

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84999; File No. SR-MSRB-2019-01)

January 29, 2019

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effective Date of Previously-Approved Amendments to Rule G-21 and New Rule G-40

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2019 the Municipal Securities Rulemaking Board (“MSRB”) 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 extend the February 7, 2019, effective date of previously-approved amendments to Rule G-21, on advertising by brokers, dealers or municipal securities dealers, and new Rule G-40, on advertising by municipal advisors (“proposed rule change”).³ The MSRB has designated the proposed rule change for immediate effectiveness. The new effective date of the amendments to Rule G-21 and new Rule G-40 will be announced in an MSRB Notice to be published on the MSRB’s website no later

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See [Release No. 34-83177](#) (May 7, 2018); 83 FR 21794 (May 10, 2018) (File No. SR-MSRB-2018-01). The SEC also approved a technical amendment to Rule G-42, on duties of non-solicitor municipal advisors. The compliance date for this amendment to Rule G-42 would remain February 7, 2019.

than 60 days following publication of the proposed rule change in the Federal Register. The effective date to be announced will be not later than 180 days following publication of the MSRB Notice.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-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 proposes to extend the effective date of amendments to Rule G-21 and new Rule G-40 (collectively "advertising rules"). On May 7, 2018, the Commission approved the amendments with an effective date of February 7, 2019.⁴

The amendments to Rule G-21 (i) provide more specific content standards for advertisements by brokers, dealers or municipal securities dealers (collectively, dealers), (ii) revise the rule's general standards for advertisements, and (iii) reconcile analogous provisions relating to the definition of "form letter" in Rule G-21 with the definition of correspondence in

⁴ Id.

FINRA Rule 2210, on communications. The amendments also include a technical amendment in paragraph (e) to streamline the rule.

New Rule G-40 includes general provisions, addresses professional advertisements by municipal advisors, and requires principal approval, in writing, for advertisements by municipal advisors before their first use. The general provisions (i) define key terms, including the term “advertisement,” (ii) provide content standards, such as the requirement that an advertisement be based on the principles of fair dealing and good faith and be fair and balanced, and (iii) provide general standards for advertisements, namely that a municipal advisor shall not publish or disseminate an advertisement that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

In setting an effective date of February 7, 2019, the MSRB was seeking to provide dealers and municipal advisors sufficient time to establish and implement effective processes and procedures to comply with the advertising rules. Consistent with that intent, the MSRB planned to provide guidance relating to: a municipal advisor’s use of case studies and municipal advisory client lists; Rule G-40’s content standards; and the use of social media.⁵ The MSRB is seeking to extend the effective date of the amendment to Rule G-21 and new Rule G-40 because additional time is needed to finalize its initial guidance and any related rule changes concerning the use of social media under MSRB advertising rules and, subsequently, allow dealers and municipal advisors to establish and implement effective policies and procedures for compliance with the advertising rules.

⁵ See Letter from Pamela K. Ellis, Associate General Counsel, MSRB, dated April 30, 2018, available at <http://msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01%20MSRB%20Letter%20to%20SEC.ashx?>

Accordingly, the MSRB submits this proposed rule change to extend the effective date of the amendments to Rule G-21 and new Rule G-40.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,⁶ 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 does not alter any rule language but extends the effective date of the amendments to Rule G-21 and new Rule G-40, which were previously approved by the Commission. The MSRB believes that by extending the effective date until after the guidance concerning the use of social media under MSRB advertising rules is finalized, dealers and municipal advisors will be afforded the time necessary to develop effective compliance procedures. Therefore, the proposed rule change will promote effective compliance with MSRB advertising rules and help prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest.

⁶ 15 U.S.C. 78o-4(b)(2)(C).

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

Section 15B(b)(2)(C) of the Act⁷ 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. The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act. The proposed rule change will not alter any rule language and will, instead, only extend the effective date of the amendments to Rule G-21 and new Rule G-40.

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.⁸ The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act in that, while the proposed rule change would affect all municipal advisors, including small municipal advisors, any regulatory burden that results is necessary and appropriate in order to promote regulatory consistency of advertising standards.

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)⁹ of the Act and Rule 19b-4(f)(6)¹⁰ thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) does not

⁷ Id.

⁸ 15 U.S.C. 78o-4(b)(2)(L)(iv).

⁹ 15 U.S.C. 78s(b)(3)(A).

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.¹¹ However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹³ The MSRB has requested that the Commission designate the proposed rule change operative upon filing,¹⁴ as specified in Rule 19b-4(f)(6)(iii),¹⁵ which would make the proposed rule change operative on January 28, 2019.

The MSRB notes that the proposed rule change does not contain any amendments to the text of MSRB rules but extends the effective date of the amendments to Rule G-21 and new Rule G-40, which were previously approved by the Commission. The MSRB believes that by extending the effective date until after the guidance concerning the use of social media under MSRB advertising rules is finalized, dealers and municipal advisors will be afforded the time

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ Id.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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.

¹⁴ See SR-MSRB-2018-10.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

necessary to develop effective compliance procedures. Further, the MSRB has stated that, in light of a 30-day operative period that would conclude after the original effective date of February 7, 2019, an earlier operative date would provide regulatory certainty to dealers and municipal advisors that the effective date for compliance with the amendments to Rule G-21 and new Rule G-40 is extended.

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 will help promote effective compliance with the amendments to Rule G-21 and new Rule G-40. Waiver of the 30-day operative period will provide certainty to dealers and municipal advisors that the effective date for compliance with the amendments to Rule G-21 and new Rule G-40 is extended in advance of February 7, 2019 and avoid confusion in the market. 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.¹⁶

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.

¹⁶ 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).

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-2019-01 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-2019-01. 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 comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2019-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁷

Eduardo A. Aleman
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).