

that have characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act³⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.³¹

A proposed rule change filed under Rule 19b-4(f)(6)³² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³⁴

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-NYSEARCA-2023-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2023-27. 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

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-NYSEARCA-2023-27 and should be submitted on or before April 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97223; File No. PCAOB-2023-01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Board Rule Governing Determinations Under the Holding Foreign Companies Accountable Act

March 30, 2023.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley" or the "Act"), notice is hereby given that on March 29, 2023, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On March 28, 2023, the Board adopted amendments to PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act* (collectively, the "proposed rules"). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b-4 and is available on the Board's website at <https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-050> and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth

³⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

³¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6)(iii).

³⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁵ 17 CFR 200.30-3(a)(12).

in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Sarbanes-Oxley mandates that the Board inspect registered public accounting firms and investigate possible statutory, rule, and professional standards violations committed by those firms and their associated persons. That mandate applies with equal force to the Board's oversight of registered firms in the United States and in foreign jurisdictions.¹

In December 2020, recognizing the obstacles the Board has faced when attempting to conduct inspections and investigations in certain foreign jurisdictions, Congress enacted the Holding Foreign Companies Accountable Act ("HFCAA"), which amended Sarbanes-Oxley.² The HFCAA required that the Board determine whether it is unable to inspect or investigate completely registered public accounting firms located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.³ The HFCAA also mandates that, after the Board makes such a determination, the Commission shall require covered issuers⁴ that retain such firms to make certain disclosures in their annual reports and, eventually, if certain conditions persist, shall prohibit trading in those issuers' securities.⁵

Following public comment, the Board adopted PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act*, to establish a framework for the Board to make its determinations under the HFCAA.⁶ Rule 6100 establishes the manner of the Board's determinations; the factors the Board will evaluate and the documents and information it will

consider when assessing whether a determination is warranted; the form, public availability, effective date, and duration of such determinations; and the process by which the Board will reaffirm, modify, or vacate any such determinations.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023 ("the 2023 Appropriations Act"),⁷ amending certain provisions of Sarbanes-Oxley that relate to Board determinations under the HFCAA. As a result, the Board is amending Rule 6100 to conform to the 2023 Appropriations Act's amendment of Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.⁸

Amendments to Rule 6100(a). Consistent with the HFCAA,⁹ Rule 6100(a), as originally adopted, provided that a Board determination regarding its inability to inspect or investigate completely a registered public accounting firm could be based only on positions taken by authorities *in the foreign jurisdiction where the firm was headquartered* (for purposes of Rule 6100(a)(1)) *or in a foreign jurisdiction where the firm had an office* (for purposes of Rule 6100(a)(2)).¹⁰ Therefore, if the Board were unable to inspect or investigate a firm completely because of a position taken by an authority in a foreign jurisdiction where the firm neither was headquartered nor had an office, a determination under the HFCAA as to the firm could not be made.

The 2023 Appropriations Act amends Section 104(i)(2)(A)(ii) of Sarbanes-Oxley to allow the Board to make a determination as to a firm located in one

foreign jurisdiction based on a position taken by an authority in a different foreign jurisdiction.¹¹ The Board is amending Rule 6100(a)(1) and (a)(2) to effectuate that change by replacing "in that jurisdiction" with "in a foreign jurisdiction" at the end of both provisions.

Amendments to Rule 6100(c) and (d). Relatedly, because future Board determinations could implicate two foreign jurisdictions—one where the firm is located and another whose authorities are taking positions that render the Board unable to inspect or investigate completely—the Board is amending Rule 6100(c) and (d) to eliminate potentially ambiguous or confusing references to "the foreign jurisdiction." Specifically, the Board is deleting "in the foreign jurisdiction or any political subdivision thereof" in Rule 6100(c)(1); is replacing "any relevant authority in the foreign jurisdiction" with "any relevant foreign authority" in Rule 6100(c)(2); is replacing "the foreign authority's" with "any relevant foreign authority's" in Rule 6100(c)(3); and is deleting "located in the foreign jurisdiction" in Rule 6100(d).

Effective Date. The Board determined that the amendments to Rule 6100 take effect upon approval by the Commission. The effective date takes into consideration the statutory amendments to Sarbanes-Oxley and the limited, conforming nature of the changes to Rule 6100.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The amendments to Rule 6100 reflect the statutory amendment to Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board did not solicit written comments on the proposed rules. The amendments to Rule 6100 reflect the statutory amendment to Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.¹²

¹¹ See Section 301 of Division AA of the 2023 Appropriations Act (striking "the foreign jurisdiction described in clause (i)" and inserting "a foreign jurisdiction" in Section 104(i)(2)(A)(ii) of Sarbanes-Oxley).

¹² The amendments to Rule 6100 do not require "mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements" of issuers,

Continued

¹ See, e.g., Section 106(a)(1) of Sarbanes-Oxley, 15 U.S.C. 7216(a)(1).

² Public Law 116–222, 134 Stat. 1063 (Dec. 18, 2020).

³ See Section 104(i)(2)(A) of Sarbanes-Oxley, 15 U.S.C. 7214(i)(2)(A).

