would not apply to proposed subsections (d)(ii) through (vi). The MSRB has proposed to modify those limitations to better reflect the characteristics of the gifts described in proposed subsections (d)(ii) through (vi).¹⁵ According to the MSRB, gifts described in those subsections in the proposed rule change are by their nature given infrequently and/or are of such nominal value that retaining the requirement that such gifts be “not so frequent or extensive” would be unnecessarily duplicative of the description of these gifts and could result in confusion.¹⁶

To assist regulated entities with their understanding of the exclusions described and with their compliance with the rule, the MSRB has provided guidance in the Supplementary Material. Paragraph .03 of the Supplementary Material provides guidance regarding promotional gifts and “other business logos” including what would constitute an “other business logo.” Paragraph .04 of the Supplementary Material provides guidance regarding personal gifts including factors that should be considered when determining whether a

gift is given in connection with the municipal securities or municipal advisory services of the employer of the recipient.

(iii) Exclusion for Compensation Paid as a Result of Contracts of Employment or Compensation for Services

The MSRB has proposed section (f) which extends to municipal advisors the exclusion from the \$100 limit in existing Rule G–20(c) for contracts of employment with or compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. The MSRB has stated that proposed section (f) would clarify that the exclusion applies only to the compensation paid as a result of certain employment contracts, and does not apply to the existence or creation of employment contracts. The MSRB further stated that proposed section (f) is only a clarification and would not alter the requirements currently applicable to dealers.¹⁷

Consolidation and Codification of MSRB and FINRA Interpretive Guidance

As discussed, the MSRB has proposed to consolidate and codify existing FINRA interpretive guidance previously adopted by the MSRB and incorporate additional relevant FINRA interpretive guidance that has not previously been adopted by the MSRB in both Rule G–20 text and the Supplementary Material. While FINRA's interpretive guidance regarding bereavement gifts was not formerly adopted by the MSRB, the MSRB believes that this guidance will be appropriate for regulated entities as it is consistent with the purpose and scope of proposed amended Rule G–20. Further, the MSRB stated its belief that the consolidation and codification of the applicable interpretive guidance will promote compliance with the rule and create efficiencies for regulated entities and regulatory enforcement agencies.¹⁸

In addition to the interpretive guidance discussed above, proposed paragraphs .01, .02, and .05 of the Supplementary Material would provide guidance relating to the valuation and the aggregation of gifts and to the applicability of state laws. Proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined generally according to the higher of its cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the \$100 limit given by the regulated entity and each

associated person of the regulated entity to a particular recipient over the course of a year however “year” is selected to be defined by the regulated entity.

Proposed paragraphs .01 and .02 reflect existing FINRA interpretive guidance regarding the aggregation of gifts for purposes of its gift rules, which the MSRB has previously adopted.

Proposed paragraph .05 of the Supplementary Material would remind regulated entities that, in addition to all the requirements of proposed amended Rule G–20, regulated entities may also be subject to other duties, restrictions, or obligations under state or other laws and that proposed amended Rule G–20 would not supersede any more restrictive provisions of state or other laws applicable to regulated entities or their associated persons.

Prohibition of Reimbursement for Entertainment Expenses

The MSRB has also proposed section (e) of Rule G–20 which provides that a regulated entity is prohibited from requesting or obtaining reimbursement for certain entertainment expenses from the proceeds of a municipal securities offering. The MSRB stated its belief that this provision would address a matter highlighted by a recent FINRA enforcement action. Proposed section (e) provides that an entertainment expense excludes “ordinary and reasonable expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained.” The MSRB has stated that proposed section (e) is intended to allow the continuation of the generally accepted market practice of a regulated entity advancing normal travel costs to personnel of a municipal entity or obligated person for business travel related to a municipal securities issuance and obtaining reimbursement for such costs.¹⁹

Additional Proposed Amendments to Rule G–20

In addition to the previously discussed proposed amendments to Rule G–20, the MSRB proposed several amendments which it believes will assist readers with their understanding of and compliance with Rule G–20.²⁰ These proposed amendments include (i) a revised rule title, (ii) a new provision stating the rule's purpose, and (iii) a re-ordering of existing provisions and additional defined terms.

¹³ *Id.* at 57242.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Recordkeeping Requirements

The MSRB has proposed amendments to Rule G–8 which extend to municipal advisors the recordkeeping requirements related to Rule G–20 that currently apply to dealers. Municipal advisor recordkeeping requirements would be identical to the recordkeeping requirements to which dealers would be subject in proposed amended Rule G–8(a)(xvii)(A) and (B).

