

August 26, 2020, the Commission may, by order, declare the Exchange proposed MRVP effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed MRVP, File No. 4–764, and to the period of its effectiveness, which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89484; File No. SR–MSRB–2020–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Amendments to MSRB Rules A–3 and A–6 That Are Designed To Improve Board Governance

August 5, 2020.

I. Introduction

On June 5, 2020, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change consisting of amendments to MSRB Rules A–3 and A–6, regarding Board governance (the “proposed rule change”). The proposed rule change was published for comment in the **Federal Register** on June 24, 2020.³

The Commission received five comment letters on the proposed rule change.⁴ On July 29, 2020, the MSRB

responded to those comments.⁵ This order approves the proposed rule change.

II. Description of Proposed Rule Change

As described further below and in the Notice of Filing, the MSRB proposed amendments designed to improve Board governance that would: (i) Extend to five years the length of time that an individual must have been separated from employment or other association with any regulated entity to serve as a public representative to the Board; (ii) reduce the Board’s size from 21 to 15 members through a transition plan that includes an interim year in which the Board will have 17 members; (iii) replace the requirement that at least one and not less than 30% of regulated members on the 21-member Board be municipal advisors with a requirement that the 15-member Board include at least two municipal advisors; (iv) impose a six-year limit on Board service; (v) remove overly prescriptive detail from the description of the Board’s nominations process while preserving in the rule the key substantive requirements; (vi) require that any Board committee with responsibilities for nominations, governance, or audit be chaired by a public representative; and (vii) make certain other reorganizational and technical changes.⁶

The MSRB requested that the proposed rule change become effective on October 1, 2020.⁷

Board members (collectively, “Former MSRB Board Members”), dated July 15, 2020 (the “Former MSRB Board Members Letter”); Letter to Secretary, Commission, from Emily Swenson Brock, Director, Federal Liaison Center, Government Finance Officers Association (“GFOA”), dated July 15, 2020 (the “GFOA Letter”); Letter to Secretary, Commission, from Emily Brock, GFOA, John Godfrey, American Public Power Association, Charles Thompson, International Municipal Lawyers Association, Eryn Hurley, National Association of Counties, Chuck Samuels, National Assn. of Health and Educational Facilities Finance Authorities, Cornelia Chebinou, National Association of State Auditors, Comptrollers and Treasurers, Brian Egan, National Association of State Treasurers, Michael Gleeson, National League of Cities, and Emery Real Bird, Native American Finance Officers Association (collectively, the “Issuer Organizations”), dated July 15, 2020 (the “Issuer Organizations Letter”); Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”), dated July 15, 2020 (the “NAMA Letter”); and Letter to Secretary, Commission, from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated July 15, 2020 (the “BDA Letter”).

⁵ See Letter to Secretary, Commission, from Jacob N. Lesser, Associate General Counsel, Municipal Securities Rulemaking Board (“MSRB”), dated July 29, 2020 (the “MSRB Response Letter”).

⁶ See Notice of Filing, 85 FR at 37974.

⁷ *Id.*

Background

The Exchange Act establishes basic requirements for the Board’s size and composition and requires the Board to adopt rules that establish “fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections.”⁸ As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”), the Exchange Act categorizes Board members in two broad groups: Individuals who must be independent of any dealer⁹ or municipal advisor (“public representatives”) and individuals who must be associated with a dealer or municipal advisor (“regulated representatives”).¹⁰ The Exchange Act requires the Board to establish by rule requirements regarding the independence of public representatives and provides that all Board members—whether public or regulated representatives—must be “knowledgeable of matters related to the municipal securities markets.”¹¹

Within the public representative category, at least one Board member must be representative of institutional or retail investors in municipal securities, at least one must be representative of municipal entities, and at least one must be a member of the public with knowledge of or experience in the municipal industry.¹² Within the regulated representative category, at least one Board member must be associated with a dealer that is a bank, at least one must be associated with a dealer that is not a bank, and at least one must be associated with a municipal advisor.¹³

The MSRB states that the Exchange Act, as amended by the Dodd-Frank Act, recognizes the benefits that a Board composed of both public and regulated representatives brings to regulation of the municipal securities market in the public interest and the protection of investors, municipal entities, and obligated persons.¹⁴ The MSRB further states that, although regulated representatives may bring specialized expertise to the regulation of a market with features and functions that are markedly different from those of other financial markets, public representatives

⁸ 15 U.S.C. 78o–4(b)(2)(B).

⁹ As used herein, the term “dealer” refers to a broker, dealer, or municipal securities dealer.

¹⁰ 15 U.S.C. 78o–4(b)(1).

¹¹ 15 U.S.C. 78o–4(b)(1); 15 U.S.C. 78o–4(b)(2)(B)(iv).

¹² 15 U.S.C. 78o–4(b)(1).

¹³ *Id.*

¹⁴ See Notice of Filing, 85 FR at 37975.

⁷ 17 CFR 200.30–3(a)(44).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 89092 (June 18, 2020) (the “Notice of Filing”), 85 FR 37974 (June 24, 2020).

⁴ See Letter to Secretary, Commission, from Steve Apfelbacher, Renee Boicourt, Marianne Edmonds, Robert Lamb and Noreen White, former MSRB

may bring a broader perspective of the public interest and the protection of investors, municipal entities, and obligated persons.¹⁵ The MSRB observes that, striking the balance between the two perspectives—public and regulated—in the Dodd-Frank Act, Congress specified that the Board at all times must be majority public but that it also must be as evenly divided between public and regulated representatives as possible.¹⁶

The MSRB states that, since the enactment of the Dodd-Frank Act, the Board has elected public representatives with a range of backgrounds and experience.¹⁷ The MSRB observes that, in addition to the statutorily specified municipal entity and investor representatives, they have included individuals with prior municipal securities regulated industry experience, academics and individuals with rating agency experience.¹⁸ The MSRB further observes that, in most years, municipal entity representation on the Board has exceeded the statutory minimum.¹⁹ The MSRB states that it has also required, either by rule or by policy, that committees responsible for nominations, governance and audit be chaired by a public representative.²⁰

