

2020-15

**Publication Date**

September 10, 2020

**Stakeholders**

Municipal Securities  
Dealers, Municipal  
Advisors, Issuers,  
Investors, General Public

**Notice Type**

Informational Notice

**Category**

Administration

**Affected Rules**

[Rule A-3](#), [Rule A-4](#)

## MSRB Makes Administrative Changes to Board Governance Rules

### Overview

The Municipal Securities Rulemaking Board (MSRB) filed an immediately effective rule change with the U.S. Securities and Exchange Commission (SEC or “Commission”) on September 9, 2020 that make certain changes to the Board’s quorum, meeting and voting requirements.<sup>1</sup>

These amendments:

- Revise the Board’s quorum requirement by replacing the specific Board category representation requirements with a more general requirement that a majority of the Board’s public representatives and a majority of the Board’s regulated members be present;
- Modify the voting requirement for the Board to remove a member for cause by replacing the requirement for the vote to include the affirmative vote of members from specified Board categories with a requirement that the vote include the affirmative vote of a majority of the Board’s public representatives and a majority of the Board’s regulated members;
- Add an express statement that the Board may meet through the use of any means of communication by which all persons participating may simultaneously hear each other (including through the use of captioning or other similar transcription means) during the meeting;
- Update the requirement for taking Board action without a meeting; and
- Move the provision on Board resolutions into its own subsection and rephrase the provision on special meetings of the Board to clarify its meaning.



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<sup>1</sup> File No. SR-MSRB-2020-05.

## Effective Date

The amendments are effective immediately and operative on October 1, 2020.

## Brief Summary of the Amendments

### MSRB Quorum and Cause Removal Voting Requirements

Prior to the current amendments, MSRB Rule A-4(c) provided that a quorum consists of “two-thirds of the members of the whole Board (at least one of whom shall be a public representative, one a broker-dealer representative, one a bank representative and one a municipal advisor representative) . . .” Rule A-3(c) used the same formulation when describing the vote required to remove a Board member for cause. The current changes include parallel amendments to both of these provisions. Specifically, the amendments replace the specific category representation requirements in both rules with a requirement that a quorum consists of a majority of the public representatives and a majority of the regulated representatives. The purpose of these amendments is twofold. First, requiring a majority of the public representatives and a majority of the regulated representatives provides additional assurance of the Board’s commitment to balanced representation on the Board, including the substantial participation of both public and regulated representatives in Board decisions. Second, eliminating the more specific category requirements mitigates the risk, increased by the Board’s impending reduction in size,<sup>2</sup> that the absence of a single Board member (or a small group of Board members) could prevent the Board from meeting the quorum requirement or the voting requirement for removal for cause even if the other requirements are met.<sup>3</sup>

### Board Meetings and Board Action Without a Meeting

MSRB Rule A-4(a) requires the Board to meet at least quarterly and governs the conduct of regular and special meetings. In practice, the Board generally meets in person each quarter and by conference call more frequently. While the Board’s power to conduct meetings telephonically or otherwise remotely has never been in doubt, the Board has amended Rule A-4(a) to expressly

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<sup>2</sup> See Exchange Act Release No. 89484 (Aug. 5, 2020), 85 FR 48579 (Aug. 11, 2020) (File No. SR-MSRB-2020-04) (approving amendments to Rule A-3 that reduce the Board’s size to 17 members for fiscal year 2021 and 15 members thereafter).

<sup>3</sup> In addition, the amendments move two sentences in Rule A-4(c) that relate to Board resolutions into a new subsection, A-4(e). Locating the provision on resolutions in its own subsection, rather than in the subsection on the Board’s quorum requirement, improves the overall organization of the rule.

provide that meetings may be held through the use of any communications method by means of which all persons participating in the meeting can hear each other (including through the use of captioning or other similar transcription means). This amendment is intended to provide additional assurance to the public that the Board is able to conduct business even when circumstances prevent it from meeting in person. The amendments also rephrase the sentence in Rule A-4(a) on special meetings of the Board to clarify its meaning.

