

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97423; File No. SR-MSRB-2023-04)

May 2, 2023

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule G-27 to Further Extend the Current Regulatory Relief for Remote Office Inspections through June 30, 2024 and Amend MSRB Rule G-16 to Delete Temporary Relief for the Initiation of Periodic Compliance Examinations of Dealers by the Examining Authorities

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 27, 2023, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to (i) amend Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB Rule G-27, on Supervision, to further extend the current regulatory relief and permit brokers, dealers and municipal securities dealers (each, individually “dealer” and collectively “dealers”) to conduct office inspections due to be completed during calendar year 2023 remotely through December 31, 2023, and office inspections due to be completed during calendar year 2024 remotely through June 30, 2024; and (ii) delete Supplementary Material .01, Temporary Relief

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

for Completing Periodic Compliance Examination, of MSRB Rule G-16, on periodic compliance examinations, which provided temporary relief for the initiation of periodic compliance examinations of dealers by registered securities associations³ and appropriate regulatory agencies⁴ (collectively, the “examining authorities”) (collectively the “proposed rule change”). The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)⁵ of the Act and Rule 19b-4(f)(6)⁶ thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of July 1, 2023.

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2023-SEC-Filings>, 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

³ Section 15B(c)(7)(A)(i) of the Exchange Act provides that periodic examinations of municipal securities brokers and municipal securities dealers shall be conducted by a registered securities association, in the case of municipal securities brokers and municipal securities dealers that are members of such association. The Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association. See <https://www.sec.gov/rules/sro.shtml>.

⁴ Pursuant to Section 15B(c)(7)(A)(ii) of the Exchange Act, municipal securities brokers and municipal securities dealers who are not members of a registered securities association shall be examined by their appropriate regulatory agency. The term “appropriate regulatory agency” when used with respect to municipal securities dealers means, in part, the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“FRB”), and the Federal Deposit Insurance Corporation (“FDIC”). See 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers if the Commission deems it necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Exchange Act. See 15 U.S.C. 78q(b)(1).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

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 has continued to monitor the impact of the coronavirus disease on municipal market participants and how dealers' operations and business models have evolved during the public health crisis. The MSRB previously filed proposed rule changes for immediate effectiveness with the SEC in April 2020,⁷ in December 2020,⁸ in October 2021,⁹ in March 2022,¹⁰ and in November 2022¹¹ ("April 2020 relief," "December 2020 relief," "October 2021 relief," "March 2022 relief," and "November 2022 relief," respectively). In connection with the

⁷ See Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR-MSRB-2020-01).

⁸ See Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR-MSRB-2020-09).

⁹ See Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR-MSRB-2021-06).

¹⁰ See Exchange Act Release No. 94383 (March 9, 2022), 87 FR 14596 (March 15, 2022) (File No. SR-MSRB-2022-01).

¹¹ See Exchange Act Release No. 96346 (November 17, 2022), 87 FR 71719 (November 23, 2022) (File No. SR-MSRB-2022-08).

April 2020 relief, the MSRB provided an extension of time for dealers to complete certain supervisory obligations, including, among other things, that office inspections due to be conducted during calendar year 2020 could be conducted by March 31, 2021, but with the expectation that dealers would conduct their inspections on-site. The December 2020 relief provided dealers with the option to conduct their office inspections remotely that were due to be completed by March 31, 2021 (for calendar year 2020) and those for calendar year 2021, subject to certain conditions. The October 2021 relief provided an additional extension of time permitting dealers to continue to conduct office inspections remotely through June 30, 2022, for their office inspections that were due to be completed for calendar year 2022.¹² The March 2022 relief allowed for dealers to complete office inspections, due to be completed during calendar year 2022, remotely through December 31, 2022. The November 2022 relief allowed for dealers to conduct office inspections, due to be completed during calendar year 2023, remotely through June 30, 2023.

The MSRB understands that a large number of firms have implemented a hybrid work environment in which particular business functions continue to be de-centralized. Therefore, the November 2022 relief was intended to allow dealers time to address ongoing challenges related to variations of telework arrangements.¹³ The MSRB believes that an additional extension

¹² The MSRB noted in the October 2021 relief that it would continue to monitor the effectiveness of remote office inspections on dealers' overall supervisory systems and would consider more long-term regulatory initiatives that align with and promote the evolving ways dealers are doing business and supervising the activities of a dealer and its associated persons. See Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR-MSRB-2021-06). The MSRB is still undertaking such review.

¹³ See Exchange Act Release No. 96346 (November 17, 2022), 87 FR 71719 (November 23, 2022) (File No. SR-MSRB-2022-08).

allowing dealers to conduct office inspections remotely through the first half of the calendar year (June 30, 2024), would provide dealers with the necessary time to continue to assess the current and future state of work and evolve their current supervisory practices to better support an integrated hybrid work environment.

Relatedly, in October 2022, FINRA submitted a proposed rule filing with the SEC to extend its remote office inspection relief through the earlier of the effective date of its proposed remote office inspection pilot program,¹⁴ if approved, or the end of calendar year 2023.¹⁵ The MSRB believes the extension of time through the first half of the calendar year (June 30, 2024), will afford the industry time, including the MSRB, to better assess the impact of FINRA's open rulemaking initiative pending with the Commission, and provide greater regulatory certainty as to the length of time dealers can operate under the current regulatory relief to aid dealers' ability to plan for the coming year.