The Exchange Act sets the number of Board members at 15 but provides that the rules of the Board “may increase the number of members which shall constitute the whole Board, provided that such number is an odd number.”²¹ The MSRB notes that, in response to the enactment of the Dodd-Frank Act, which established a new registration requirement and regulatory framework for municipal advisors, the Board increased the size of the Board to 21 members (11 public and 10 regulated) in October 2010.²² The MSRB further notes that, at the same time, the Board also provided for municipal advisor membership on the Board that was greater than the statutory minimum, requiring that at least 30% of the regulated representatives be associated with municipal advisors.²³ The MSRB states that these changes were designed to ensure the Board could achieve appropriately balanced representation

and would have sufficient knowledge and expertise to implement the new municipal advisor regulatory framework without detracting from its ability to continue fulfilling its existing rulemaking responsibilities with respect to dealer activity.²⁴ The MSRB further states that, although its expanded duties with regard to the protection of municipal entities and obligated persons and the regulation of municipal advisors are ongoing, the Board has completed the rulemaking activity associated with implementation of the Dodd-Frank Act, including establishment of the core municipal advisor regulatory regime.²⁵

In September 2019, the Board announced the formation of a special committee to examine all aspects of the Board’s governance.²⁶ In January 2020, the Board published a Request for Comment on potential changes to MSRB Rule A–3 (the “RFC”) to solicit comment on changes to MSRB Rule A–3,²⁷ and the MSRB states that the proposed rule change reflects the Board’s consideration of the comments it received.²⁸

Independence Standard

The Exchange Act requires the Board to establish by rule “requirements regarding the independence of public representatives.”²⁹ MSRB Rule A–3 currently defines the term “independent of any municipal securities broker, municipal securities dealer, or municipal advisor” to mean that an individual has “no material business relationship with” such an entity. MSRB Rule A–3 further provides that

the term “no material business relationship” is defined to mean, at a minimum, that: (i) The individual is not, and within the last two years was not, associated with a dealer or municipal advisor; and (ii) the individual does not have a relationship with any dealer or municipal advisor, compensatory or otherwise, that reasonably could affect the individual’s independent judgment or decision making.

The proposed rule change includes an amendment to MSRB Rule A–3 that would increase the two-year separation period in the definition of “no material business relationship” to five years.³⁰ The MSRB states that this amendment is intended to enhance the independence of public representatives who have prior regulated entity associations and better avoid any appearance of a conflict of interest on the part of a public representative.³¹

The MSRB states that it continues to believe that the Board’s public representatives have acted with the independence required by the Exchange Act, MSRB rules and their duties as public representatives, notwithstanding any prior affiliation with a regulated entity.³² At the same time, the MSRB states that it believes that a five-year separation period would further enhance not only independence in fact but also the appearance of independence, which should, in turn, provide additional assurance that the Board’s decisions are made in furtherance of its mission to protect investors, municipal entities, obligated persons and the public interest, and to promote a fair and efficient municipal securities market.³³

Board Size

The Exchange Act establishes a 15-member Board but permits the MSRB to increase the size, provided that:

- The number of Board members is an odd number;
- A majority of the Board is composed of public representatives; and
- The Board is as closely divided in number as possible between public and regulated representatives.³⁴

MSRB Rule A–3 currently sets the size of the Board at 21 members.

The proposed rule change includes an amendment to MSRB Rule A–3 that would return the Board’s size to 15 members, the original number

²⁴ See Notice of Filing, 85 FR at 37975; Exchange Act Release No. 65158 (Aug. 18, 2011), 76 FR 61407, 61408 (Oct. 4, 2011); Exchange Act Release No. 63025 (Sept. 30, 2010), 75 FR 61806, 61809 (Oct. 6, 2010).

²⁵ See Notice of Filing, 85 FR at 37975.

²⁶ MSRB, “MSRB to Begin FY 2020 With a Focus on Governance” (Sept. 23, 2019), available at <http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-to-Begin-FY-2020-with-Focus-on-Governance.aspx>.

²⁷ MSRB Notice 2020–02 (Jan. 28, 2020), available at <http://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2020-02.ashx?n=1>. Comments on the RFC are available on the Board’s website at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2020/2020-02.aspx?c=1>. The MSRB states that, after it issued the RFC, the special committee focused on, among other things, reorganizational and technical changes to the Board’s administrative rules that would improve interested persons’ ability to locate and understand MSRB requirements. These reorganizational and technical amendments, which were not included in the RFC, are included in the proposed rule change, as described herein.

²⁸ See Notice of Filing, 85 FR at 37975. The comments received by the MSRB on the RFC, along with the Board’s responses to those comments, are described in the Notice of Filing, 85 FR at 37981–5.

²⁹ 15 U.S.C. 78o–4(b)(2)(B)(iv).

¹⁵ *Id.*

¹⁶ See Notice of Filing, 85 FR at 37975; 15 U.S.C. 78o–4(b)(2)(B)(i).

¹⁷ See Notice of Filing, 85 FR at 37975.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 15 U.S.C. 78o–4(b)(1); 15 U.S.C. 78o–4(b)(2)(B)(iii).

²² See Notice of Filing, 85 FR at 37975.

²³ *Id.* MSRB Rule A–3 provides that these municipal advisors may not be associated with dealers.

³⁰ See Notice of Filing, 85 FR at 37975.

³¹ See Notice of Filing, 85 FR at 37976.

³² *Id.*

³³ *Id.* See also MSRB Mission Statement, available at <http://www.msrb.org/About-MSRB/About-the-MSRB/Mission-Statement.aspx>.

