

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83207; File No. SR-MSRB-2018-03)

May 10, 2018

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Revise the Language of Certain Administrative Rules to Continue to Help Ensure that They Reflect MSRB Practices and Improve Consistency Among the Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2018 the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (“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 proposed amendments to MSRB Rule A-3, on membership on the Board, MSRB Rule A-4, on meetings of the Board, MSRB Rule A-5, on officers and employees of the Board, and MSRB Rule A-17, on confidentiality of examination reports, to revise the language of the rules to continue to help ensure that they reflect MSRB practices and improve consistency among the rules (collectively, the “proposed rule change”). The MSRB has designated the proposed rule change as being immediately effective upon filing

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3)<sup>4</sup> thereunder. The proposed rule change is concerned solely with the administration of the MSRB in that it amends certain rules that relate exclusively to the internal operation of the Board.

The text of the proposed rule change is available on the MSRB's website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-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

The MSRB has adopted administrative rules ("A-Rules") that pertain to the operation and administration of the Board, which are identified by the prefix A.<sup>5</sup> The MSRB routinely reviews its A-Rules for accuracy and adherence to governance best practices. As a result of a recent review of certain A-Rules, the MSRB is proposing to amend Rules A-3, A-4, A-5 and A-17.

Rule A-3(b)(i)

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<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> See MSRB Rule A-1.

As part of its review of the A-Rules, the MSRB sought to improve internal consistency among its rules. The MSRB has adopted certain definitional rules which define terms used in the rules of the Board.<sup>6</sup> Rule D-4 defines the term “Board” as the Municipal Securities Rulemaking Board, but in one instance Rule A-3(b)(i) refers to the “Board of Directors.” The proposed rule change would replace this reference to “Board of Directors” with the defined term “Board” for consistency.

#### Rule A-3(b)(iii) and (iv)

Rule A-3(b)(iii) sets forth information regarding the Board application process, including the public notices which the Nominating and Governance Committee (“Committee”) publishes and the information that applicants must provide to the Committee. In describing the information that the Committee’s public notice will require, Rule A-3(b)(iii) references “applicant recommendations.” In practice, the Committee solicits applications through an application form completed by applicants.

While applicants can recommend themselves and this phrasing is therefore not inaccurate, the proposed rule change would amend Rule A-3(b)(iii) and (iv) to better reflect the manner in which the Board conducts the application process by replacing references to “recommendations” with “applications” and making other conforming changes.

#### Rule A-3(d)

During the review, the MSRB noted an obsolete cross-reference in Rule A-3(d), which stems from previous amendments to Rule A-3. Specifically, on January 25, 2011, the

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<sup>6</sup> Id.

Commission approved amendments to former Rule A-3(c) (now Rule A-3(b))<sup>7</sup> to reflect changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”),<sup>8</sup> which amended Section 15B of the Exchange Act.<sup>9</sup> Subsection (vi) of the former Rule A-3(c) (now Rule A-3(b)) was deleted, which included a requirement that the public representatives on the Board, prior to assuming office, be subject to approval by the Commission to assure that they were not disqualified as public members by reason of association with a broker, dealer or municipal securities dealer. The deletion was made as the MSRB took the process of assuring public status upon itself.

At the time of this change, a cross-reference in another part of Rule A-3 to the Commission’s approval function was inadvertently not deleted. This cross-reference is currently contained in Rule A-3(d), on vacancies, and it provides that vacancies on the Board with respect to public representatives are filled by Board vote, “subject to the Commission’s power of approval referred to in section (c) of [Rule A-3] ... .” As noted, however, after the 2011 amendments, there is no longer any Commission approval function for public representatives, as was previously described in Rule A-3(c). The cross-reference, therefore, has been without any effect. The proposed rule change would delete the obsolete cross-reference in Rule A-3(d).

Rule A-3(c) and (f)

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<sup>7</sup> Release No. 34-63764 (January 25, 2011), 76 FR 5417 (January 31, 2011) (SR-MSRB-2010-17).

<sup>8</sup> Pub. Law No. 111-203, 124 Stat. 1376 (2010).

<sup>9</sup> 15 U.S.C. 78o-4.

The Dodd-Frank Act grants the MSRB broad rulemaking authority over municipal advisors and municipal advisory activities<sup>10</sup> and requires that the Board include at least one individual who is associated with and representative of municipal advisors (“municipal advisor representative”).<sup>11</sup> As indicated above, the MSRB amended its A-Rules to reflect certain changes made by the Dodd-Frank Act. However, the more recent review of the A-Rules identified two provisions which refer generally to other Board member categories but have not been amended to address municipal advisor representatives.

On July 29, 2009, an amendment to Rule A-3 became effective to add section (g) (now Rule A-3(f)), on affiliations, which prohibits two persons associated with the same dealer from serving as members of the Board at the same time.<sup>12</sup> The same concerns that arise from two representatives of the same dealer serving on the Board at the same time could also arise with municipal advisor representatives and, accordingly, the rationale underlying Rule A-3(f) should apply evenly to all categories of regulated representatives. Thus, the proposed rule change would amend Rule A-3(f) also to address municipal advisors, such that two persons associated with the same municipal advisor would be prohibited from serving on the Board at the same time.

Similarly, Rule A-3(c), which provides that an affirmative vote of two-thirds of the whole Board is needed to remove a member from office, requires that the vote to remove include the affirmative vote of at least one public representative, one broker-dealer representative and one bank representative. The rationale of this provision is to require the affirmative vote of at least

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<sup>10</sup> See Section 15B(b)(2) of the Exchange Act (15 U.S.C. 78o-4(b)(2)).

<sup>11</sup> *Id.* In addition, not less than 30 percent of the total number of regulated representatives must be municipal advisor representatives. MSRB Rule A-3 (Membership on the Board).

<sup>12</sup> Release No. 34-60408 (July 30, 2009), 74 FR 39372 (August 6, 2009) (SR-MSRB-2009-11).

one member of each Board category in the decision to remove a member. According to the same rationale, this provision should be extended also to require the affirmative vote of at least one municipal advisor representative to remove a Board member from office; thus, the proposed rule change would so amend Rule A-3(c).

#### Rule A-4(d), Rule A-5(c) and Rule A-17

Lastly, the proposed rule change would amend certain provisions in Rules A-4, A-5 and A-17 to refer to the MSRB's most senior executive as "Chief Executive Officer" instead of the current title of "Executive Director" due to an intended alignment with other existing MSRB officer titles.

#### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(B) and (I) of the Act.<sup>13</sup> Section 15B(b)(2)(B) provides that the MSRB's rules shall "establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives." While the proposed rule change would not alter the MSRB's Board nomination or election process, it would help to continue to ensure that the MSRB's rules reflect that process.

Section 15B(2)(I) provides that the MSRB's rules shall provide for the operation and administration of the MSRB. The proposed rule change amends provisions of the A-Rules that relate to the operation and administration of the MSRB. The MSRB also believes that the proposed rule change will further enhance the Board's governance procedures by improving descriptions of the MSRB's practices and improving internal consistency.

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<sup>13</sup> 15 U.S.C. 78o-4(b)(2)(B) and 15 U.S.C. 78o-4(b)(2)(I).

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

Section 15B(b)(2)(C) of the Act<sup>14</sup> requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the proposed rule change simply amends language in the A-Rules to continue to help ensure they reflect the MSRB's practices and improve consistency among MSRB rules.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>16</sup> 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.

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<sup>14</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2018-03 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-2018-03. 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 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2018-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.<sup>17</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).