The MSRB has proposed to amend the language contained in Rule G–8(a)(xvii)(A), (B), and (C) applicable to dealers, to reflect the revisions to proposed amended Rule G–20. Proposed amended paragraph (a)(xvii)(A) provides that a separate record of any gift or gratuity *subject to the general limitation of* proposed amended Rule G–20(c) must be made and kept by dealers (emphasis added to amended rule text). Paragraph (a)(xvii)(B) would be amended to clarify that dealers must make and keep records of all agreements referred to in proposed amended Rule G–20(f) and *records of all compensation paid as a result of those agreements* (emphasis added to proposed amended rule text). The proposed amendments would also track the reordering of sections in proposed amended Rule G–20 and provide greater specificity as to the records that a dealer must maintain by referencing the terms used in proposed amended Rule G–20.

The proposed rule change would extend the provisions of existing Rule G–8 to require that municipal advisors as well as dealers make and keep records of: gifts given that are subject to the \$100 limit; and all agreements referred to in proposed section (f) (on compensation for services) and records of compensation paid as a result of those agreements.

Implementation Date

The MSRB requested that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes.

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

As noted previously, the Commission received three comment letters on the proposed rule change.²¹ The commenters generally support the proposed rule change.²² However, some commenters asked for further clarification and provided suggestions to the proposed rule change.²³ In response to an earlier request for

comment by the MSRB on the draft amendments to Rules G–20 and G–8,²⁴ the MSRB received eight comment letters and responded to the comments in the Notice. In the MSRB Response Letter, the MSRB incorporated by reference its response to comments made in the Notice noting that the three comments received on the proposed rule change were the same or substantially similar to the comments made in response to the MSRB Request for Comment.²⁵ The MSRB believes the proposed rule change is appropriately tailored and responded to the commenters as discussed below.

A. Application of Proposed Amended Rule G–20(c) to Certain Recipients

NAMA commented that under the MSRB's proposed Rule G–20, the \$100 limit would seem not to apply to gifts given to employees or officials of municipal entities or obligated persons because such persons, for the most part, do not engage in "municipal advisory activities."²⁶ NAMA noted that the MSRB indicated in the Notice that prior interpretive guidance made clear issuer personnel are considered to engage in "municipal securities activities" and requested that the MSRB codify this guidance in Rule G–20.²⁷ The MSRB responded to NAMA stating that the language of both existing Rule G–20 and proposed amended Rule G–20 applies to gifts given in relation to this broad term "municipal securities activities."²⁸

NAMA also commented that many municipal official and governing board members are not employees of municipal entities or obligated persons, and therefore it appears that G–20 does not apply to gifts given to non-employee officials of municipal entities and obligated persons.²⁹ The MSRB responded by stating that it believes for purposes of existing and proposed amended Rule G–20, elected and appointed officials are considered employees of the governmental entity on behalf of which they act as agent or representative.³⁰

B. Changing the Amount of the \$100 Limit

In its comments, NAMA proposed that the \$100 limit be raised to \$250 per

person per year which would aid in limiting conflicts of interest and also align Rule G–20 with MSRB Rule G–37.³¹ NAMA stated that in Rule G–37 the MSRB determined that the contribution level of \$250 was sufficient to address the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence.³² NAMA proposed that supplementary material be added to state, in effect, that occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity would be presumed to be so extensive as to raise a question of propriety if they exceed \$250 in any year in conjunction with any gifts provided under Rule G–20(c).³³ NAMA asserted that because the purposes of Rule G–20 and Rule G–37 both are meant to limit a dealer's or a municipal advisor's ability to gain undue influence through the giving of gifts or contributions that the rules should be written similarly.³⁴

The MSRB responded to NAMA by stating that Rule G–37 is designed to address potential political corruption that may result from pay-to-play practices,³⁵ and as such, is tailored in light of First Amendment concerns. Existing Rule G–20 is designed to address commercial bribery by minimizing the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealer by means of gifts or gratuities given to employees of such organizations.³⁶ The MSRB stated that Rules G–37 and G–20 address substantially different regulatory needs in different legal contexts, and therefore the dollar amounts are likewise justifiably different.³⁷

C. "Normal Business Dealings"

NAMA commented that proposed amended Rule G–20(d), which sets forth the exclusions from the \$100 limit, leaves open opportunities for abuse.³⁸ NAMA expressed specific concern regarding proposed subsection (d)(i), which would, under certain circumstances, exclude from the \$100 limit the giving of occasional meals or tickets to theatrical, sporting or

³¹ See NAMA Letter.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See *supra* notes 5 and 24.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See NAMA Letter.

²⁴ Request for Comment on Draft Amendments to MSRB Rule G–20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors, MSRB Notice 2014–18 (Oct. 23, 2014) ("MSRB Request for Comment").

²⁵ See *supra* note 5.

²⁶ See NAMA Letter.

²⁷ *Id.*

²⁸ See *supra* notes 5 and 24.

²⁹ See NAMA Letter.

³⁰ See *supra* notes 5 and 24.

²¹ See *supra* note 4.

