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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88694; File No. SR-MSRB-2020-01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide Dealers and Municipal Advisors Additional Time to Comply with Certain Obligations for a Temporary Period of Time and Temporarily Suspend Late Fees on Payments Owed to the MSRB

April 20, 2020.

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 April 13, 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 and II 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 to provide dealers and municipal advisors additional time to comply with certain obligations for a temporary period of time and temporarily suspend late fees on payments owed to the MSRB (the “proposed rule change”). The MSRB has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

The MSRB is closely monitoring the impact of the coronavirus disease (COVID-19) pandemic on municipal market participants, including brokers, dealers, municipal securities dealers ("dealers"), municipal advisors, issuers and investors. The MSRB recognizes that dealers and municipal advisors (collectively, "regulated entities") are experiencing operational challenges with a vast number of individuals working from home, coupled with unprecedented conditions in the municipal market due to the COVID-19 pandemic.⁴ In an effort to provide regulated entities an opportunity to better manage and allocate resources during these exigent circumstances, the MSRB is proposing to (i) suspend late fees owed for the period of March 1,

⁴ Wall Street Journal: How the Muni Market Became the Epicenter of the Liquidity Crisis (April 2, 2020) <https://www.wsj.com/articles/how-the-muni-market-became-the-epicenter-of-the-liquidity-crisis-11585823404>

2020 through July 31, 2020; (ii) modify the date by which compliance obligations must be completed under certain MSRB rules for a temporary period; and (iii) extend the compliance date of rule changes that have yet to be implemented.⁵

The MSRB will continue monitoring the impact of the COVID-19 pandemic and work in close coordination with other financial regulators and governmental authorities.

Temporary Suspension of Late Fees

The MSRB assesses late fees under MSRB Rule A-11, on assessments for municipal advisor professionals, and MSRB Rule A-12, on registration. The MSRB is proposing to suspend the assessment of such late fees on overdue balances that may be owed to the MSRB for a temporary period. Specifically, the proposed rule change would temporarily suspend, for the period of March 1, 2020 through July 31, 2020, the late fees assessed under:

- MSRB Rule A-11(b), for the annual municipal advisor professional fees owed by each municipal advisor pursuant to Rule A-11(a) for each person associated with the municipal advisor who is qualified as a municipal advisor representative pursuant to Rule A-11(a);
- MSRB Rule A-12(d), for the:
 - Initial registration fee owed by each dealer and municipal advisor pursuant to Rule A-12(b);
 - Annual registration fee owed by each dealer and municipal advisor pursuant to Rule A-12(c);

⁵ See 17 CFR 240.19b-4(f)(6).

- Any underwriting assessments owed by each dealer, pursuant to MSRB Rule A-13(a), for municipal securities purchased from an issuer by or through a dealer as part of a primary offering;⁶
- Any underwriting assessment for a primary offering of municipal fund securities owed, pursuant to Rule A-13(b), by each underwriter of a primary offering of a plan, as the terms “underwriter” and “plan” are defined under Rule G-45(d)(xiv) and Rule G-45(d)(ix), respectively;
- Any transaction assessment owed by each dealer for certain inter-dealer municipal securities sales pursuant to Rule A-13(d)(i); and
- Any technology assessment owed by each dealer for certain sales to customers pursuant to Rule A-13(d)(ii).

Late fees are generally assessed during the last week of the month on outstanding balances subject to late fees per applicable Rule at that point in time. In this instance, beginning on August 1, 2020, outstanding balances will be subject to late fees as specified by MSRB Rule A-11(b) and MSRB Rule A-12(d), respectively. During the last week of August, outstanding balances subject to late fees under those Rules will be assessed such fees in accordance with those Rules. Late fees will not be assessed retroactively for the period of March 1, 2020 through July 31, 2020.

⁶ Rule A-13, on underwriting and transaction assessments for brokers, dealers, and municipal securities dealers, section A-13(a) provides that the underwriting assessment does not apply to a primary offering of securities if all such securities in the primary offering are commercial paper as defined in MSRB Rule G-32(d) or constitute municipal fund securities. An underwriting assessment for a primary offering of municipal fund securities is address under Rule A-13(b).

Extension of Time to Complete Certain Supervisory Functions

The MSRB is proposing to provide dealers additional time to complete certain annual supervisory functions under MSRB Rule G-27, on supervision. Specifically, the following supervisory obligations shall be deemed to have been timely completed for calendar year 2020, provided that such supervisory obligations are completed on or before March 31, 2021:

- An inspection of an office of municipal supervisory jurisdiction, branch office or non-branch location pursuant to Rule G-27(d)(i)(A), (B) and (C), as applicable, recognizing that, consistent with Rule G-27 (g)(ii)(A)(7), a temporary location established in response to the implementation of a business continuity plan is not deemed an office for purposes of complying inspection obligations;
- The annual compliance interview or meeting pursuant to Rule G-27(b)(vii); and
- The submission of a report from the designated principal(s) to the firm's senior management detailing the review of the firm's supervisory controls pursuant to Rule G-27(f)(i).

