

securities dealers) will be deemed in compliance with the requirements of section 352 if it complies with the regulations of its regulator governing the establishment and maintenance of anti-money laundering programs.⁹ The adoption of MSRB Rule G-41, on anti-money laundering compliance programs, will not impose any new or different obligations upon bank dealers; it will articulate that a bank municipal securities dealer has to comply with the regulations of its banking regulator in connection with anti-money laundering compliance programs in order to be qualified under MSRB Rule G-2, on standards of professional qualification. Examination of these financial institutions by their Federal functional regulators will continue to ensure compliance with those regulations.

For securities dealers that were not previously subject to AML compliance programs, the Department of Treasury and the Financial Crimes Enforcement Network ("FinCEN") believed that it was appropriate to implement section 352 through industry self-regulatory organizations ("SROs").¹⁰ After passage of the USA PATRIOT Act, the SEC met with representatives from the NASD and the New York Stock Exchange ("NYSE") to coordinate the filing of a rule proposal to prescribe the minimum standards required for each securities firm's anti-money laundering compliance program. The rules that were ultimately enacted became effective by April 24, 2002, the statutory deadline.¹¹ BSA regulation 31 CFR 103.120(c) provides that a financial institution regulated by an SRO shall be deemed to satisfy the requirements of section 352 if the financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its SRO governing such programs.¹²

NASD Rule 3011, which incorporates the requirements of section 352, is designed to allow dealers to be in compliance with section 352 by virtue of being in compliance with the rules of

the dealers' SRO, the NASD. NASD also has provided significant guidance to assist its member firms in developing anti-money laundering compliance programs that fit their business model and needs.¹³ However, in the case of municipal securities dealers who are members of both the NASD and MSRB, the rules that govern the dealers' conduct in connection with municipal securities activities are the rules of the MSRB, not the NASD. Therefore, for securities dealers that only conduct municipal securities transactions with the public, there currently is no SRO rule that provides guidance concerning the development and implementation of an anti-money laundering compliance program.¹⁴ For this reason, the MSRB adopted MSRB Rule G-41, on anti-money laundering compliance programs, to ensure that all dealers, including sole municipal securities dealers, know where to look for guidance concerning the development and implementation of anti-money laundering compliance programs.

The provisions of the USA PATRIOT Act are provisions of federal law and consequently all MSRB members should already be in compliance with section 352 of the AML Act. The MSRB is proposing new Rule G-41 to ensure that all brokers, dealers and municipal securities dealers who effect transactions in municipal securities, especially sole municipal securities dealers, are aware of their obligations under section 352 and know where to look for guidance concerning appropriate anti-money laundering programs. Moreover, the adoption of MSRB Rule G-41 will facilitate compliance with and enforcement of anti-money laundering compliance program rules by identifying for both bank and NASD examiners the rules and regulations that each dealer must comply with. By adopting a new rule that requires all dealers that effect transactions in municipal securities to establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator, the MSRB provides clarity to dealers and examiners about dealers' anti-money laundering program obligations and avoids promulgating duplicative or

inconsistent anti-money laundering program regulation.

(2) Basis

The Board proposed the rule change pursuant to section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Act in that it will facilitate dealer compliance with anti-money laundering compliance program regulation. These programs are designed to help identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

("FDIC"), the Office of Thrift Supervision ("OTS"), the National Credit Union Administration ("NCUA"), and SEC, and, pursuant to section 321(c) of the Act, the Commodity Futures Trading Commission ("CFTC").

⁹ See 31 CFR 103.120(b).

¹⁰ See FinCEN; Anti-Money Laundering Programs for Financial Institutions (Interim Final Rules announcement) 31 CFR part 103 (April 23, 2002), 67 FR 21110 (April 29, 2002).

¹¹ See Release No. 34-45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (SR-NASD-2002-24 and SR-NYSE-2002-10) (approval order); Release No. 34-46258 (July 25, 2002), 67 FR 49714 (July 31, 2002) (SR-Amex-2002-52) (approval order).

¹² See 31 CFR 103.120(c).

¹³ See <http://www.nasdr.com/money.asp> (NASD Regulation Web Page provides information about anti-money laundering rules, regulations, and compliance).

¹⁴ The MSRB believes that, nonetheless, sole municipal securities dealers are currently complying with NASD Rule 3011.