

**Supporting Statement for the
Uniform Application for Municipal Securities Principal or Municipal Securities
Representative Associated with a Bank Municipal Securities Dealer
(Form MSD-4; OMB No. 7100-0100) and the
Uniform Termination Notice for Municipal Securities Principal or Municipal Securities
Representative Associated with a Bank Municipal Securities Dealer
(Form MSD-5; OMB No. 7100-0101)**

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, two mandatory municipal securities dealer reporting forms:

- Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-4; OMB No. 7100-0100) and
- Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-5; OMB No. 7100-0101).

These information collections are submitted on occasion by state member banks (SMBs), bank holding companies (BHCs), savings and loan holding companies (SLHCs), and foreign dealer banks that are municipal securities dealers.¹ The Form MSD-4 collects information (such as personal history and professional qualifications) on an employee whom the bank wishes to assume the duties of municipal securities principal or representative. The Form MSD-5 collects the date of, and reason for, termination of such an employee.

On August 4, 2014, the Municipal Securities Rulemaking Board (MSRB) (MSRB Notice 2014-13) announced the creation of a new designation of registered person – Limited Representative - Investment Company and Variable Contracts Products – which is a sub-category of Municipal Securities Representative.² To conform to MSRB Notice 2014-13, the Board proposes to make a minor revision to the Form MSD-4 to add the Limited Representative - Investment Company and Variable Contracts Products as a new type of qualification. The Federal Reserve Board also proposes to require electronic submission of both the Form MSD-4 and Form MSD-5 to a secure Board e-mail address. The total annual reporting burden for these reporting forms is estimated to be 33 hours. A draft copy of the revised Form MSD-4 and Form MSD-5 reporting forms and instructions are attached.

Background and Justification

Pursuant to the Securities Acts Amendments of 1975 (P.L. 94-29), the Congress imposed a comprehensive federal regulatory structure on the municipal securities industry. A new rulemaking body, the MSRB, was created as a self-regulatory organization (SRO) to prescribe

¹ At this time, there are no SLHCs or foreign dealer banks that are registered as municipal securities dealers.

² See www.msrb.org/~media/Files/Regulatory-Notices/Announcements/2014-13.ashx?n=1.

rules for the municipal securities industry with respect to transactions in municipal securities. Rules of the MSRB take effect only after approval by the Securities and Exchange Commission (SEC). Although MSRB rules apply to all municipal securities dealers, the MSRB does not have authority to enforce its rules. For enforcement purposes the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) (the 1934 Act) designates appropriate regulatory agencies (ARAs) for specified municipal securities dealers. The Board is the ARA for municipal securities dealers that are SMBs and BHCs, and certain of their subsidiaries, departments, and divisions, or that are SLHCs. Although the 1934 Act does not specify the ARA for municipal securities dealer activities of foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by a foreign bank, or Edge Act corporations (collectively referred to as foreign dealer banks), the SEC has agreed that the Board should examine the municipal securities dealer activities of foreign dealer banks.³

The federal bank regulatory agencies⁴, in consultation with the MSRB, jointly drafted and adopted the Form MSD-4 and Form MSD-5 in 1977. The Form MSD-4 is the source document for initial information submitted to each agency. The Form MSD-5 is the source document for updating the information when an associated person's employment is terminated for any reason. Information collected on the Form MSD-4 and the Form MSD-5 may be routinely used by the ARA to (1) refer information indicating a potential violation of law to another government agency or SRO, (2) aid in the resolution of any proceeding in which the federal securities laws or banking laws are at issue, (3) obtain additional information from a government agency or SRO concerning the applicant's qualifications, or (4) respond to a government agency or SRO request for information needed to issue a license or for similar action affecting the applicant.

The Department of the Treasury (Treasury) rules covering government securities broker and dealer activities became effective in July 1987. The specific rule that deals with associated persons of government securities brokers and dealers who are also associated persons of a municipal securities dealer allows the associated persons to fulfill the notification requirements by filing the Form MSD-4 (17 C.F.R. 400.4). This was done to reduce burden by eliminating the need to file both the Form MSD-4 and Treasury's Form G-FIN-4 (Disclosure Form for Person Associated with a Financial Institution Government Securities Broker or Dealer; OMB No. 1535-0089). These two reporting forms require almost identical information. Likewise, the Form MSD-5 may also be used in lieu of filing both the Form MSD-5 and the Form G-FIN-5 (Uniform Termination Notice for Person Associated with a Financial Institution Government Securities Broker or Dealer; OMB No. 1535-0089) to terminate an associated person.

On September 13, 2011 (MSRB Notice 2011-54), the MSRB announced the creation of a new designation of registered person, a Municipal Securities Sales Limited Representative. The Municipal Securities Sales Limited Representative, a sub-category of Municipal Securities Representative, is limited to sales to and purchases from customers of municipal securities.

³ Letter from Catherine McGuire, Chief Counsel, SEC's Division of Market Regulation, to Laura M. Homer, Assistant Director, Board's Division of Banking Supervision and Regulation, June 14, 1994.