³⁴ 15 U.S.C. 78o–4(b)(1); 15 U.S.C. 78o–4(b)(2)(B).

established by the Exchange Act.³⁵ The MSRB states that, although the 21-member Board size was particularly valuable during the period of heightened rulemaking activity required to implement the Dodd-Frank Act, particularly the complex rulemaking necessary to establish the core regulatory framework for municipal advisors as a new type of regulated entity, that rulemaking activity is now complete.³⁶ Thus, the MSRB states that it believes that it can now return to the statutorily prescribed Board size of 15, and the attendant efficiency and lower cost of such a smaller Board, without decreasing its ability to discharge its expanded responsibilities under the Exchange Act, as amended by the Dodd-Frank Act.³⁷

The MSRB states that it believes that the 15-member Board size established by Congress will continue to allow for a broad range of viewpoints as the Board fulfills its statutory mission.³⁸ The MSRB observes that, each year, through its annual nominations and elections process, the Board seeks to constitute a Board that not only meets the requirements of the Exchange Act and MSRB rules but that also provides the Board with a broad and diverse range of perspectives.³⁹ Although there will be fewer Board members, the MSRB states that it believes that the 15-member size contemplated by the Exchange Act allows the Board to continue to assemble a Board that reflects the wide range of backgrounds and experiences within each of the statutorily required Board member categories.⁴⁰

Board Composition

The MSRB states that, when it established the 21-member Board, the MSRB required that municipal advisor representation be greater than the statutory minimum.⁴¹ Specifically, the Board provided in MSRB Rule A-3: at least one, and not less than 30 percent of the total number of regulated representatives, shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer, or municipal securities dealer.⁴²

Along with the increased Board size, the MSRB states that the change was

intended to ensure that the Board could achieve appropriately balanced representation and would have sufficient knowledge and expertise to implement the new municipal advisor regulatory framework without detracting from its ability to continue fulfilling its existing rulemaking responsibilities with respect to dealer activity.⁴³

In connection with reducing the Board's size to 15 members, the proposed rule change amends MSRB Rule A-3 to provide that at least two of the regulated representatives shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer or municipal securities dealer.⁴⁴ The MSRB states that it believes that it remains appropriate, in light of the broad range of municipal advisors subject to MSRB regulation, to require municipal advisor representation greater than the statutory minimum of one.⁴⁵ The MSRB states that this amendment would preserve as closely as possible the current percentage of municipal advisors on the Board as the Board moves from a 21-member Board to a 15-member Board.⁴⁶ Specifically, the proposed amendment to MSRB Rule A-3 would require that at least two (28.6%) of the regulated representatives on a 15-member Board be municipal advisor representatives, which the MSRB states is very close to the 30% representation currently required.⁴⁷ The MSRB observes that retaining the 30% requirement with the 15-member Board would require that three of the seven (or 42.9%) regulated members be municipal advisors; although there may be times the Board chooses to have a municipal advisor contingent of that size (just as the Board routinely has representations greater than the minimum for the other statutorily specified categories), the Board states that it does not believe imposing a minimum larger than two is in the public interest.⁴⁸

Member Qualifications

The MSRB notes that MSRB Rule A-3 tracks the Exchange Act requirement that all Board members must be knowledgeable of matters related to the municipal securities markets.⁴⁹ The MSRB states that, in its processes for the nomination and election of new members, the Board has consistently sought candidates who meet that

standard, but who also have demonstrated personal and professional integrity.⁵⁰ The MSRB further states that, in order to further convey to the public the seriousness with which the Board conducts its elections and bolster public confidence in its process, the proposed rule change includes an amendment to MSRB Rule A-3 that would add an express requirement that Board members be individuals of integrity.⁵¹ The MSRB notes that it will continue to determine whether a candidate possesses the requisite personal and professional integrity through its rigorous nominations and elections processes, which include, among other things, candidate interviews, extensive screening, and background checks.⁵²

Transition Plan to Reduced Board Size

The MSRB states that the proposed change to a 15-member Board requires a transition plan, and the Board has designed a plan to effect the necessary changes expeditiously, while minimizing any risk of disruption to MSRB governance, programs and operations.⁵³

The proposed rule change includes a transition plan that would reduce the Board size to 17 members for fiscal year 2021, which begins on October 1, 2020.⁵⁴ The MSRB observes that the plan included in the proposed rule change transitions the Board's class structure from three classes of five members and one class of six members to three classes of four members and one class of three members.⁵⁵ The MSRB states that each of the new Board classes would have the same number of public and regulated representatives except for

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Notice of Filing, 85 FR at 37976-7.

⁵⁴ See Notice of Filing, 85 FR at 37977. The Board sought comment in the RFC on a transition plan that would reduce the Board's size to 15 members in the next fiscal year because the 15 Board members returning after the six Board members serving in their fourth year complete their terms on September 30, 2020 would meet the Board composition requirements for a Board of that size. In the Notice of Filing, the MSRB states that, although it generally seeks to assemble a Board that includes more than one issuer representative, under the transition plan described in the RFC, the Board would have had just a single issuer representative in fiscal year 2021. The Board states that it was persuaded by commenters on the RFC that having more than one issuer representative is of particular importance next fiscal year in light of the ongoing COVID-19 pandemic and its effects on municipal entities. The MSRB notes that reducing the Board size to 17 members in the first year of the transition will enable the Board to include a second issuer member for fiscal year 2021. *Id.*

⁵⁵ See Notice of Filing, 85 FR at 37977.

³⁵ See Notice of Filing, 85 FR at 37976. As required by Section 15B(b)(1) of the Exchange Act, the 15-member Board would be composed of eight public representatives and seven regulated representatives.

³⁶ See Notice of Filing, 85 FR at 37976.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* See also Notice of Filing, 85 FR at 37983.

⁴⁰ See Notice of Filing, 85 FR at 37976.

⁴¹ *Id.*

⁴² MSRB Rule A-3(a)(ii)(3).

