

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96348; File No. SR-MSRB-2022-09)

November 17, 2022

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule G-3, on Professional Qualification Requirements, to Delete References to Certain Temporary Regulatory Relief Implemented During the Height of the Coronavirus Disease

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2022, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to amend Rule G-3, on professional qualification requirements, to delete references to certain temporary regulatory relief,³ implemented during the height of the coronavirus disease (“COVID-19” or “pandemic”) (the “proposed rule change”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Release No. 34-88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR-MSRB-2020-01) (the “April 2020 relief”).

The MSRB has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A)⁴ of the Act and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposed rule change effective upon receipt of this filing by the Commission. The MSRB would have the proposed rule change become operative on December 27, 2022.

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2022-SEC-Filings>, at the MSRB’s principal office, 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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In 2020, 2021 and 2022, the MSRB provided temporary regulatory relief to brokers, dealers, and municipal securities dealers (“dealers”) and municipal advisors (collectively “regulated entities”) in complying with certain obligations under MSRB rules in light of

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

operational challenges due to the pandemic.⁶ Specifically, with respect to regulatory relief provided from certain professional qualification standards, the MSRB was guided in part by operational concerns related to Prometric Test Centers, the physical facilities used for the MSRB-owned professional qualification examinations.⁷ In March 2020, Prometric announced that, due to the pandemic, it was temporarily closing all test center locations in the United States and Canada through April 15, 2020.⁸

In response to the test center closures and in light of other operational challenges due to the pandemic, such as stay-at-home orders imposed by many states and the vast number of regulated entities operating under business continuity plans, the April 2020 relief extended the time to comply with certain professional qualification obligations, as follows:

- The date by which an individual functioning in the capacity as a principal before passing the applicable MSRB-owned principal qualification examination pursuant to Rule G-3(b)(ii)(D), G-3(b)(iv)(B)(4) and G-3(c)(ii)(D), as applicable, would be extended 120

⁶ See supra note 3. In 2020, 2021 and 2022, the MSRB provided and further extended other COVID-19 related temporary relief to regulated entities for certain compliance obligations under MSRB rules. See Release No. 34-90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR-MSRB-2020-09), Release No. 34-93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR-MSRB-2021-06) and Release No. 34-94383 (March 9, 2022), 87 FR 14596 (March 15, 2022) (File No. SR-MSRB-2022-01).

⁷ The Financial Industry Regulatory Authority (“FINRA”) has been designated to provide test administration services to the MSRB for the delivery of MSRB-owned professional qualification examinations. FINRA uses Prometric as its sole vendor for the delivery of MSRB-owned professional qualification examinations. See e.g., Release No. 34-75714 (August 17, 2015), 85 FR 50863 (August 21, 2015) (Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors).

⁸ See <https://www.prometric.com/corona-virus-update>.

days from the time that the MSRB announces that Prometric has resumed access to its testing centers; thereby, marking the expiration date of the temporary period.⁹

- The date by which an individual must complete their Regulatory Element component of continuing education training,¹⁰ as required by Rule G-3(i)(i)(A)(1), would be extended 120 days from the time the MSRB announces that Prometric has resumed access to its testing centers; thereby, marking the expiration date of the temporary period.¹¹
- The date by which certain individuals are required to become qualified with the Municipal Advisor Principal Qualification Examination (“Series 54”) was extended until November 30, 2021. On October 11, 2019, the MSRB announced that a municipal advisor principal, as defined under Rule G-3(e),¹² had a one-year grace period, sunsetting on November 12, 2020, to pass the Series 54.¹³ The MSRB subsequently

⁹ See Rule G-3, Supplementary Material .10 - .12.

¹⁰ The Regulatory Element component of continuing education is a computer-based training program that focuses on dealer compliance, regulatory, ethical and sales practice standards with the content derived from common industry rules and regulations for dealers, as well as widely accepted standards and practices within the industry.

