

2015-20

Publication Date
November 3, 2015

Stakeholders
Municipal Securities
Dealers, Municipal
Advisors

Notice Type
Regulatory
Announcement

Category
Administration

MSRB Adopts Rule Requiring Participation in Business Continuity and Disaster Recovery Testing

Overview

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) new MSRB Rule A-18, on mandatory participation in business continuity and disaster recovery testing.¹ Rule A-18, which was effective upon filing, requires certain brokers, dealers, municipal securities dealers and municipal advisors registered with the MSRB to participate in business continuity and disaster recovery plans (“BC/DR Plans”) testing in connection with the SEC’s Regulation Systems Compliance and Integrity (“Regulation SCI”).²

Background

Regulation SCI was adopted by the SEC under the Securities Exchange Act of 1934 and applies to certain self-regulatory organizations (including the MSRB), alternative trading systems, plan processors, and exempt clearing agencies (collectively, “SCI entities”), and requires these SCI entities to comply with requirements with respect to certain automated systems. Among other things, Regulation SCI requires the MSRB and other SCI entities to maintain BC/DR Plans that meet certain standards set forth in Regulation SCI.³ Regulation SCI also requires that each SCI entity “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of

¹ See [File No. SR-MSRB-2015-12](#).

² See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014).

³ 17 CFR 242.1001(a)(2)(v).



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such plans.”⁴ Regulation SCI also requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁵ To facilitate compliance with Regulation SCI, the MSRB proposed new Rule A-18.

Description of Rule Change

Rule A-18 requires certain brokers, dealers, municipal securities dealers and municipal advisors registered with the MSRB (“MSRB Registrants”) to participate in functional and performance testing of the operation of the MSRB’s BC/DR Plans, in the manner and frequency specified by the MSRB, provided that such frequency shall not be less than once every 12 months. Those MSRB Registrants that will be designated “Participants” are those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during a particular month or quarter (“Measurement Period”). The percentage of data submission volume and the minimum number of Participants that the MSRB considers to be meaningful and the Measurement Period will be determined by the MSRB, published to MSRB Registrants in advance of the Measurement Period, and applied during the Measurement Period (not retroactively). The MSRB will, at least forty-five (45) calendar days prior to a functional and performance testing of the operation of the MSRB’s BC/DR Plans, individually notify all Participants for purposes of participation in such testing. The MSRB believes the proposed notice requirement is necessary to provide sufficient advance notice to those MSRB Registrants that are designated as Participants in mandatory business continuity and disaster recovery testing under Rule A-18.

Any changes to the standards by which an MSRB Registrant might be determined to be a designated Participant in the BC/DR Plans testing would be publicly announced with reasonable advance notice.

⁴ 17 CFR 242.1004(a).

⁵ 17 CFR 242.1004(b).

Questions about this notice may be directed to Gail Marshall, Associate
General Counsel – Enforcement Coordination, at 703-797-6600.

November 3, 2015

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Text of Rule Change⁶

Rule A-18: Mandatory Participation in Business Continuity and Disaster Recovery Testing

(a) Purpose. Pursuant to Regulation Systems Compliance and Integrity under the Securities Exchange Act of 1934 and with respect to the MSRB’s business continuity and disaster recovery plans, including its backup systems, the MSRB is required to establish standards for the designation of MSRB Registrants that the MSRB reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. The MSRB has established standards and will designate Participants according to those standards as set forth below.

(b) Designation. The MSRB shall designate Participants as those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during the Measurement Period. The Measurement Period will be determined by the MSRB and published to MSRB Registrants. The percentage of data submission volume and the minimum number of Participants that the MSRB considers to be meaningful will be determined by the MSRB, published to MSRB Registrants in advance of the Measurement Period, and applied during the Measurement Period (not retroactively). The MSRB will individually notify all Participants that are subject to section (c) at least forty-five (45) calendar days prior to the testing set forth in section (c).

(c) Participation. Participants are required to participate in functional and performance testing of the operation of the MSRB’s business continuity and disaster recovery plans, in the manner and frequency specified by the MSRB, provided that the frequency shall be at least once every 12 months.

(d) Definitions. For purposes of this Rule,

(i) “Measurement Period” means the time period, whether monthly or quarterly, during which time the MSRB measures data submission volume required to be provided by MSRB Registrants for purposes of designating Participants in accordance with section (b).

(ii) “MSRB Registrants” means brokers, dealers, municipal securities dealers or municipal advisors registered with the MSRB.

⁶ Underlining indicates new language.

(iii) “Participants” means those MSRB Registrants that the MSRB has determined, pursuant to section (b), are among those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during the Measurement Period, which percentage of data submission volume represents the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the MSRB’s business continuity and disaster recovery plans.