⁴³ See Notice of Filing, 85 FR at 37976.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

the class of three, which would have two public representatives.⁵⁶

Pursuant to the transition plan included in the proposed rule change, all new Board members elected during the transition, and thereafter, would be appointed to four-year terms. The Board would resume electing new members for a four-member class with terms commencing in fiscal year 2022, which begins on October 1, 2021. No new Board members would be elected for terms beginning on October 1, 2020. The transition would be completed in fiscal year 2024, which ends on September 30, 2024.⁵⁷

The MSRB states that, to effect the transition, the Board would grant one-year term extensions to five public representatives and three regulated representatives, as follows:

- One public representative and one regulated representative whose terms would otherwise end on September 30, 2020;
- One public representative whose term would otherwise end on September 30, 2021;
- One public representative and one regulated representative whose terms would otherwise end on September 30, 2022; and
- Two public representatives and one regulated representative whose terms would otherwise end on September 30, 2023.⁵⁸

The MSRB states that, each year, members would be considered for the one-year extensions as part of the Board's annual nominations process, once that process resumes during fiscal year 2021, so that overall Board composition, resulting from existing member extensions and new member elections, can be considered holistically.⁵⁹

Terms

The Exchange Act provides that Board members "shall serve as members for a term of 3 years or for such other terms as specified by the rules of the Board."⁶⁰ MSRB Rule A-3 currently provides for four-year terms and prohibits a Board member from serving more than two consecutive terms. The proposed rule change includes an amendment to MSRB Rule A-3 that would impose a six-year lifetime limit on Board service.⁶¹ The MSRB observes that the six-year maximum service provision would effectively limit a

Board member to one complete four-year term.⁶² The MSRB states that allowing for up to an additional two years would permit the Board to fill a vacancy that arises in the middle of a Board member's term expeditiously, as it has in the past, by re-appointing a sitting member, or electing a former Board member, to serve for the remainder of the term of the Board member whose departure created the vacancy rather than leaving the vacancy unfilled until a more exhaustive, but time-consuming, search for a new Board member can be completed.⁶³

Based on its experience, the MSRB states that it believes that regularly refreshing the Board with new members benefits the Board and, in turn, the municipal market, by bringing new and diverse perspectives to the policymaking process.⁶⁴ The MSRB states that the six-year lifetime limit is intended to enhance these benefits by increasing the rate at which new members will join the Board.⁶⁵

The proposed rule change also includes an amendment to MSRB Rule A-3 that would permit a Board member filling a vacancy to serve for any part of an unexpired term, rather than requiring such a Board member to serve for the entire unexpired portion.⁶⁶ The MSRB states that this change is necessary to implement the six-year lifetime limit described above because a Board member may leave the Board with more than two years remaining in his or her term.⁶⁷ The MSRB states that, in many such cases, requiring the replacement Board member to serve the remainder of the term would disqualify current and former Board members due to the six-year limit.⁶⁸

Finally, MSRB Rule A-3(d) currently provides that "[v]acancies on the Board shall be filled by vote of the members of the Board," and states in the final sentence that the term "vacancies on the Board" includes a vacancy resulting from the resignation of a Board member prior to the commencement of his or her term.⁶⁹ The proposed rule change deletes this final sentence to clarify that the term includes all vacancies that arise prior to conclusion of a term for any reason.⁷⁰

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ MSRB Rule A-3(d).

⁷⁰ See Notice of Filing, 85 FR at 37977. As discussed below, the proposed rule change also includes amendments to MSRB Rule A-3 to reorganize the rule. As reorganized, the provision

Amendments to Board Nominations and Elections Provisions

The MSRB notes that MSRB Rule A-3 includes a detailed description of the composition, responsibilities and processes of the Board's Nominating and Governance Committee.⁷¹ The MSRB states that the proposed rule change includes amendments to MSRB Rule A-3 that would preserve the key features of this important Board committee while removing what the MSRB describes as overly prescriptive detail that could be provided instead, and the Board believes more appropriately, in governing documents such as committee charters and Board policies.⁷² The MSRB further states that it believes these amendments will enhance the Board's flexibility to respond efficiently to changes in circumstances.⁷³

Specifically, the proposed rule change would remove references in MSRB Rule A-3 to the "Nominating and Governance Committee" and replace them with references to a committee charged with the nominating process. The proposed rule change retains the substantive requirements that the committee responsible for the nominating process be: (1) Composed of a majority of public representatives, (2) chaired by a public representative, and (3) representative of the Board's membership, but removes the more detailed requirements.⁷⁴ The proposed rule change would also move these requirements, as amended by the proposed rule change, to MSRB Rule A-6, Committees of the Board.⁷⁵ The MSRB states that it believes that moving these requirements relating to committee composition to a more logical location will improve transparency by making Board requirements easier to find.⁷⁶

The proposed rule change also includes an amendment to MSRB Rule A-3 that updates the requirement for the Board to publish a notice seeking applicants for Board membership, which the MSRB states that it believes has become antiquated.⁷⁷ Specifically, the amendment would replace the requirement to publish the notice "in a financial journal having national circulation among members of the municipal securities industry and in a

on vacancies would be a subsection of section (b), which governs Board nominations and elections.

⁷¹ See Notice of Filing, 85 FR at 37977.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Notice of Filing, 85 FR at 37977-8.

⁷⁶ *Id.* at 37978.

⁷⁷ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Exchange Act Section 15B(b)(1), 15 U.S.C 78o-4(b)(1).

