

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90621; File No. SR-MSRB-2020-09)

December 9, 2020

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide Additional Regulatory Relief on a Temporary Basis to Dealers and Municipal Advisors Due to the Sustained Coronavirus (COVID-19) Pandemic

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 December 2, 2020 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 and II, 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 (i) amend Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB G-27, on supervision, to allow internal inspections of brokers, dealers and municipal securities dealers (collectively, “dealers”) to be conducted remotely, subject to certain conditions, for calendar year 2020 and calendar year 2021, without an on-site visit to the office or location; (ii) amend MSRB Rule G-16, on periodic compliance examinations, to add Supplementary Material .01, Temporary Relief for Completing Periodic Compliance Examination, to provide a temporary

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

extension of time for registered securities associations³ and appropriate regulatory agencies⁴ (collectively, “examining authorities”) to initiate periodic examinations of dealers; (iii) amend Supplementary Material .09, Temporary Relief for Municipal Advisor Principal, of MSRB Rule G-3, on professional qualification requirements, to provide a further extension of time for those individuals who meet the definition of a municipal advisor principal⁵ to become appropriately qualified by passing the Municipal Advisor Principal Qualification Examination (Series 54); and (iv) make a technical change to Supplementary Material .12, Temporary Relief for Municipal Advisor Continuing Education Requirements, of MSRB Rule G-3 to update a cross-reference (collectively the “proposed rule change”).

The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6)⁷ thereunder, which

³ Section 15B(c)(7) of the Exchange Act provides that periodic examinations of municipal securities brokers and municipal securities dealers shall be conducted by a registered securities association, in the case of municipal securities brokers and municipal securities dealers that are members of such association. The Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association. See 15 U.S.C. 78q-4(c)(7).

⁴ Pursuant to Section 15B(c)(7) of the Exchange Act, municipal securities brokers and municipal securities dealers who are not members of a registered securities association shall be examined by their appropriate regulatory agency. The term “appropriate regulatory agency” when used with respect to municipal securities dealers means, in part, the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“FRB”), and the Federal Deposit Insurance Corporation (“FDIC”). See 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers. See 15 U.S.C. 78q(b)(1).

⁵ 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 qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

renders the proposal effective upon receipt of this filing by the Commission and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so that the MSRB can implement the proposed rule change immediately.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx, 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 March of this year, the United States declared a national emergency in response to the coronavirus disease ("COVID-19") pandemic.⁸ In light of the operational challenges and disruptions to normal business functions as a result of COVID-19 pandemic, the MSRB filed a

⁸ See The White House, "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/#:~:text=On%20March%2011%2C%202020%2C%20the,and%20across%20the%20United%20States.>

proposed rule change for immediate effectiveness with the SEC in April of this year that provided regulatory relief on a temporary basis to dealers and municipal advisors (collectively “regulated entities”). The MSRB stated it would continue to monitor the impact of COVID-19 and work in close coordination with other financial regulators and governmental authorities.⁹

The MSRB recognizes that a vast number of regulated entities are still operating under business continuity plans and continue to manage operations from alternate sites with employees working from diverse work locations and telework arrangements. The impacts of the COVID-19 pandemic persist and, in an effort to slow the spread of COVID-19, many states are continuing to impose stay-at-home orders, limitations on in-person interactions and travel restrictions. Due to the ongoing pandemic-related health and safety concerns and the operational challenges regulated entities continue to experience, the MSRB believes the additional tailored temporary relief provided in the proposed rule change is warranted.

Temporary Relief under Rule G-27 to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021

With respect to Rule G-27, the April relief extended the deadline until March 31, 2021 for dealers to complete their calendar year 2020 inspections.¹⁰ However, in light of the health and safety concerns coupled with the continued restrictions on social interactions and travel, the April relief is no longer sufficient. To help proactively address the challenges resulting from the sustained pandemic, the MSRB is proposing to amend temporary Supplementary Material .01 under Rule G-27, on supervision, to provide dealers, subject to specified requirements therein,

⁹ See Release No. 34-88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR-MSRB-2020-01) (“April relief”).

¹⁰ Id.

the ability to conduct the inspections of their offices and locations for calendar year 2020 and calendar year 2021 remotely without the need to conduct an onsite visit to such office or location.¹¹

The proposed amendment to Supplementary Material .01 would set forth that inspections are due to be completed by March 31, 2021 for calendar year 2020 and completed by December 31, 2021 for calendar year 2021, the requirement to amend or supplement written supervisory procedures for remote inspections, the use of remote inspections as part of an effective supervisory system, and documentation requirements. The MSRB believes affording dealers the option to conduct remote inspections is a prudent regulatory approach during these unprecedented times while continuing to serve the important investor protection objectives of the inspection requirements under these unique circumstances. The temporary proposed supplementary material makes clear that it is not intended to alter a dealer's core responsibility, embodied in Rule G-27, to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to ensure compliance with Board rules and the applicable provisions of the Act and rules thereunder.