⁴ The Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

The creation of the Municipal Securities Sales Limited Representative designation resulted from changes in the structure of the Series 7 qualification examination which now focuses on a broader range of securities products.⁵ Because of the shift in emphasis and cut in the number of municipal securities questions, the Series 7 exam will no longer qualify associates as “municipal securities representatives”. Rather, individuals who take the Series 7 examination will be referred to as a “municipal securities sales limited representative” and be limited solely to sales activities. All other individuals will be required to pass the Series 52 exam in order to qualify as full municipal securities representatives.⁶

On August 4, 2014 (MSRB Notice 2014-13), the MSRB announced the creation of another designation of registered person, a “Limited Representative - Investment Company and Variable Contracts Products,” a sub-category of Municipal Securities Representative, is limited to sales to and purchases from customers of municipal fund securities. Individuals engaging in municipal fund securities activities *other* than sales of municipal fund securities will be required to take and pass the Municipal Securities Representative Qualification Examination (Series 52 examination).

Description of Information Collection

MSRB rule G-7, Information Concerning Associated Persons, requires persons who are or seek to be associated with municipal securities dealers as municipal securities principals (persons performing supervisory functions) or representatives (persons engaged in underwriting, trading, or sales of municipal securities or furnishing financial advice to issuers in connection with the issuance of municipal securities) to provide certain background information to the municipal securities dealers. The rule also requires municipal securities dealers to obtain and report this information. Generally, the information required to be disclosed by MSRB rule G-7 relates to employment history and professional background including any disciplinary sanctions and any claimed basis for exemption from MSRB examination requirements. MSRB rule G-7 provides that the information may be provided on the Form MSD-4 for a bank dealer.

The Form MSD-4 is the source document for initial information submitted to each regulatory agency on an employee whom the bank wishes to assume the duties of municipal securities principal or representative. Generally, the Form MSD-4 collects such information as employment history and professional background, including any disciplinary sanctions and any claim basis for exemption from MSRB examination requirements. In addition, the reporting form solicits personal information that most people would include on a resume.

The Form MSD-5 is the source document for updating the information when an associated person’s employment is terminated for any reason. The Form MSD-5 requires such

⁵ Individuals seeking to become a stockbroker must take the General Securities Representative Exam, commonly referred to as the Series 7 or Stockbroker Exam. A passing grade is required in order to obtain the professional license needed to become a Registered Representative of a broker-dealer in the United States.

⁶ Individuals seeking to become a municipal securities representative must take the Municipal Securities Representative Qualification Examination. A passing grade is required in order to obtain the professional license needed to sell municipal securities, such as municipal bonds, agency bonds and Section 529 plans for college education.

information as the reason for termination and whether any investigations or actions by agencies or SROs involving the associated person occurred during the period of employment. Both information collections are event-generated.

Currently, there are 11 SMBs and 2 BHCs registered as municipal securities dealers. Any SMB, BHC, or foreign dealer bank registering as a municipal securities dealer in the future will be required to file these event-generated reporting forms for its employees. Bank municipal securities dealers must retain exact copies of the Form MSD-4 for each associated person during the entire term of employment and both the Form MSD-4 and Form MSD-5 for three years from the date of termination of employment.

Proposed Revisions

To conform to MSRB Notice 2014-13, the Board proposes to make a minor revision to the Form MSD-4 to add the Limited Representative - Investment Company and Variable Contracts Products as a new type of qualification. The proposed reporting form, in all other respects, would preserve the structure of the current form. In addition, the Board proposes to revise the reporting instructions for the Form MSD-4 and Form MSD-5 to require respondents to submit an electronic copy of the forms and attachments to a secure Board e-mail address.

To better conform with statute defining the institutions for which the Board is the ARA – 15 U.S.C. § 78c(a)(34) – the Board proposes to clarify the reporting instructions to the Form MSD-4 and Form MSD-5 to explicitly state that BHCs and SLHCs are required to file the Form MSD-4 and Form MSD-5 with the Board.

Time Schedule for Information Collection

MSRB rule G-7 requires filing the Form MSD-4 prior to permitting a person to be associated with a municipal securities dealer. Further, a bank is required to file the Form MSD-5 within 30 days after a principal or representative terminates association with the municipal securities dealer. Completed reporting forms are sent directly to the Board's Division of Banking Supervision and Regulation. The information collected on the Form MSD-4 and Form MSD-5 is not published, nor is it otherwise available to the public.