⁶¹ See Notice of Filing, 85 FR at 37977.

separate financial journal having general national circulation” with the more general requirement to publish the notice “by means reasonably designed to provide broad dissemination to the public.”⁷⁸ The MSRB states that this broader and more flexible requirement recognizes that in addition to publishing the notice in financial journals as specified in MSRB Rule A-3, the Board currently uses a variety of methods to reach a broad range of potential candidates, including press releases, the MSRB website, and the Board’s social media channels.⁷⁹ The MSRB states that the amendment to MSRB Rule A-3 would permit the Board to continue to use these methods, as well as to determine other ways to reach a wide range of potential applicants in light of available technology and media.⁸⁰

Public Representative Committee Chairs

The MSRB states that it believes it should retain administrative flexibility to design and from time to time change its committee structure.⁸¹ The MSRB further states that the proposed rule change would enable the Board to establish its committee structure through governance mechanisms such as charters and policies.⁸² The MSRB observes that it could, for example, continue to have a committee responsible for both nominations and governance, or it could establish a separate committee on governance, freeing the nominating committee to focus on identifying, recruiting and vetting new members.⁸³

The MSRB believes that, irrespective of the committee structure the Board from time to time may establish, responsibility for both nominations and governance should continue to be in a committee or committees chaired by a public representative, as currently required by MSRB Rule A-3.⁸⁴ Current Board policy requires that the audit committee also be chaired by a public representative. In light of the importance of public representative leadership of the audit committee to the Board’s corporate governance system, the MSRB states that it believes this requirement should be included in the Board’s rules, rather than only in a Board policy.⁸⁵ Accordingly, the proposed rule change codifies these existing rule and policy requirements in

a single location in MSRB Rule A-6, Committees of the Board.⁸⁶

Reorganizational and Technical Changes

MSRB Rule A-3 Title

The proposed rule change would change the title of MSRB Rule A-3 from “Membership on the Board” to “Board Membership: Composition, Elections, Removal, Compensation.” The MSRB states that the new title will describe all of the topics covered by the rule and should make it easier for interested persons to locate relevant MSRB rule requirements.⁸⁷

MSRB Rule A-3 Organization

The MSRB states that the proposed rule change reorganizes the content of MSRB Rule A-3 so that similar provisions are grouped together, topics are presented in a more logical sequence, and overall readability is improved.⁸⁸ The provision on vacancies, currently section (d), would be included as a subsection of section (b), regarding nominations and elections. Similarly, the provision on Board member affiliations, currently section (f), would be included within section (a), which describes the number of Board members and the requirements for Board composition. The titles of sections (b) and (c) would be revised to more completely describe the topics covered and new subsection headers would be added to section (b) to provide a better roadmap to the section’s contents.⁸⁹ Although none of these changes is substantive, the MSRB states that they should make it easier for interested persons to find and understand relevant MSRB requirements.⁹⁰

Board Member Changes in Employment and Other Circumstances

The MSRB states that Board policies describe certain changes in a Board member’s circumstances, such as a change in employment, that could result in the Board member’s disqualification from continuing to serve on the Board.⁹¹ For example, a Board member who is a public representative at the time of his or her election may accept a position with a regulated entity during the course of his or her Board term. Assuming there are no Board vacancies at the time, the MSRB observes that such a change would result in the Board

no longer being majority public and no longer as evenly divided in number as possible between public and regulated representatives.⁹² The MSRB states that Board policy provides that the member would be disqualified from continuing to serve because the change in employment would cause a conflict with Board composition requirements.⁹³

The MSRB states that the proposed rule change would include the substance of this policy in MSRB Rule A-3(c), with minor updates.⁹⁴ Specifically, new subsection (c)(ii) would provide that:

- If a member’s change in employment or other circumstances results in a conflict with the Board composition requirements described in section (a) of MSRB Rule A-3, as proposed to be amended, 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 the above provision 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.

The MSRB states that including these provisions in the Board’s rules, rather than its policies, is intended to improve transparency about the Board’s approach to changes in Board member circumstances, including changes that require immediate disqualification due to a conflict with Board composition requirements and changes that do not cause a conflict with those requirements but might still, in the Board’s judgment, require removal because, for example, they negatively affect the balanced representation on the Board that the Board seeks to maintain.⁹⁵

III. Summary of Comments Received and MSRB’s Responses to Comments

As noted previously, the Commission received five comment letters on the proposed rule change, as well as the MSRB Response Letter.

Independence Standard

One commenter reiterated its concern, expressed in its response to the RFC, that “five years away from the industry and the market is too long for a Board member to be effective.”⁹⁶ This

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See BDA Letter at 1.

commenter stated that the Board has “provided no evidence that the current two-year required separation has created any conflicts or even the perception of conflicts” and that the only effect of an increase to five years would be to prevent qualified and knowledgeable persons from serving on the Board.⁹⁷

The MSRB stated that, while the five-year separation requirement may postpone the time when some otherwise qualified persons may apply for Board membership, the comment’s intimation that former regulated entity employees are the primary—or the best—source of public members is not correct.⁹⁸ The MSRB noted that Section 15B(b)(1) of the Exchange Act provides that all Board members “shall be knowledgeable of matters related to the municipal securities markets” and that at least one of the public representatives must be a member of the public “with knowledge of or experience in the municipal industry.”⁹⁹ The MSRB stated that it does not view prior experience with a dealer or municipal advisor as a prerequisite for Board service as a public representative, and public representatives may gain the required knowledge in any number of ways.¹⁰⁰

One commenter stated that the “knowledge standard requirement for public applicants, as written, is very subjective and, in the past, has been too narrowly interpreted by the MSRB Board and Committees” and suggested that the Board “should ensure that individuals with broad knowledge of the public interest be considered in addition to those who have specialized industry expertise and have been traditionally appointed to these seats.”¹⁰¹ The MSRB stated that it continues to believe, as it noted in the RFC, that “while regulated representatives may bring specialized expertise to the regulation of a market with features and functions that are vastly different from those of other financial markets, public representatives may bring a broader perspective of the public interest.”¹⁰² The MSRB stated that, through its nominations and elections process, the Board will continue to seek qualified public representatives who can bring that perspective to bear on Board decision-making.¹⁰³

The MSRB further stated that, while some stakeholders perceive—accurately, in the Board’s view—that the Board’s public representatives are independent of the entities that the Board regulates, that perception is not universally held.¹⁰⁴ Accordingly, the MSRB stated that increasing the length of the separation period is intended in part to address the perception held by some stakeholders that public representatives are not sufficiently independent, and that it continues to believe that enhancing the appearance of independence of public representatives will provide additional assurance that the Board’s decisions are made in furtherance of its mission to protect investors, municipal entities, obligated persons and the public interest and to promote a fair and efficient municipal securities market.¹⁰⁵