Similarly, the MSRB is also proposing to provide municipal advisors until March 31, 2021 to complete the annual certification for calendar year 2020 required pursuant to MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors. Pursuant to Rule G-44(d), the chief executive officer(s) (or equivalent officer(s)) of a municipal advisor must annually certify in writing that the municipal advisor has in place processes to establish,

maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules.⁷

Extension of Previously Announced Compliance Dates

On January 31, 2020, the MSRB announced a compliance date of November 30, 2020 for the amended and restated guidance regarding the fair dealing obligations underwriters owe to issuers of municipal securities under MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities (the “Revised Interpretive Notice”).⁸ The MSRB is proposing to extend the compliance date until March 31, 2021; underwriting relationships commenced by dealers on or after the revised compliance date will be subject to the Revised Interpretive Notice.⁹

On December 20, 2019, the MSRB announced a compliance date of November 30, 2020 for amendments to Form G-32.¹⁰ These amendments to Form G-32 are designed to collect new data elements from underwriters related to primary offerings of municipal securities through the

⁷ As provided in Rule G-44(d), this requirement shall not apply to municipal advisors that are subject to a substantially similar certification requirement of the Financial Industry Regulatory Authority (FINRA) with respect to all applicable rules.

⁸ MSRB Notice 2020-03 (Jan 31, 2020) announcing the effective date for the Revised Interpretive Notice, which the SEC had approved on November 6, 2019. See Release No. 34-87478 (Nov. 6, 2019), 84 FR 61660 (Nov. 13, 2019) (File No. SR-MSRB-2019-10).

⁹ As stated in the Revised Interpretive Notice, an underwriting relationship is deemed to commence at the time the obligation to deliver the first disclosure is triggered (i.e., the earliest stages of an underwriter’s relationship with an issuer with respect to an issue, such as in a response to a request for proposal or in promotional materials provided to an issuer).

¹⁰ MSRB Notice 2019-21 (Dec 20, 2019) announcing the effective date for amendments to Form G-32, which the SEC had approved on June 27, 2019. See Release No. 34-86219 (June 27, 2019), 84 FR 31961 (July 3, 2019) (File No. SR-MSRB-2019- 07).

MSRB's Electronic Municipal Market Access Dataport system, the majority of which is data underwriters are presently required to input into the Depository Trust Company's New Issue Information Dissemination Service. The MSRB is proposing to extend the compliance date until March 31, 2021.¹¹

Extension of Time to Complete Certain Professional Qualification Standards

FINRA, as appointed by the Commission, provides test administration services to the MSRB for the delivery of MSRB-owned professional qualification examinations.¹² FINRA uses Prometric¹³ as its single vendor for the delivery of the professional qualification examinations that FINRA is charged with administering, including MSRB-owned professional qualification examinations. In March 2020, Prometric announced that, due to the COVID-19 pandemic, it was temporarily closing all of its test center locations in the United States and Canada through April 15, 2020.¹⁴ While, at this time, Prometric has not announced a deviation from its planned resumption of operations effective April 16, 2020, there is no certainty as to when Prometric will resume operation of its testing centers. Moreover, there is no certainty as to when individuals would be able to visit any open testing centers due to stay-at-home orders that may be in place.

¹¹ Consistent with its prior pronouncement, the MSRB will make the amended Form G-32 available in advance of the revised compliance date so that dealers can operationalize processes for compliance with the amended form.

¹² See, e.g., Release No. 34-75714 (Aug. 17, 2015) (Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors).

¹³ Prometric is a leading provider of technology-enabled testing and assessment solutions to many of the world's most recognized licensing and certification organizations, academic institutions, and government agencies. See <https://www.prometric.com>.

¹⁴ See <https://www.prometric.com/corona-virus-update>.

For those reasons, the MSRB is proposing to provide additional time to allow firms and individuals to fulfill certain professional qualification standards established under MSRB Rule G-3, on professional qualification requirements, consistent with MSRB Rule G-2, on standards of professional qualification as follows:

- The date by which an individual functioning in the capacity as a principal before passing the applicable MSRB-owned principal qualification examination pursuant to Rule G-3(b)(ii)(D), G-3(b)(iv)(B)(4) and G-3(c)(ii)(D), as applicable, would be extended 120 days from the time the MSRB announces that Prometric has resumed access to its testing centers;¹⁵
- The date by which an individual has to complete their Regulatory Element component of continuing education training, as required pursuant to Rule G-3(i)(i)(A)(1), would be extended 120 days from the time the MSRB announces that Prometric has resumed access to its testing centers;¹⁶
- The date by which certain individuals are required to become qualified with the Municipal Advisor Principal Qualification Examination (Series 54) would be extended until March 31, 2021. On October 11, 2019, the MSRB announced that a

¹⁵ The MSRB will publish a notice on its website announcing when Prometric resumes operations in its testing centers so regulated entities are on notice of when the 120-day period begins to toll.