Rule A-4 also sets forth the requirements for the Board to take action without a meeting. The Board takes action without a meeting infrequently, generally when a matter requires prompt attention in between scheduled meetings and circumstances preclude convening a special meeting. Rule A-4(d) provides that such action may be taken by written consent or by telephone or email poll of all members of the Board. The amendments to Rule A-4(d) simplify the rule and more clearly describe the process for taking action without a meeting under the Virginia Nonstock Corporation Act,<sup>4</sup> pursuant to which the Board is organized. As amended, the rule provides that action without a meeting must be taken by unanimous written consent of the Board members.

Questions about this notice may be directed to Jake Lesser, Deputy General Counsel, at 202-838-1500.

September 10, 2020

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<sup>4</sup> Va. Code Ann. §§ 13.1-801 et seq.

## Text of [Proposed] Amendments\*

### Rule A-3: Board Membership: Composition, Elections, Removal, Compensation

(a)-(b) No change

(c) *Resignation, Disqualification and Removal.*

(i) A member may resign from the Board by submitting a written notice of resignation to the Chair of the Board which shall specify the effective date of such member's resignation. In no event shall such date be more than 30 days from the date of delivery of such notice to the Chair. If no date is specified, the resignation shall become effective immediately upon its delivery to the Chair.

(ii) If a member's change in employment or other circumstances results in a conflict with the requirements of section (a) of this rule the member shall be disqualified from serving on the Board as of the date of the change. If the Board determines that a member's change in employment or other circumstances does not result in disqualification pursuant to this paragraph but changes the category of representative in which the Board member serves, the member will remain on the Board pending a vote of the other members of the Board, to be taken within 30 days, determining whether the member is to be retained.

(iii) If the Board finds that any member has willfully violated any provision of the Act, any rule or regulation of the Commission thereunder, or any rule of the Board or has abused his or her authority or has otherwise acted, or failed to act, so as to affect adversely the public interest or the best interests of the Board, the Board may, upon the affirmative vote of two-thirds of the whole Board (which shall include the affirmative vote of a majority of the public representatives and a majority of the regulated representatives ~~at least one public representative, one broker-dealer representative, one bank representative and one municipal advisor representative~~), remove such member from the Board

(d)-(f) No change

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### Rule A-4: Meetings of the Board

(a) *Meetings.* Regular meetings of the Board shall be held at least quarterly and at such time and place as from time to time determined by resolution of the Board or provided by rule of the Board. The Chair of the Board may, and upon the written request of not less than three members shall, call a special meeting, the purpose or purposes of which shall be specified. ~~Special meetings of the Board shall be called by the Chair of the Board or at the written request of not less than three members, which request shall in each case specify the purpose or purposes of the meeting.~~ Meetings may be held either in person or through the use of any means of communication by which all persons participating may simultaneously hear each other (including through the use of captioning or other similar transcription means) during the meeting. At special meetings, the Board shall consider only those specific matters for which the meeting was called, unless all members consent either at the meeting or in writing before or after the meeting to the consideration of other matters.

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\* Underlining indicates new language; strikethrough denotes deletions.

(b) No change

(c) *Quorum and Voting Requirements.* A quorum of the Board shall consist of two-thirds of the members of the whole Board, including a majority of the public representatives and a majority of the regulated representatives (at least one of whom shall be a public representative, ~~one a broker-dealer representative, one a bank representative and one a municipal advisor representative~~), and any action taken by the affirmative vote of a majority of the whole Board at any meeting at which a quorum is present shall, except as otherwise provided by rule of the Board, constitute the action of the Board. ~~Unless otherwise specified by the Act or by rule of the Board, action by the Board may be by resolution. Resolutions of the Board shall take effect immediately, unless a different effective date shall be specified therein.~~

(d) *Action Without a Meeting.* Action by the Board may be taken without a meeting by unanimous written consent of the Board setting forth the action so taken, or by telephone or e-mail poll of all members of the Board, provided that, in the case of action taken by telephone or e-mail poll, the Board, at a meeting, or the chairman of the Board authorizes the action to be taken by such means. ~~The Chief Executive Officer shall transmit to each Board member, as soon as practicable after a telephone or e-mail poll is taken, a written statement setting forth the question or questions with respect to which the telephone or e-mail poll was taken and the results of the telephone or e-mail poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent, telephone or e-mail poll, an affirmative vote of a majority of the whole Board is required.~~

(e) Resolutions. ~~Unless otherwise specified by the Act or by rule of the Board, action by the Board may be by resolution. Resolutions of the Board shall take effect immediately, unless a different effective date shall be specified therein.~~