Board Composition—Municipal Advisor Representation

One commenter believed that only a minimum of one municipal advisor representative should be required,¹⁰⁶ while two commenters believed that a minimum of three municipal advisor representatives should be required.¹⁰⁷ The commenter that believed that only one municipal advisor representative should be required stated that requiring only the statutory minimum of one municipal advisor would provide the Board with the maximum flexibility to determine municipal advisor representation based on its anticipated agenda.¹⁰⁸ Noting that dealers pay more in fees to the MSRB than municipal advisors, this commenter “call[ed] on the MSRB to set the ratio of board seats between dealers and MAs based on each constituency’s relative financial contribution to the organization, subject to statutory requirements.”¹⁰⁹

The commenters that believed that at least three municipal advisor representatives should be required noted that municipal advisor regulation remains a significant

focus of the Board.¹¹⁰ These commenters suggested that at least three municipal advisors are necessary to represent the diverse range of that profession as well as the issuer clients it serves.¹¹¹ One believed that it would be difficult for two municipal advisors “to make their voices heard” on a Board with five dealer representatives and stated that just as MSRB Rule A–3 recognizes the difference between bank and non-bank dealers, “the broad and different nature of our MA businesses [should] also be considered.”¹¹² This commenter also disagreed that representation on the Board should be proportionate to fees paid.¹¹³

After considering these comments, the MSRB stated that it continues to believe that while municipal advisor representation on the Board should be greater than the statutory minimum of one, requiring at least three of seven regulated representatives (or 42.9%) to be municipal advisors not associated with a dealer would not be appropriate.¹¹⁴ As an initial matter, the MSRB noted that Rule A–3 sets the minimum number of Board members within each regulated category and that once those minimums are met the Board seeks to balance the Board each year with the mix of members it believes will best serve its mission to protect investors, municipal entities, obligated persons and the public interest and to promote a fair and efficient municipal securities market.¹¹⁵ The MSRB stated that, while that mix may, in a particular year, include three municipal advisors, the proposed rule change reflects the Board’s view that it should always include at least two municipal advisors not associated with a dealer.¹¹⁶

The MSRB stated that it reached that position for some of the reasons

¹¹⁰ See Former MSRB Board Members Letter at 1, 2; NAMA Letter at 1. The MSRB noted that both commenters characterized statements in the Notice of Filing that the Board had completed the rulemaking associated with implementation of the Dodd-Frank Act, including the establishment of the core municipal advisor regulatory regime, see Notice of Filing at 37975, 37976, as minimizing the continued significance of rulemaking involving municipal advisors. These commenters noted that municipal advisor regulation will continue to present the Board with challenges going forward. The MSRB stated that it agrees that “its expanded duties with regard to the protection of municipal entities and obligated persons and the regulation of municipal advisors are ongoing.” See Notice of Filing, 85 FR at 37975. See also MSRB Response Letter at 6.

¹¹¹ See Former MSRB Board Members Letter at 1; NAMA Letter at 1.

¹¹² See Former MSRB Board Members Letter at 2.

¹¹³ *Id.* at 1–2.

¹¹⁴ See MSRB Response Letter at 7.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See MSRB Response Letter at 4–5.

⁹⁹ See BDA Letter.

¹⁰⁰ See Former MSRB Board Members Letter; NAMA Letter.

¹⁰¹ See BDA Letter at 1–2.

¹⁰² See BDA Letter at 2. The BDA Letter also states, in support of its position that only one municipal advisor should be required, that five commenters on the RFC opposed the Board’s proposal to require at least two municipal advisors while only two agreed with it. See BDA Letter at 1. As noted in the Notice of Filing, two commenters (one of which was BDA) believed that one municipal advisor should be required, two believed that two municipal advisors should be required, and three believed that three municipal advisors should be required. See Notice of Filing, 85 FR at 37983. See also MSRB Response Letter at 6.

⁹⁷ *Id.*

⁹⁸ See MSRB Response Letter at 3.

⁹⁹ See MSRB Response Letter at 3–4.

¹⁰⁰ See MSRB Response Letter at 4. See also Notice of Filing, 85 FR at 37982.

¹⁰¹ See NAMA Letter at 2.

¹⁰² See MSRB Response Letter at 4. See also RFC at 3.

¹⁰³ See MSRB Response Letter at 4.

described by commenters.¹¹⁷ Specifically, the MSRB stated that it agrees that municipal advisor representation greater than the statutory minimum continues to be appropriate in light of the broad range of municipal advisors subject to MSRB regulation, though it disagrees, based on its experience with the current Board composition, that a proportional increase in municipal advisor representation is warranted.¹¹⁸

The MSRB stated that it also disagrees with the comment that the Board should “set the ratio of board seats between dealers and MAs based on each constituency’s relative financial contribution to the organization, subject to statutory requirements.”¹¹⁹ The MSRB observed that nothing in the Exchange Act suggests that fees paid to the Board should be tied to Board composition and, in fact, the Exchange Act treats the two topics in separate provisions.¹²⁰ Exchange Act Section 15B(b)(2)(B) requires MSRB Rules to “establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives.”¹²¹ The MSRB explained that the proposed rule change would maintain, as closely as possible on a 15-member Board, the existing balance of representation among regulated representatives and that the Board believes that requiring municipal advisor representation greater than the statutory minimum continues to assure fair representation in light of the broad range of MAs subject to MSRB regulation.¹²² The MSRB concluded that, for these reasons, the Board believes that the amendments related to Board composition are consistent with the Exchange Act.¹²³

With respect to the comments regarding the fees paid by regulated entities and their proportionate representation on the Board, the MSRB stated that comments on the MSRB fee structure are outside the scope of the proposed rule change.¹²⁴

