

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89998; File No. SR-MSRB-2020-05)

September 25, 2020

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to MSRB Rules A-3 and A-4 Relating to Board Quorum, Meeting, and Voting Requirements

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 September 15, 2020 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 Rules A-3 and A-4 (the “proposed rule change”) relating to Board quorum, meeting, and voting requirements. 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)³ of the Act and Rule 19b-4(f)(3)⁴ thereunder, which renders the proposal effective upon filing with the Commission. As described below, the draft amendments would:

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).

- 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.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-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 Quorum and Cause Removal Voting Requirements

MSRB Rule A-4(c) currently provides 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)” MSRB Rule A-3(c) uses the same formulation when describing the vote required to remove a Board member for cause.⁵ The proposed rule change includes parallel amendments to both of these provisions. Specifically, the amendments would replace the specific category representation requirements in both rules with a requirement that there be 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 would provide additional

⁵ MSRB Rule A-3(c) provides, “In the event the Board shall find 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 at least one public representative, one broker-dealer representative, one bank representative and one municipal advisor representative), remove such member from office.” The Commission recently approved amendments to Rule A-3 that are effective on October 1, 2020. See Exchange Act Release No. 89484 (Aug. 5, 2020); 85 FR 48579 (Aug. 11, 2020) (File No. SR-MSRB-2020-04). The approved amendments include minor wording changes to the language quoted above but do not modify the substance.

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 would mitigate the risk, increased by the Board's impending reduction in size,⁶ 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.

In addition, the proposed rule change would move two sentences in MSRB 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, will improve the overall organization of the rule.

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 proposed rule change includes an amendment to MSRB Rule A-4(a) expressly providing 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

⁶ See Exchange Act Release No. 89484 (Aug. 5, 2020), 85 FR 48579 (Aug. 11, 2020) (File No. SR-MSRB-2020-04) (approving amendments to MSRB Rule A-3 that reduce the Board's size to 17 members for fiscal year 2021 and 15 members thereafter).

proposed rule change also includes an amendment to rephrase the sentence in MSRB Rule A-4(a) on special meetings of the Board to clarify its meaning.

MSRB 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. MSRB 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 proposed amendments to MSRB Rule A-4(d) are intended to simplify the rule and more clearly describe the process for taking action without a meeting under the Virginia Nonstock Corporation Act,⁷ pursuant to which the Board is organized. As amended, the rule would no longer provide that action without a meeting may be taken by telephone or email poll, but rather that it must be taken by unanimous written consent of the Board members.⁸

The proposed rule change will become operative on October 1, 2020, the effective date for the recently-approved amendments to MSRB Rule A-3 that, among other things, reduce the Board's size.⁹

2. Statutory Basis

⁷ Va. Code Ann. §§ 13.1-801 et seq.

⁸ Articles 3 and 4 of the Bylaws of the MSRB (“Bylaws”) restate MSRB Rules A-3 and A-4, respectively. The MSRB will update the Bylaws to mirror amended MSRB Rules A-3 and A-4, as well as amended MSRB Rule A-6, which the Commission recently approved. See Exchange Act Release No. 89484 (Aug. 5, 2020), 85 FR 48579 (Aug. 11, 2020) (File No. SR-MSRB-2020-04).

⁹ See id.

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Exchange Act,¹⁰ which provides that the MSRB's rules shall:

provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

The amendment to MSRB Rule A-3 would modify the existing voting requirement to remove a Board member for cause by requiring the vote to include the affirmative vote of a majority of the public representatives and a majority of the regulated representatives. Similarly, the proposed rule change would modify the existing quorum requirement in MSRB Rule A-4(c) to require that a majority of the public representatives and a majority of the regulated representatives be present. As such, these amendments provide for the operation and administration of the Board and are therefore consistent with Section 15B(b)(2)(I) of the Exchange Act.¹¹

The amendments to MSRB Rule A-4 also would include an express statement that the Board may meet remotely, update the Board's requirements for taking Board action without a meeting, relocate the existing provision governing Board resolutions, and clarify an existing sentence regarding special meetings of the Board. Accordingly, these amendments also provide for the operation and administration of the Board and are therefore consistent with Section 15B(b)(2)(I) of the Exchange Act.¹²

¹⁰ 15 U.S.C. 78o-4(b)(2)(I).

¹¹ Id.

¹² Id.

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 requirements on dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on 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.

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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 email to rule-comments@sec.gov. Please include File Number SR-MSRB-2020-05 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-2020-05. This file number should be included on the subject line if email 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-2020-05 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).