Temporary Relief under Rule G-16 to Extend the Time to Complete Periodic Compliance Examinations

MSRB Rule G-16, on periodic compliance examination, provides that at least once every four calendar years, each dealer that is a member of a registered securities association, must be examined by such registered securities association (i.e., FINRA); and at least once every two

¹¹ The proposed amendment to Supplementary Material .01 would be analogous to FINRA's rule change, File No. SR-FINRA-2020-04, which was filed on November 6, 2020 and was effective upon filing. See Release No. 34-90454 (Nov. 6, 2020) <https://www.sec.gov/rules/sro/finra/2020/34-90454.pdf>.

calendar years, each municipal securities dealer that is a bank or subsidiary or department or division of a bank must be examined by the appropriate regulatory agency (i.e., OCC, FRB, or FDIC), in accordance with Section 15B(c)(7) of the Exchange Act¹² for compliance with applicable rules of the Board and applicable provisions of the Act and rules and regulations of the Commission thereunder.

In an effort to provide examining authorities with an opportunity to better manage and allocate resources during these exigent circumstances; and in working with dealers as they manage operational challenges due to the pandemic, the MSRB is proposing to temporarily modify the date by which compliance examinations under Rule G-16 must be met. Specifically, the proposed rule change would deem any examination initiated between January 1, 2020 and March 31, 2021 to have occurred in calendar year 2020.

Temporary Relief under Rule G-3 to Extend Time to Complete Professional Qualification Requirements and Technical Amendment

In connection with the MSRB's April relief, the MSRB provided additional time to allow individuals to fulfill certain professional qualification standards under Rule G-3, on professional qualification requirements.¹³ At that time, due to the uncertainty regarding ongoing stay-at-home orders and social distance restrictions that could impact capacity at Prometric testing centers,¹⁴

¹² 15 U.S.C. 78o-4(b)(c)(7).

¹³ See supra note 9.

¹⁴ FINRA, as appointed by the Commission, provides test administration services to the MSRB for the delivery of MSRB-owned professional qualification examinations. See, e.g., Release No. 34-75714 (Aug. 17, 2015) (Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors). FINRA uses Prometric as its single vendor for the delivery of the professional qualification examinations that FINRA is charged with administering, including MSRB-owned professional qualification examinations.

the MSRB extended the date by which individuals are required to become qualified with the Series 54 examination from November 12, 2020 to March 31, 2021.¹⁵ Given the protracted period of the COVID-19 pandemic, the MSRB is taking proactive measures and is proposing to amend Supplementary Material .09 of Rule G-3 to extend the time period from March 31, 2021 to November 12, 2021, by which individuals who meet the definition of a municipal advisor principal must become appropriately qualified by passing the Series 54 examination. This extension of time affords municipal advisors and individuals functioning as municipal advisor principals a full year from the sunseting of the original grace-period¹⁶ to continue to engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, so long as such persons are qualified with the Municipal Advisor Representative Qualification Examination (Series 50).

¹⁵ In the April relief, the MSRB provided temporary relief for dealers by permitting any individual qualified to function in the capacity as a municipal securities principal, municipal fund securities limited principal or a municipal securities sales principal additional time to engage in the principal activity before passing the applicable principal-level qualification examination. The April relief extended the requirement to 120 days from the time the MSRB announces that Prometric testing centers have resumed sufficient access to its testing centers. See Rules G-3(b)(ii)(D), G-3(b)(iv)(B)(4) and G-3(c)(ii)(D). The MSRB stated in the April relief that 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. See supra note 9. The MSRB notes dealer firms are still covered under the April relief because, given the exigent circumstances surrounding the sustained pandemic, the MSRB has not yet announced when the obligation to take and pass the applicable principal examination must be completed.

¹⁶ The MSRB had previously stated, to facilitate the transition to the new exam requirement, the MSRB was providing a one-year grace period, sunseting on November 12, 2020, during which individuals qualified with the Series 50 examination would be able to take the Series 54 examination while continuing to engage in principal-level activities. See Release No. 34-84630 (Nov. 20, 2018), 83 FR 60927 (Nov. 27, 2018) (File No. SR-MSRB-2018-07).

The proposed rule change also makes a technical amendment to Supplementary Material .12 under Rule G-3, providing for the temporary relief for municipal advisor continuing education requirements, by correcting the cross-reference under the provision from (i)(ii)(B)(2) to (i)(ii)(B).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,¹⁷ 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.

The proposed rule change is designed to provide regulated entities additional time to comply with certain obligations under MSRB rules for a temporary period of time; it does not relieve such entities from compliance with underlying obligations that directly serve to protect investors, municipal entities, obligated persons and the public interest or market transparency goals. In a time when faced with unique challenges resulting from the sustained pandemic, the proposed rule change will afford dealers, municipal advisors and the examining authorities the ability to safeguard the health and safety of their personnel and to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest. In addition, the proposed rule change will also alleviate some of the operational challenges these

¹⁷ 15 U.S.C. 78o-4(b)(2)(C).

regulated entities may be experiencing, which will allow them to more effectively allocate resources to the provision of advice and the operations that facilitate 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.