¹¹ See Rule G-3, Supplementary Material .14. This extension was only for purposes of compliance with MSRB Rule G-3(i)(i)(A)(1) and was not intended to provide regulatory relief to individuals who needed to complete Regulatory Element pursuant to the rules of another regulatory authority.

¹² The term "municipal advisor principal" is defined in Rule G-3(e)(i) to mean a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. To become qualified as a municipal advisor principal a person must, as a pre-requisite, take and pass the Municipal Advisor Representative Qualification Examination; and take and pass the Municipal Advisor Principal Qualification Examination.

¹³ See MSRB Notice 2019-18 (October 21, 2019) announcing the launch of the Series 54 exam, which the SEC had approved on November 20, 2018. See Release No. 34-84630

extended the grace period until March 31, 2021,¹⁴ and further extended it to November 30, 2021.¹⁵ These extensions permitted individuals qualified with the Municipal Advisor Representative Qualification Examination (Series 50) to continue to engage in principal-level activities without passing the Series 54 until November 30, 2021.¹⁶

- The Firm Element¹⁷ obligations for calendar year 2020 were deemed satisfied if completed on or before March 31, 2021.¹⁸
- The annual needs analysis and the delivery of continuing education pursuant to Rule G-3(i)(i)(B) and G-3(i)(ii), as applicable, was deemed to have been timely completed for calendar year 2020, provided that the needs analysis and the delivery of continuing education were completed on or before March 31, 2021.¹⁹

(November 20, 2018), 80 FR 60927 (November 27, 2018) (File No. SR-MSRB-2018-07).

¹⁴ See Release No. 34-90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR-MSRB-2020-09).

¹⁵ See Release No. 34-92938 (September 10, 2021), 86 FR 51696 (September 16, 2021) (File No. SR-MSRB-2021-05).

¹⁶ See Rule G-3, Supplementary Material .13.

¹⁷ The Firm Element component of continuing education is a firm-administered training program that requires all regulated entities to annually evaluate and prioritize their training needs based on a completed needs analysis. A needs analysis generally reflects a firm's assessment of its unique training needs based on various factors, for example, the business activities the firm and its associated persons engage in, the level of industry experience the firm's associated persons have and any changes to applicable rules or regulations.

¹⁸ See Rule G-3, Supplementary Material .15.

¹⁹ See Rule G-3, Supplementary Material .16.

These modified obligations were reflected in Supplementary Material to Rule G-3. By their terms, Supplementary Material paragraphs .13, .15 and .16 have expired.²⁰ The MSRB stated in the April 2020 relief that it would announce an end date for the temporary relief provided under Supplementary Material .10 through .12 and .14 by a notice published on its website.²¹

Prometric fully restored access to its test centers, thus permitting individuals seeking to take an MSRB-owned professional qualification examination to visit any Prometric test center in-person to take a principal qualification examination.²² Therefore, on July 25, 2022, the MSRB published a notice (the “2022 Notice”),²³ announcing that the remaining temporary relief under Supplementary Material .10 through .12 under Rule G-3, which provisions provided temporary relief for persons designated as municipal securities principals, municipal securities limited principals, and/or municipal securities sale principals would expire on August 29, 2022. Accordingly, principals designated under Supplementary Material .10 through .12, who, under the rule provisions, were required to be qualified in a representative capacity with at least 18 months experience functioning as representatives within the preceding five-year period of such

²⁰ In an effort to provide regulated entities the opportunity to better manage and allocate resources, the MSRB modified the date by which compliance obligations were due to be completed, under certain MSRB rules, to March 31, 2021.

²¹ See supra note 3. Specifically, the MSRB stated it would publish a notice on its website announcing when Prometric resumes operations in its testing centers so regulated entities are on notice of when the 120-day period begins to toll.

²² While Prometric test centers are now open, regulated entities are reminded that, due to the uncertain nature of the ongoing pandemic, individuals are advised to continue to review Prometric’s website, at <https://www.prometric.com/> for any operational changes that may affect test center access.

