

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91958; File No. SR-MSRB-2021-03)

May 20, 2021

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to MSRB Rule A-8 and the By-Laws of the Municipal Securities Rulemaking Board to Update Descriptions of Board Rulemaking Processes and Eliminate Redundant or Obsolete Provisions

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 May 19, 2021 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, 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 a proposed rule change consisting of amendments to MSRB Rule A-8, relating to rulemaking procedures, and parallel amendments to Article 8 of the By-Laws of the Municipal Securities Rulemaking Board (“Bylaws”), which reproduces MSRB Rule A-8 (the “proposed rule change”). The MSRB has designated the proposed rule change as “concerned solely with the administration of the self regulatory organization” under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

effective upon filing with the Commission. As described below, the proposed rule change would update descriptions of Board rulemaking processes and eliminate redundant or obsolete provisions.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-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

MSRB rulemaking is governed by Section 19 of the Exchange Act⁵ and Rule 19b-4 thereunder, which describe the processes self-regulatory organizations must follow to file proposed rule changes with the Commission. MSRB Rule A-8 reflects, and to some extent incorporates, these requirements and includes provisions that describe Board processes for complying with them. The proposed rule change is intended to update these provisions and reduce unnecessary complexity, as follows.

⁵ 15 U.S.C. 78s.

Eliminating Unnecessary Descriptions of Statutory Requirements

Section (a) of MSRB Rule A-8 notes the statutory requirements with which the Board must comply when it adopts rules and also restates the statutory authority granted to the Board in Section 15B(b) of the Exchange Act.⁶ While referencing the Board's statutory authority in section (a) is useful to provide context for what follows, the more detailed description adds unnecessary length and complexity. The proposed rule change streamlines the section by deleting the detailed description but does not change the substance of the rule. The proposed rule change further improves the readability of section (a) by moving the sentence describing who must sign rule filings – a separate topic – into a new section (b).

Removing Outdated or Obsolete References

Current section (b) of MSRB Rule A-8 (section (c) in the proposed rule change) notes that the Board may “render or cause to be rendered advisory opinions and interpretations of rules of the Board at the request of any interested person.”⁷ The proposed rule change removes the reference to “advisory opinions,” a term that the Board once used, but no longer uses, to describe certain interpretations. Removing this reference would eliminate the potential for confusion about the meaning of the term without limiting the kinds of interpretive and other materials relating to rulemaking that the Board may issue.⁸

⁶ 15 U.S.C. 78o-4(b).

⁷ The Board is currently engaged in a retrospective review of the catalogue of interpretive guidance in its rule book. The multi-year initiative is intended to streamline and modernize the rule book by clarifying, amending and/or retiring guidance that no longer achieves its intended purposes. See MSRB Notice 2021-02 (February 11, 2021).

⁸ Depending on its substance, an interpretation may be deemed to be a proposed rule change pursuant to Exchange Act Rule 19b-4, in which case it must be filed with the Commission.

In addition, because the Board may interpret its rules on its own initiative, in addition to upon request, the proposed rule change removes the reference to “the request of any interested person.” Finally, the proposed rule change replaces the words “render” and “rendered” in the first sentence with “issue” and “issued” and revises the second sentence to say that interpretations shall “be consistent with,” rather than “represent,” the Board’s intent in adopting the rules being interpreted. The Board believes that the new phrasing is clearer.

Current section (c) of MSRB Rule A-8 provides that the Board may approve procedures relating to the administration of MSRB rules pursuant to MSRB Rule A-4(d), which describes requirements for taking Board action without a meeting. Current Rule A-8(c) also provides that such procedures can take effect no earlier than 10 business days after publication and that regulated entities are subject to these procedures in the same manner as they are subject to the rules of the Board.

Adopted at a time when the Board’s rules required the Board to approve changes to Board rules at a meeting of the Board (rather than through action without a meeting), Rule A-8(c) permitted the Board to approve minor changes to an MSRB form, for example, without a meeting. Because the Board’s rules have for some time allowed it to take any permissible action, including actions relating to rulemaking, without a meeting,⁹ this section is obsolete and the proposed rule change deletes it.