Additionally, the proposed rule change is consistent with Section 15B(b)(2)(E) of the Exchange Act,¹⁸ which provides that the MSRB's rules shall provide:

for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers, municipal securities dealers, and municipal advisors to determine compliance with applicable provisions of this title, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker, municipal securities dealer, or municipal advisor.

Given the potential period of the pandemic and resulting persistent challenges to business operations, the proposed rule change provides examining authorities, not only with the ability to appropriately allocate their resources, but with a degree of flexibility to be responsive to the challenges dealers may face and minimize, to the extent possible, undue regulatory burdens, while not substantively altering examining authorities' obligations to examine for compliance with applicable rules of the Board and applicable provisions of the Act. The MSRB believes the temporary relief to provide for an extension of time for examining authorities to initiate periodic compliance examinations is not likely to, in isolation, create an investor protection harm given

¹⁸ 15 U.S.C. 78o-4(b)(2)(E).

that, through risk assessments, dealers are prioritized and examined with a greater frequency than the timeline Rule G-16 allows.¹⁹

The MSRB believes that the proposed rule change is also consistent with Section 15B(b)(2)(A) of the Act,²⁰ which authorizes the MSRB to prescribe “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,” in that those acting in the capacity of a municipal advisor principal would still be subject to the regulatory requirements under Rule G-3, including the requirement to be qualified with the Series 50 examination. Additionally, continuing to allow individuals to function in a principal capacity with the Series 50 for a period of time before having to pass the Series 54 examination, given this protracted period of the pandemic, provides individuals flexibility to prioritize safeguarding their health and safety and the proposed rule change is not inconsistent with the purpose of the grace period that the MSRB originally provided such professionals to qualify by the Series 54 examination, which is to minimize disruptions and to provide an orderly transition to the new qualification requirements.²¹

¹⁹ The MSRB stated in a filing made with the SEC, in 2011, that firms that are members of a registered securities association are risk-ranked based on an analysis of various identified risks and related factors. See Release No. 34-65992 (Dec. 16, 2011), 76 FR 79738 (Dec. 22, 2011) (File No. SR-MSRB-2011-19).

²⁰ 15 U.S.C. 78o-4(b)(2)(A).

²¹ See Release No. 34-84630 (Nov. 20, 2018), 83 FR 60927 (Nov. 27, 2018) (File No. SR-MSRB-2018-07).

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

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²² The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The goal of the proposed rule change is to provide temporary relief to grant additional time for regulated entities and the examining authorities to meet certain obligations under MSRB rules during the exigent circumstances of the COVID-19 pandemic but would not alter their underlying obligations under MSRB rules.

Additionally, Section 15B(b)(2)(L)(iv) of the Exchange 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.²³ The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act²⁴ in that, while the proposed rule change to extend the date by which individuals have to pass the Series 54 examination will affect all municipal advisors, including small municipal advisors, there is no new regulatory burden that results. Small municipal advisors typically have fewer associated persons and, as a result, their resources may be more limited during the pandemic and the benefits of the proposed rule change may provide smaller municipal advisors a greater benefit given their limited resources.

²² 15 U.S.C. 78o-4(b)(2)(C).

²³ 15 U.S.C. 78o-4(b)(2)(L)(iv).

²⁴ Id.

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

Pursuant to Section 19(b)(3)(A)²⁵ of the Act and Rule 19b-4(f)(6)²⁶ thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.²⁷ However, Rule 19b-4(f)(6)(iii)²⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.²⁹ The MSRB has requested that the Commission designate the proposed rule change operative

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ Id.

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

²⁹ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

upon filing,³⁰ as specified in Rule 19b-4(f)(6)(iii),³¹ which would make the proposed rule change operative on December 2, 2020.

The MSRB notes that the proposed rule change does not relieve regulated entities from compliance with underlying obligations. Rather, the proposed rule change provides regulated entities with additional time and flexibility to comply with certain compliance obligations for a temporary period of time. Additionally, it grants examining authorities an extension of time to examine dealers without substantially altering the examining authorities' obligations. The MSRB believes the proposed rule change will afford regulated entities the ability to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest during the sustained pandemic. Further the MSRB stated, that by alleviating operational challenges, the proposed rule change will allow regulated entities to focus resources on the provision of advice and operations that facilitate transactions in municipal securities and municipal financial products.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change does not relieve regulated entities from compliance with underlying obligations and will allow regulated entities to more effectively allocate resources during ongoing disruption to normal business functions as a result of the pandemic. Waiver of the 30-day operative period will alleviate operational challenges and facilitate the provision of advice and transactions in the municipal securities market in light of the ongoing impacts to in-person interactions, travel, health and safety

³⁰ See SR-MSRB-2018-10.

³¹ 17 CFR 240.19b-4(f)(6)(iii).

presented by the pandemic. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b-4(f)(6)(iii) and designates the proposed rule change to be operative upon filing.³²

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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2020-09 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-2020-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

³² For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).