Board Composition—Issuer Representation

The MSRB noted that, although the proposed rule change includes no amendments related to Board

composition other than as it relates to municipal advisors, three commenters urged the Board to increase the required number of issuer representatives.¹²⁵ One such commenter stated that a Board with eight public members should include three issuers, three investors, and two “general public members” and asked the Commission not to approve the proposed rule change without increasing the number of issuers.¹²⁶ This commenter believed that a single issuer representative is insufficient to represent the broad spectrum of issuers in the municipal market, and stated that “[w]ithout issuers, none of the other parties would exist, and because of this, the voice of the issuer community is essential to ensure robust capital formation within the parameters of the MSRB’s regulatory regime.”¹²⁷

In the Notice of Filing, in response to similar comments on the RFC, the MSRB noted that although the proposed rule change does not include amendments that would change the number of required issuer representatives on the Board, the Board modified the plan described in the RFC for transitioning immediately to a 15-member Board in the next fiscal year in order to avoid being left with only one issuer representative for that year.¹²⁸ The MSRB stated that it did so because it agreed with commenters on the RFC that operating with only one issuer is a particularly undesirable result in fiscal year 2021 in light of the effects of the COVID-19 pandemic on municipalities and the municipal securities market more generally.¹²⁹ Accordingly, the MSRB stated that it determined to specify an interim Board size of 17 members in the first year of its transition to the reduced Board size of 15 members, which will allow the Board the benefit of a second issuer representative in fiscal year 2021.¹³⁰ At the same time, based on its experience with the current Board composition requirements, the MSRB stated that it continues to believe that maintaining

the status quo as it relates to Board composition as closely as possible with the smaller Board size remains appropriate and will continue to assure fair representation.¹³¹

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(1) of the Act,¹³² which provides:

The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B), which shall perform the duties set forth in this section. The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as “public representatives”); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as “broker-dealer representatives”), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as “bank representatives”), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as “advisor representatives” and, together with the broker-dealer representatives and the bank representatives, are referred to as “regulated representatives”). Each member of the board shall be knowledgeable of matters related to the municipal securities markets. Prior to the expiration of the terms of office of the members of the Board, an election shall be held under rules adopted by the Board

¹²⁵ See GFOA Letter; Issuer Organizations Letter; NAMA Letter.

¹²⁶ See GFOA Letter at 2.

¹²⁷ See GFOA Letter at 1. See also NAMA Letter at 2 (stating that “the issuer community is extremely diverse and should be well and better represented on the Board to allow for the different ways that issuers approach the capital markets”); Issuer Organizations Letter at 1 (describing the diverse range of issuers and urging the Board to require at least two issuer representatives to “ensure that issuer voices are heard and utilized by the MSRB in its rulemaking, management of the EMMA system, and municipal market educational efforts”).

¹²⁸ See MSRB Response Letter at 9. See also Notice of Filing, 85 FR at 37977.

¹²⁹ See MSRB Response Letter at 9.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² 15 U.S.C. 78o-4(b)(1).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ See MSRB Response Letter at 7–8.

¹²⁰ *Id.*

¹²¹ 15 U.S.C. 78o-4(b)(2)(B).

¹²² See MSRB Response Letter at 8.

¹²³ *Id.*

¹²⁴ See MSRB Response Letter at 8.

(pursuant to subsection (b)(2)(B) of this section) of the members to succeed such members.

In addition, the Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(B) of the Act,¹³³ which provides that the MSRB's rules shall:

establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

Furthermore, the Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(I) of the Act,¹³⁴ 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.

MSRB Rule A-3 defines a public representative as independent if the public representative has “no material business relationship” with a regulated entity. An individual has no material business relationship with a regulated entity, under MSRB Rule A-3, if the individual has not been associated with a regulated entity for a two-year period. The Commission believes that the Board's determination to increase this period of time to five years, in order to further enhance the independence of public representatives, is consistent with Section 15B(b)(2)(B)(iv) of the Exchange Act with respect to the requirement for the Board to “establish requirements regarding the independence of public representatives.”¹³⁵

¹³³ 15 U.S.C. 78o-4(b)(2)(B).

¹³⁴ 15 U.S.C. 78o-4(b)(2)(I).

¹³⁵ 15 U.S.C. 78o-4(b)(2)(B)(iv).

Section 15B(b)(1) of the Exchange Act¹³⁶ provides that the Board “shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B). . . .” and consist of eight public representatives and seven regulated representatives. The Board having previously increased its size, in accordance with Section 15B(b)(2)(B) of the Exchange Act,¹³⁷ after the enactment of the Dodd-Frank Act, has determined that it is now appropriate to return to the size specified in the Exchange Act. The Commission believes that returning to a 15-member Board consisting of eight public representatives and seven regulated representatives would be consistent with Section 15B(b)(1) of the Exchange Act.¹³⁸

Section 15B(b)(2)(B) of the Exchange Act¹³⁹ requires MSRB Rules to “establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives.” The proposed rule change would maintain, as closely as possible on a 15-member Board, the existing balance of representation among regulated representatives and includes no changes relating to the representation of public representatives. The Commission believes that requiring representation of municipal advisors not associated with a dealer greater than the statutory minimum and maintaining as nearly as possible the current balance between municipal advisor representatives and dealer representatives continues to assure fair representation of regulated entities on the Board and therefore is consistent with Section 15B(b)(2)(B) of the Exchange Act.¹⁴⁰ In addition, the Commission believes that the amendment that would add an explicit requirement that Board members be “individuals of integrity” to codify existing Board practice of seeking individuals of integrity in nominating and electing Board members is consistent with Section 15B(b)(2)(B) of the Exchange Act.¹⁴¹

The proposed rule change includes a plan for transitioning the Board from 21 members to 15 members, with an interim year with a 17-member Board composed of nine public representatives and eight regulated representatives and

¹³⁶ 15 U.S.C. 78o-4(b)(1).

¹³⁷ 15 U.S.C. 78o-4(b)(2)(B).