²² *Id.*

²³ *Id.*

entertainment events.³⁹ In NAMA's view, regulated entities would be able to engage in otherwise impermissible gift giving under the guise of "normal business dealings," and such gift giving likely would result in the improper influence that Rule G-20 was designed to curtail.⁴⁰ NAMA suggested modifying the amended rule to impose an aggregate limit of \$250 on all gifts given as part of "normal business dealings" and gifts and gratuities given under proposed subsection (c) believing the aggregate limit would be consistent with the dollar threshold used in MSRB Rule G-37.⁴¹

The MSRB responded that in order to curtail any abuse of the exception to the \$100 limit, proposed amended Rule G-20 places conditions on the excluded gifts, including those that fall under "normal business dealings."⁴² All of the gifts described in proposed section (d) would be excluded only if they do not "give rise to any apparent or actual material conflict of interest," and, under proposed section (d)(i), "normal business dealing" gifts would be excluded only if they are not "so frequent or so extensive as to raise any question of propriety."⁴³ The MSRB further stated that dealers and municipal advisors are subject to the fundamental fair-dealing obligations of MSRB Rule G-17.⁴⁴ The MSRB stated that Rule G-17 likely addresses at least some of the concerns raised by NAMA by prohibiting regulated entities from characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue, as such behavior could possibly constitute a deceptive, dishonest or unfair practice.⁴⁵

D. Incorporation of Applicable FINRA Interpretive Guidance

ICI commented that the MSRB should incorporate the relevant portions of certain NASD guidance regarding the value of promotional items into Rule G-20.⁴⁶ ICI also encouraged the MSRB to do so in order to ease the compliance burden on regulated entities as well as make clear that the monetary limits in Rule G-20 do not apply to "customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction,

even when such items have a cost of more than \$100."⁴⁷

In response to ICI, the MSRB stated that such interpretive guidance published by NASD has been incorporated into proposed amended Rule G-20.⁴⁸ The MSRB also stated that proposed Rule G-20(d)(ii) provides that the general \$100 limitation does not apply to "[g]ifts that are solely decorative items commemorating a business transaction, such as a customary plaque or desk ornament (e.g., Lucite tombstone)."⁴⁹ The MSRB noted that this description does not contain a monetary limit, and therefore the provision fully addresses ICI's comment.⁵⁰

E. Recordkeeping Requirements

NAMA commented that a regulated entity should be required to maintain records for gifts that are subject to either the normal business dealing exclusion under proposed amended Rule G-20(c) or Rule G-20(d)(i).⁵¹ NAMA noted that gifts that constitute normal business dealings under proposed amended Rule G-20(d)(i) require recordkeeping to comply with certain requirements of the Internal Revenue Service and of various municipalities.⁵² Therefore, according to NAMA, imposing a recordkeeping requirement would not be an entirely new burden, would provide protection against pay-to-play activities and would provide a means to determine whether such gifts give rise to questions of impropriety or conflicts of interest.⁵³ NAMA also commented that to allow for meaningful enforcement the MSRB should require a regulated entity to keep records of any personal gifts given pursuant to proposed amended Rule G-20(d)(iv) that were paid for, directly or indirectly, by the regulated entity.⁵⁴

The MSRB responded to NAMA stating that it believes that the recordkeeping requirements of Rule G-8(h) that relate to Rule G-20 should be limited to items that are subject to the \$100 limit so as to continue to align recordkeeping under Rule G-20 with existing FINRA recordkeeping requirements for dealers.⁵⁵ The MSRB further stated that significant safeguards are already in place, including Rules G-27, G-44, and G-17, which weigh against imposing the additional recordkeeping burdens on regulated

entities.⁵⁶ The MSRB further noted that it reminded dealers in its 2007 MSRB Gifts Notice on Rule G-20 that they must have supervisory policies and procedures in place under Rule G-27 that are reasonably designed to prevent and detect violations of Rule G-20 (and of other applicable securities laws).⁵⁷ The MSRB also stated that recently adopted Rule G-44, on supervision and compliance obligations of municipal advisors, imposes similar supervisory requirements on municipal advisors.⁵⁸ Finally, the MSRB notes that they reminded dealers in 2007 in particular contexts that the making of payments that might not otherwise be subject to Rule G-20 could constitute separate violations of Rule G-17, which currently applies to municipal advisors and dealers.⁵⁹

SIFMA commented that it objects to the requirement that brokers, dealers and municipal securities dealers keep records related to Rule G-20 for a period of six years because municipal advisors only need to retain them for five years.⁶⁰ The MSRB responded to SIFMA stating that this topic is addressed in MSRB Rule G-9 which was not included as part of the proposed rule change and therefore no revision to the proposed rule change is necessary.⁶¹

V. Discussion and Commission Findings

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 Sections 15B(b)(2) and 15B(b)(2)(C) of the Act. Section 15B(b)(2) of the Act provides that the MSRB shall propose and adopt rules to effect the purposes of that title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entity or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.⁶² Section 15B(b)(2)(C) of the Act requires that the MSRB's rules shall be designed to

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *supra* notes 5 and 24.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See ICI Letter.