⁹ MSRB Rule A-4(d) provides that action by the Board may be taken without a meeting by unanimous written consent. As the Board noted when it last amended MSRB Rule A-4(d), “[t]he 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.” Exchange Act Release No. 89998 (September 25, 2020); 85 FR 62001, 62002 (October 1, 2020); File No. SR-MSRB 2020-05.

Better Reflecting Current Transparency Practices

Section (d) of MSRB Rule A-8 directs the Board to establish procedures to provide “access by all interested persons to rules of the Board and other official Board action.” As required by Exchange Act Rule 19b-4(m)(1),¹⁰ the Board posts and maintains a complete version of its rules on its website available for the public to access. The proposed rule change amends section (d) to mirror that requirement and current practice.

Bylaws

Article 8 of the Bylaws reproduces MSRB Rule A-8. Accordingly, the proposed rule change amends the Bylaws to mirror amended MSRB Rule A-8.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)¹¹ and 15B(b)(2)(I)¹² of the Exchange Act.

Section 15B(b)(2) provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(I) of the Exchange Act provides that MSRB rules shall “provide for the operation and administration of the Board”

¹⁰ 17 CFR 240.19b-4(m)(1).

¹¹ 15 U.S.C. 78o-4(b)(2).

¹² 15 U.S.C. 78o-4(b)(2)(I).

Statutory Basis for Proposed Amendments to Eliminate Unnecessary Descriptions of Statutory Requirements

The proposed amendment to MSRB Rule A-8(a) that deletes the detailed description of the Board's statutory authority is consistent with Section 15B(b)(2) of the Exchange Act, which grants that authority. As amended, MSRB Rule A-8(a) will continue to state, as Section 15B(b)(2) does, that the Board shall propose and adopt rules to effect the purposes of the Exchange Act. Because the Board remains subject to the detailed description of the Board's statutory authority in Section 15B(b)(2) of the Exchange Act, it is unnecessary, and potentially confusing, to duplicate or restate that description in the rule.

In addition, both the proposed amendment to MSRB Rule A-8(a) that deletes the detailed description of the Board's statutory authority and the amendment to MSRB Rule A-8(a) that moves the last sentence into a new subsection are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. MSRB Rule A-8 is an administrative rule that describes the Board's processes for carrying out its statutory rulemaking responsibilities. Improving the readability of the rule should enhance the transparency of those processes.

Statutory Basis for Proposed Amendments That Remove Outdated or Obsolete References

The proposed amendments to current section (b) (section (c) in the proposed rule change) of MSRB Rule A-8 that update the description of the Board's process for interpreting its rules are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. These amendments should improve transparency about Board processes by aligning the rule more closely to the Board's current practices.

The proposed amendment to delete current section (c) of MSRB Rule A-8 is also consistent with Section 15B(b)(2)(I) of the Exchange Act for the same reason. While section (c)

provided for the operation and administration of the Board because it provided a Board process for the Board to approve certain procedures, that process is now obsolete. Deleting it from the rule should improve transparency and reduce the potential for confusion about the administrative processes the Board follows to take action related to rulemaking.

Statutory Basis for Proposed Amendments to Better Reflect Current Transparency Practices

The proposed amendments to section (d) of MSRB Rule A-8 are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. Specifically, these amendments update the description of how the Board provides access to its rules. Updating that description to more closely align with current practice and the requirements of Exchange Act Rule 19b-4(m)(1) should enhance clarity about Board processes.

Statutory Basis for Proposed Amendments to Bylaws

The proposed amendments to the Bylaws are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. Specifically, the proposed amendments ensure that the Bylaws reflect, and are consistent with, the change to MSRB Rule A-8.

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

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³ The proposed rule change relates only to the administration of the Board and would not impose or alter requirements on dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on

¹³ 15 U.S.C. 78o-4(b)(2)(C).

competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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 Act¹⁴ and paragraph (f) of Rule 19b-4 thereunder.¹⁵ 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-2021-03 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2021-03. 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 comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2021-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).