Legal Status

The Board's Legal Division has determined that sections 15B(a)-(b) and 17 of the Securities Exchange Act (15 U.S.C. §§ 78o-4(a)-(b) and 78q) authorize the SEC and MSRB to promulgate rules requiring municipal security dealers to file registration reports about associated persons with the SEC and the ARA. In addition, section 15B(c) of the Act provides that ARAs may enforce compliance with the SEC's and MSRB's rules (15 U.S.C. § 78o-4(c)). Section 23(a) of the Act also authorizes the SEC, the Board, and the other ARAs to make rules and regulations in order to implement the provisions of the Act (15 U.S.C. § 78w(a)). The Board is the ARA for bank municipal securities dealers that are savings and loan holding companies, state member banks (including their divisions or departments), and bank holding companies (including a subsidiary bank of the bank holding company if the subsidiary does not already

report to another ARA or to the SEC, and any divisions, departments, or subsidiaries of that subsidiary)⁷ (15 U.S.C. § 78c(a)(34)(A)(ii)). The Board is also the ARA for state branches or agencies of foreign banks that are municipal securities dealers.⁸ Accordingly, the Board's collection of Form MSD-4 and Form MSD-5 for these institutions is authorized pursuant to 15 U.S.C. §§ 78o-4, 78q, and 78w.

The Board is also authorized to require that state member banks and their departments file reports with the Board pursuant to section 11(a)(1) of the Federal Reserve Act (12 U.S.C. § 248(a)(1)). Branches and agencies of foreign banks are also subject to the reporting requirements of section 11(a)(1) of the Federal Reserve Act pursuant to section 7(c)(2) of the International Banking Act (12 U.S.C. § 3105(c)(2)). In addition, section 10(b)(2) of the Home Owners' Loan Act authorizes the Board to require SLHCs to file "such reports as may be required by the Board" and instructs that such reports "shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require" (12 U.S.C. § 1467a(b)(2), as amended by section 369 of the Dodd-Frank Act).

The obligation to file the forms with the Board is mandatory for those financial institutions for which the Board serves as the ARA, and the filing of both forms is event generated.

The data collected on Form MSD-4 and Form MSD-5 is compiled in a "system of records" within the meaning of the Privacy Act (5 U.S.C. § 552a(a)(5)). In 1977, the Board formally designated a system of records for Form MSD-4 and Form MSD-5. See 4 Fed. Res. Reg. Service ¶ 8-350 (42 FR 16,854 (March 30, 1977)).⁹ The Privacy Act prohibits the Board from disclosing the information collected on the forms unless certain exceptions apply that would permit disclosure (5 U.S.C. § 552a(b)). For example, information that must be released under the Freedom of Information Act (FOIA) may be released under the Privacy Act (5 U.S.C. § 552a(b)(2)). In this case, exemption 6 of FOIA prohibits the release of information that is contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. § 552(b)(6)).

Consultation Outside the Agency

The Board has consulted with the OCC and the FDIC to ensure uniformity of the reporting forms. On February 19, 2016, the Board published a notice in the *Federal Register* (81 FR 8494) requesting public comment for 60 days on the extension, with revision, of these

⁷ Currently, the instructions to Form MSD-4 and to Form MSD-5 do not explicitly state that a SLHC or a BHC are required to file these forms with the Board. These instructions will be amended to make this requirement explicit, and the forms will be revised to include a Privacy Act notice.

⁸ Although Section 3(a)(34) of the Act (15 U.S.C. § 78c(a)(34)) does not specify the ARA for municipal securities dealer activities of foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by a foreign bank, or Edge Act corporations (collectively referred to as foreign dealer banks), the Division of Market Regulation of the SEC has agreed that the Board should examine the municipal securities dealer activities of foreign dealer banks. See Letter from Catherine McGuire, Chief Counsel, SEC's Division of Market Regulation, to Laura M. Homer, Assistant Director, Federal Reserve Board's Division of Banking Supervision and Regulation, June 14, 1994.

⁹ In 2008, the Board updated all of the Board's existing systems of records, including the system of records for Form MSD-4 and Form MSD-5 (BGFRS-17). See 73 FR 24,984, 24,999 (May 6, 2008).

information collections. The comment period for this notice expired on April 19, 2016. The Board did not receive any comments. On May 5, 2016, the Board published a final notice in the *Federal Register* (81 FR 27132).

Estimate of Respondent Burden

As shown in the following table, the total annual burden for both notices is estimated to be 33 hours. The Board estimates that it takes one hour to complete Form MSD-4 and 15 minutes to complete Form MSD-5. The Board estimates the proposed revision would not result in a change to the average hours per response. Because the frequency of filing these notices is event-generated, it is not possible to predict exactly how many would be filed in a particular year. The estimated number of responses was determined using the number of notices received in the past. Because respondents are required to retain these reporting forms during the employee's tenure and for three years after termination of employment, the estimated total annual burden of these information collections includes both reporting and recordkeeping burden. The annual burden of this information collection represents less than 1 percent of the total Federal Reserve System paperwork burden.

	<i>Number of respondents</i> ¹⁰	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Form MSD-4	20	1	1.00	20
Form MSD-5	50	1	0.25	<u>13</u>
<i>Total</i>				33

The annual cost to the public of these information collections is estimated to be \$1,754.¹¹

Sensitive Questions

These information collections contain no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System, including processing, printing, and mailing, is negligible.

¹⁰ Of the respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.

¹¹ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$17, 45% Financial Managers at \$65, 15% Lawyers at \$66, and 10% Chief Executives at \$89). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2015*, published March 30, 2016 www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.