⁴ See Section 104(i)(1)(A) of Sarbanes-Oxley, 15 U.S.C. 7214(i)(1)(A) (defining "covered issuer").

⁵ See generally *Holding Foreign Companies Accountable Act Disclosure*, SEC Release No. 34–93701 (Dec. 2, 2021).

⁶ See *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Rel. No. 2021–004 (Sept. 22, 2021); see also *Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, SEC Release No. 34–93527 (Nov. 4, 2021).

⁷ See Public Law 117–328 (Dec. 29, 2022).

⁸ The other amendments to Sarbanes-Oxley in the 2023 Appropriations Act relate to the timetable for trading prohibitions. See Section 301 of Division AA of the 2023 Appropriations Act (reducing, from three years to two years, the timetable for trading prohibitions set forth in Section 104(i)(3) of Sarbanes-Oxley). Because Rule 6100 does not address the timetable for such prohibitions, no related changes to Rule 6100 are necessary.

⁹ See HFCAA § 2(i)(2)(A)(ii), 15 U.S.C. 7214(i)(2)(A)(ii) (providing that a Board determination as to a registered firm can be based only on a position taken by an authority in "the foreign jurisdiction described in clause (i)," that is, the foreign jurisdiction where a branch or office of the firm is located).

¹⁰ See PCAOB Rule 6100(a)(1) (pre-amendment) ("The Board may determine that it is unable to inspect or investigate completely registered public accounting firms headquartered in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.") (emphasis added); PCAOB Rule 6100(a)(2) (pre-amendment) ("The Board may determine that it is unable to inspect or investigate completely a registered public accounting firm that has an office that is located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.") (emphasis added).

III. Date of Effectiveness of the Proposed Rules and Timing of Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) by order approve or disapprove such proposed rules; or

(B) institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of 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/pcaob.shtml>); or
- Send an email to rule-comments@sec.gov. Please include PCAOB-2023-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to PCAOB-2023-01. 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/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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

nor do they impose any "additional requirements" on auditors. Section 103(a)(3)(C) of Sarbanes-Oxley. Accordingly, the Board has concluded that Section 103(a)(3)(C) of Sarbanes-Oxley does not apply to this rulemaking.

Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to PCAOB-2023-01 and should be submitted on or before April 25, 2023.

For the Commission by the Office of the Chief Accountant.¹³

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97218; File No. SR-MSRB-2023-02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Create New MSRB Rule G-46, on Duties of Solicitor Municipal Advisors, and To Amend MSRB Rule G-8, on Books and Records

March 29, 2023.

I. Introduction

On January 31, 2023, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to create a new rule, MSRB Rule G-46 ("Rule G-46"), on duties of solicitor municipal advisors ("Proposed Rule G-46") and amend MSRB Rule G-8 ("Rule G-8"), on books and records ("Proposed Amended Rule G-8") (together, the "proposed rule change").

The proposed rule change was published for comment in the **Federal Register** on February 14, 2023.³ The public comment period closed on March

7, 2023.⁴ The Commission received one comment letter on the proposed rule change.⁵ On March 23, 2023, the MSRB responded to the comment letter⁶ and filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").⁷ The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

As described further below, the proposed rule change consists of new Proposed Rule G-46, as modified by Amendment No. 1, and amendments to Rule G-8.

A. Solicitor Municipal Advisor Activity

There are two broad categories of municipal advisors—those that provide certain advice to or on behalf of a municipal entity or obligated person and those that undertake certain solicitations of a municipal entity or obligated person on behalf of certain third-party financial professionals.⁸ The first category of municipal advisors is often referred to as non-solicitor municipal advisors, while the latter is sometimes referred to as solicitors.⁹

⁴ The comment letter received on the proposed rule change is available on the Commission's website at <https://www.sec.gov>.

⁵ See Letter to Secretary, from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated March 7, 2023 ("SIFMA Letter").

⁶ See Letter to Secretary, Commission, from Saliha Olgun, Interim Chief Regulatory Officer, MSRB, dated March 23, 2023 ("Response Letter").

⁷ *Id.* As described in Amendment No. 1, the MSRB stated it proposed to amend the original proposed rule change to make a change directly responsive to the comments and two other technical changes.

⁸ Exchange Act Section 15B(e)(4) generally defines "municipal advisor" to mean a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity. Additionally, the SEC has interpreted the definition of "municipal advisor" to include a person who engages in the solicitation of an obligated person acting in the capacity of an obligated person. 15 U.S.C. 78o-4(e)(4). See also Release No. 34-70462 (September 20, 2013), 78 FR 67468 (November 12, 2013) (File No. S7-45-10) at 67469, n. 138, 408; 17 CFR 240.15Ba1-1(d)(1)(i).

⁹ Exchange Act Section 15B(e)(9) generally defines "solicitation of a municipal entity or obligated person" to mean a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or

¹³ 17 CFR 200.30-11(b)(1) and (3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Release No. 34-96842 (February 8, 2023), 88 FR 9560 (February 14, 2023) (File No. MSRB-2023-02) (the "Notice").