¹³⁸ 15 U.S.C. 78o-4(b)(1).

¹³⁹ 15 U.S.C. 78o-4(b)(2)(B).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

with extensions to a limited number of terms for Board members to change the structure of the Board's member classes. The Commission believes that the amendment establishing the 17-member Board is consistent with Section 15B(b)(2)(B)(iii) of the Exchange Act,¹⁴² which permits the Board to increase the statutorily specified 15-member Board, provided that the number of members is an odd number, and is also consistent with Section 15B(b)(2)(B)(i) of the Exchange Act,¹⁴³ which requires the number of public representatives to at all times exceed the number of regulated representatives and the membership to at all times be as evenly divided in number as possible between public representatives and regulated representatives. Furthermore, the Commission believes that the amendments that provide for a limited number of term extensions, to include a fifth year of service, for Board members are consistent with Section 15B(b)(2)(B)(ii) of the Exchange Act,¹⁴⁴ which requires the Board to “specify the length or lengths of terms members shall serve.” Finally, the Commission believes that the transition plan is consistent with Section 15B(b)(2)(I) of the Exchange Act,¹⁴⁵ which requires MSRB rules to “provide for the operation and administration of the Board,” in that the plan would serve to administer the Board transition process in a manner intended to minimize risks of disruption to MSRB governance, programs and operations.

The proposed rule change includes amendments that would impose a six-year limit on Board service intended to increase the rate at which new members will join the Board, thereby more regularly refreshing the perspectives the Board may draw upon in carrying out its mission. The Commission believes that this amendment is consistent with Section 15B(b)(2)(B) of the Exchange Act,¹⁴⁶ which requires the Board to establish fair procedures for the nomination and election of members of the Board and “specify the length or lengths of terms members shall serve,” by promoting broader participation in Board membership and specifying the overall length of service permitted.

The proposed rule change includes amendments that the MSRB describes as removing overly-prescriptive detail from the Board's rule regarding nominations and elections, while preserving the key features of the process, as further

¹⁴² 15 U.S.C. 78o-4(b)(2)(B)(iii).

¹⁴³ 15 U.S.C. 78o-4(b)(2)(B)(i).

¹⁴⁴ 15 U.S.C. 78o-4(b)(2)(B)(ii).

¹⁴⁵ 15 U.S.C. 78o-4(b)(2)(I).

¹⁴⁶ 15 U.S.C. 78o-4(b)(2)(B).

described above. The Commission believes that the amendments to these provisions providing for the operation and administration of the Board are consistent with Exchange Act Sections 15B(b)(2)(B) and (I),¹⁴⁷ which require the Board's rules to establish fair procedures for the nomination and election of members and provide for the operation and administration of the Board.

Amendments to MSRB Rule A-6 would codify existing MSRB rule and policy requirements that the chairs of Board committees with responsibilities for nominations, governance, and audit must be public representatives. As an administrative and operational matter, the Board has established a number of standing committees as well as special committees when appropriate. The Commission believes that the MSRB's determination to codify that such committees be chaired by public representatives is consistent with Section 15B(2)(I) of the Exchange Act¹⁴⁸ to provide for the operation and administration of the Board.

The proposed rule change includes certain organizational and technical changes to MSRB Rule A-3 which make no substantive changes to these fair procedures but merely improve the rule's readability. Accordingly, the Commission believes that these amendments are consistent with Exchange Act Section 15B(b)(2)(B).¹⁴⁹

The proposed rule change includes an amendment that would provide that a Board member is disqualified from further service if his or her change in employment or other circumstances would result in the Board's noncompliance with the requirements in Exchange Act Section 15B(b)(1)¹⁵⁰ for Board composition, and provides procedures for the Board to determine whether to retain a member if a member's change in employment or other circumstances does not result in disqualification under the Board's composition requirements. The Commission believes the amendment allows the Board to remain in compliance with its statutory composition requirement and to preserve the balance of Board categories on the Board that it establishes each year when it elects new members, and therefore is consistent with Exchange Act Section 15B(b)(1)¹⁵¹ and 15B(b)(2)(B).¹⁵²

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.¹⁵³ Section 15B(b)(2)(C) of the Act¹⁵⁴ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 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 Commission 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.

As noted above, the Commission received five comment letters on the filing. The Commission believes that the MSRB, through its responses, has addressed commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵⁵ that the proposed rule change (SR-MSRB-2020-04) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.¹⁵⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-17454 Filed 8-10-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89483; File No. SR-NYSEAMER-2020-62]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule

August 5, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 3, 2020, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange

Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to amend the NYSE American Options Fee Schedule ("Fee Schedule") regarding qualifications for rebates for initiating a Customer Best Execution Auction. The Exchange proposes to implement the fee change effective August 3, 2020. The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding the qualifications for a rebate for initiating a Customer Best Execution ("CUBE") auction, whether Single-Leg or Complex (collectively, "CUBE Orders").

In brief, the proposed changes are designed to encourage ATP Holders to increase their initiating CUBE volume while maintaining a meaningful level of Electronic volume in the "Professional" range.⁴ Specifically, the Exchange proposes to increase the qualification level to earn a rebate on initiating CUBE

¹⁴⁷ 15 U.S.C. 78o-4(b)(2)(B), (I).

¹⁴⁸ 15 U.S.C. 78o-4(b)(2)(I).

¹⁴⁹ 15 U.S.C. 78o-4(b)(2)(B).

¹⁵⁰ 15 U.S.C. 78o-4(b)(1).

¹⁵¹ 15 U.S.C. 78o-4(b)(1).

¹⁵² 15 U.S.C. 78o-4(b)(2)(B).

¹⁵³ 15 U.S.C. 78c(f).

¹⁵⁴ 15 U.S.C. 78o-4(b)(2)(C).

¹⁵⁵ 15 U.S.C. 78s(b)(2).

¹⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ For purposes of this filing, "Professional" volume includes Electronic volume from the following: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm (the "Professional volume").