¹⁶ This extension is only for purposes of compliance with MSRB Rule G-3(i)(i)(A)(1) and is not intended to provide relief to individuals who may need to complete the Regulatory Element component of continuing education pursuant to the rules of another regulatory authority.

municipal advisor principal,¹⁷ as defined under Rule G-3(e), would have a one-year grace period, sunsetting on November 12, 2020, to pass the Series 54.¹⁸ The MSRB is proposing to extend the grace period until March 31, 2021. As a result, individuals qualified with the Municipal Advisor Representative Qualification Examination (Series 50) will be able to continue to engage in principal-level activities without passing the Series 54 until March 31, 2021; and

- The annual needs analysis and the delivery of continuing education pursuant to Rule G-3(i)(i)(B) and G-3(i)(ii), as applicable, shall be deemed to have been timely completed for calendar year 2020, provided that the needs analysis and the delivery of continuing education are completed on or before March 31, 2021.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹⁹ which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in

¹⁷ The term "municipal advisor principal" means a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. To become qualified as a municipal advisor principal a person must, as a pre-requisite, take and pass the Municipal Advisor Representative Qualification Examination; and take and pass the Municipal Advisor Principal Qualification Examination.

¹⁸ MSRB Notice 2019-18 (October 21, 2019) announcing the launch of the Series 54 exam, which the SEC had approved on November 20, 2018. See Release No. 34-84630 (Nov. 20, 2018), 80 FR 60927 (Nov. 27, 2018) (File No. SR-MSRB-2018-07).

¹⁹ 15 U.S.C. 78o-4(b)(2)(C).

general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is designed to provide dealers and municipal advisors additional time to comply with certain obligations for a temporary period of time and suspend late fees on payments owed to the MSRB; it does not relieve such regulated entities from compliance with underlying obligations that directly serve investor protection or market transparency goals. In a time when faced with unique challenges resulting from the COVID-19 pandemic, the proposed rule change will afford regulated entities the ability to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest during these unprecedented market conditions. In addition, the proposed rule change will also alleviate some of the operational challenges regulated entities may be experiencing, which will allow them to more effectively allocate resources to operations facilitate transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.

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

Section 15B(b)(2)(C) of the Act²⁰ requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act. The goal of the proposed rule change is to relieve the burden on regulated entities during the exigent circumstances of the COVID-19 pandemic. The proposed rule change will only provide temporary relief for regulated

²⁰ Id.

entities; excluding the suspension on the assessment of late fees, regulated entities will still be required to fulfill their underlying obligations under MSRB rules.

Additionally, Section 15B(b)(2)(L)(iv) of the Act, requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.²¹ The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act in that, while the proposed rule change will affect all municipal advisors, including small municipal advisors, there is no new regulatory burden that results, and each municipal advisor continues to be obligated to meet baseline competence standards and complete requisite supervisory functions. Small municipal advisors typically have fewer associated persons and, as a result, during the COVID-19 pandemic their resources may be more limited. As the proposed rule change is designed to provide regulated entities an opportunity to better manage and allocate resources during these exigent circumstances, the proposed rule change may be of greater benefit to small municipal advisors.

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.

²¹ 15 U.S.C. 78o-4(b)(2)(L)(iv).

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

Pursuant to Section 19(b)(3)(A)²² of the Act and Rule 19b-4(f)(6)²³ thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.²⁴ However, Rule 19b-4(f)(6)(iii)²⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.²⁶ The MSRB has requested that the Commission designate the proposed rule change operative upon filing,²⁷ as specified in Rule 19b-4(f)(6)(iii),²⁸ which would make the proposed rule change operative on April 13, 2020.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ Id.

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

²⁷ See SR-MSRB-2018-10.

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

The MSRB notes that the proposed rule change does not relieve regulated entities from compliance with underlying obligations. Rather, the proposed rule change provides regulated entities with additional time to complete certain compliance obligations, suspends late fees due to the MSRB for a temporary period of time, and extends the compliance date of MSRB rule changes not yet implemented. The MSRB believes the proposed rule change will afford regulated entities the ability to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest during unprecedented market conditions. Further the MSRB has stated, in light of the operational challenges and unprecedented conditions in the municipal market due to the COVID-19 pandemic, the proposed rule change would alleviate operational challenges and facilitate transactions in municipal securities and municipal financial products.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change does not relieve regulated entities from compliance with underlying obligations and will allow regulated entities to more effectively allocate resources during unprecedented municipal securities market conditions. Waiver of the 30-day operative period will alleviate operational challenges and facilitate transactions in the municipal securities market in light of the exigent circumstances presented by the COVID-19 pandemic. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b-4(f)(6)(iii) and designates the proposed rule change to be operative upon filing.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission

²⁹ For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2020-01 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-MSRB-2020-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm.

Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2020-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Assistant Secretary.

³⁰ 17 CFR 200.30-3(a)(12).