²³ See MSRB Notice 2022-05 (July 25, 2022) announcing the end of regulatory relief that extended certain professional qualification requirements due to COVID-19.

principal designation, may continue to do so until December 27, 2022, without taking and passing the appropriate principal qualification examination.

The 2022 Notice also announced that the temporary relief from Regulatory Element requirements for registered persons under Supplementary Material .14 of Rule G-3 would expire on August 29, 2022. Accordingly, persons designated under Supplementary Material .14 who are subject to the Regulatory Element must complete any Regulatory Element required under Rule G-3 (i)(i)(A)(1) within 120 days of August 29, 2022, or by December 27, 2022 — recognizing the stated regulatory relief was not intended to provide regulatory relief to individuals who may need to complete Regulatory Element pursuant to the rule of another regulatory authority; and thereby, may have completed such continuing education requirements.

The MSRB intends to have the proposed rule change become operative on December 27, 2022. This aligns with the provision of allowing 120 days from August 29, 2022, the expiration date of the temporary regulatory relief under Supplementary Material .10 through .12 and .14 under Rule G-3, for individuals to meet their regulatory obligation. Thus, upon the operative date of December 27, 2022, the expired regulatory relief will be deleted from MSRB Rule G-3. The MSRB notes that, while the temporary regulatory relief related to Supplementary Material .10 through .12 and .14 expired on August 29, 2022, the MSRB will continue to monitor the impact of the ongoing pandemic and work in close coordination with other regulatory and governmental authorities, as needed, to address any additional pandemic-related issues that may arise in the future.²⁴

²⁴ The MSRB notes that while certain professional qualifications pandemic-related regulatory relief expired on August 29, 2022, other relief remains in place; specifically, the ability for dealers to continue to conduct office inspections remotely.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act,²⁵ provides that the Board shall propose and adopt rules to effect the purposes of this 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 entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act²⁶ provides that the MSRB's rules shall be designed to: prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; 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; remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and, in general, protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change to remove outdated references to the regulatory relief that is no longer applicable would ensure that rule provisions are clear, accurate, and streamlined, thereby facilitating compliance and promoting just and equitable principles of trade by clarifying the regulatory obligations of dealers and municipal advisors. The removal of expired and outdated references will promote just and equitable principles of trade by reducing the risk of potential

²⁵ 15.U.S.C. 78o-4(b)(2).

²⁶ 15 U.S.C. 78o-4(b)(2)(C).

confusion as to the current state of one or more regulatory obligations and ensuring that the existing rule provisions are accurate and understandable by all dealers and municipal advisors.

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

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁷ In fact, the MSRB does not believe that the proposed rule change will have any burden on competition because the proposed rule change would apply equally to all regulated entities by deleting references to certain temporary regulatory relief implemented during the height of the pandemic for all regulated entities. Regulated entities of all size would be equitably and proportionately impacted by the proposed rule change. Therefore, the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁸

Additionally, 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.²⁹ The MSRB believes that the proposed

²⁷ Id.

²⁸ The Board’s “Policy on the Use of Economic Analysis in MSRB Rulemaking” (“policy”), available at: <https://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>, maintains that proposed rule changes filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act are not subject to the policy. With such filings, the MSRB usually focuses its economic analysis exclusively on the burden of competition to regulated entities. However, the MSRB may include further analysis based upon facts and circumstances if it believes that such analysis may inform the rulemaking process.

²⁹ 15 U.S.C. 78o-4(b)(2)(L)(iv).

rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act in that, while the proposed rule change will affect all municipal advisors, including small municipal advisors, there is no new regulatory burden that results.

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

Written comments were neither solicited nor received on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(6)³¹ thereunder. 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(6).

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-MSRB-2022-09 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-2022-09. 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 website (<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 website 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 am and 3:00 pm. 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. Persons submitting comments are

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2022-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

³² 17 CFR 200.30-3(a)(12).