⁴⁷ *Id.*

⁴⁸ See *supra* note 5.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See NAMA Letter.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See *supra* notes 5 and 24.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See SIFMA Letter.

⁶¹ See *supra* note 5.

⁶² 15 U.S.C. 78o-4(b)(2).

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.”⁶³

The proposed rule change would help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors, municipal entities, obligated persons, and the public interest by reducing, or at least exposing, the potential for conflicts of interests in municipal advisory activities by extending the policies embodied in existing Rule G–20 to municipal advisors and their associated persons and establishing a common standard for all regulated entities that operate in the municipal securities market. The proposed rule change would help ensure that engagements of municipal advisors, as well as engagements of dealers, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. In addition, by prohibiting the reimbursement of entertainment expenses from the proceeds of a municipal securities issuance, the proposed rule change will provide regulated entities with clear notice and guidance regarding MSRB regulation of such matters. Further, codifying certain applicable MSRB interpretive guidance and adopting and codifying certain FINRA interpretive guidance will increase awareness of such guidance by regulated entities and in turn improve compliance and help prevent inadvertent violations of Rule G–20.

In addition, the proposed amendments to Rule G–8 will assist in the enforcement of Rule G–20 by extending the relevant existing recordkeeping requirements of Rule G–8 that currently are applicable to dealers to municipal advisors. Regulated entities will be required to create and maintain records in a consistent manner which the Commission believes will allow organizations that examine regulated entities to more precisely monitor and promote compliance with the proposed rule change. Increased

compliance with the proposed rule change would likely reduce the frequency and magnitude of conflicts of interests that could potentially result in harm to investors, municipal entities, or obligated persons, or undermine the public’s confidence in the municipal securities market.

The Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act, in that it does 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.⁶⁴ While the proposed rule change would affect all municipal advisors, including small municipal advisors, the Commission believes the proposed rule change is a necessary and appropriate regulatory burden in order to limit practices that could harm investors, municipal entities and obligated persons. The proposed rule change will likely reduce the frequency and severity of violations of the public trust by elected officials and others involved in the issuance of municipal securities that might otherwise have their decisions regarding the award of municipal advisory business influenced by the gifts given by regulated entities and their associated persons. Further, codifying certain interpretive guidance will help minimize compliance costs which will benefit all regulated entities, including small municipal advisors. While the proposed rule change would burden some small municipal advisors, the Commission believes that such burden is outweighed by the need to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process.

In addition, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Act which provides that the MSRB’s rules shall prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.⁶⁵ The proposed rule change would extend the provisions of existing Rule G–8 to require that municipal advisors as well as dealers make and keep records related to Rule G–20 as amended by the proposed rule change.

In approving the proposed rule change, the Commission has considered

the proposed rule’s impact on efficiency, competition and capital formation.⁶⁶ The Commission believes the proposed rule change will help promote competition. By extending the relevant current restrictions embodied in existing MSRB Rule G–20 to municipal advisors and their municipal advisory activities, the proposed rule change will promote merit-based and price-based competition for municipal advisory services and limit the selection or retention of a municipal advisor based on the receipt of gifts. A market where regulated entities compete on the basis of price and quality of services is more likely to provide a level playing field for existing regulated entities within which to operate and also encourages the entry of new providers. By extending the policies embodied in existing MSRB Rule G–20 to municipal advisors and their municipal advisory activities, the proposed rule change will also establish common standards for dealers and municipal advisors that operate in the same municipal securities market. The Commission also believes that by codifying certain interpretive guidance, the proposed rule change will clarify the obligations of dealers and municipal advisors and ease compliance burdens. The Commission believes that the effect of the proposed rule is beneficial and the proposed changes will help maintain the integrity of the municipal securities market and preserve investor and public confidence.

As noted above, the Commission received three comment letters on the filing. The Commission believes that the MSRB through its responses has addressed commenters concerns. For the reasons noted above, including those discussed in the MSRB Response Letter, 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,⁶⁷ that the proposed rule change (SR–MSRB–2015–09) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁶⁸

Robert W. Errett,

Deputy Secretary.

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⁶⁶ 15 U.S.C. 78c(f).

⁶⁷ 15 U.S.C. 78s(b)(2).

⁶⁸ 17 CFR 200.30–3(a)(12).

⁶³ 15 U.S.C. 78o–4(b)(2)(C).

⁶⁴ 15 U.S.C. 78o–4(b)(2)(L)(iv).

⁶⁵ 15 U.S.C. 78o–4(b)(2)(G).