To that end, the MSRB is proposing amendments to Supplementary Material .01 of MSRB Rule G-27. Specifically, the proposed amendments to Supplementary Material .01 of MSRB Rule G-27 would allow dealers to satisfy their office inspection obligations by permitting dealers to conduct office inspections, due to be completed in calendar year 2023, remotely for

¹⁴ See Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (File No. SR-FINRA-2022-021). FINRA proposes to amend FINRA Rule 3110, on supervision, to adopt a voluntary, three-year remote inspection pilot program to allow FINRA member firms to elect to conduct inspections of some or all of a firm's branch offices and locations remotely without an on-site visit to such office or location, subject to specified terms and conditions.

¹⁵ See Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (File No. SR-FINRA-2022-030).

the remainder of calendar year 2023, as well as allow dealers to conduct calendar year 2024 office inspections remotely through June 30, 2024.¹⁶

The conditions required to be met for dealers to avail themselves of the option to conduct office inspections remotely would remain unchanged under Rule G-27. However, amendments are being proposed to paragraphs (a) and (d) of Supplementary Material .01 to reflect the additional extension of time under the proposed rule change. Pursuant to paragraphs (b)-(d) of Supplementary Material .01 of MSRB Rule G-27, as currently effective, dealers electing to conduct their office inspections remotely must (i) amend or supplement their written supervisory procedures as appropriate to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Board rules; (ii) use remote office inspections as part of an effective supervisory system, which would include the ongoing review of activities and functions occurring at all offices and locations whether or not the dealer conducts inspections remotely; and (iii) make and maintain a centralized record for each of the calendar years 2020, 2021, 2022, and for calendar year 2023 through June 30, 2023, separately identifying all offices or locations that had inspections that were conducted remotely; and any offices or locations for which the dealer determined to impose additional supervisory procedures or more frequent monitoring as provided for under paragraph (c) of Supplementary Material .01, of MSRB Rule G-27. Thus, under the proposed rule change, the dates within paragraphs (a) and (d) of Supplementary Material .01, of MSRB Rule G-27, would be revised to include the remainder of

¹⁶ As the MSRB has noted in the past, pursuant to 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 with the office inspection obligations, under MSRB Rule G-27. See supra note 7.

calendar year 2023 and calendar year 2024 through June 30, 2024, for conducting remote office inspections and with respect to the related documentation requirement for dealers that elect to conduct their inspections remotely.

The proposed rule change also deletes Supplementary Material .01, Temporary Relief for Completing Periodic Compliance Examinations, of MSRB Rule G-16, on periodic compliance examination, that provided temporary relief for completing periodic examinations of dealers by registered securities associations and appropriate regulatory agencies.¹⁷ Supplementary Material .01, of MSRB Rule G-16, currently provides that any examination initiated between January 1, 2020 and March 31, 2021 is deemed to have occurred in calendar year 2020. As that time period has since passed and the Supplementary Material is no longer relevant, the proposed rule change deletes this Supplementary Material in order to streamline the rule.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,¹⁸ 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,

¹⁷ See Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR-MSRB-2020-09).

¹⁸ 15 U.S.C. 78o-4(b)(2)(C).

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

The proposed rule change is designed to provide dealers additional time to comply with certain obligations under MSRB rules for a temporary period of time and greater regulatory certainty as to the length of time dealers can operate under the current regulatory relief to aid dealers' ability to plan for the coming year. The proposed rule change does not relieve dealers from compliance with their core regulatory obligations to establish and maintain a system to supervise the activities of each of their associated persons that is reasonably designed to achieve compliance with applicable rules and regulations, and with applicable MSRB rules, which serve to protect investors, municipal entities, obligated persons, and the public interest. The MSRB believes that an additional extension affording dealers the option to conduct remote inspections, due to be completed in calendar year 2023, as well as the option to conduct remote office inspections, due to be completed in calendar year 2024, for the first half of the calendar year (June 30, 2024), is a prudent regulatory approach. This approach will allow dealers time to continue to adapt their supervisory practices to long-term hybrid work arrangements while continuing to serve the important investor protection and public interest objectives of the inspection obligations. Lastly, the proposed rule change also will alleviate some of the operational challenges dealers may be experiencing, which will allow them to more effectively allocate resources to the operations that 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.¹⁹

¹⁹ The proposed rule change only creates the option for dealers to conduct office inspections remotely through June 30, 2024. With that in mind, dealers should consider whether,

The proposed rule change to remove outdated references to the regulatory relief that is no longer applicable would ensure that rule provisions are clear, accurate, and streamlined, thereby facilitating compliance and promoting just and equitable principles of trade by clarifying the regulatory obligations under MSRB rules.

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

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.²⁰ In fact, the MSRB does not believe that the proposed rule change will have any burden on competition because the proposed rule change treats all dealers equally in that all dealers have the option to elect to conduct remote inspections remotely through June 30, 2024. The goal of the proposed rule change is to grant additional time for dealers to focus their time on the establishment and integration of long-term hybrid work arrangements — recognizing the use of a remote work force and transformative technology to decentralize functions — while also balancing the regulatory obligation to establish office inspection schedules for the first half of 2024 and meet their office inspection obligations, under Supplementary Material .01 of Rule G-27. The temporary relief afforded does not alter dealers’ underlying obligations under Rule G-27 and with applicable MSRB rules that directly serve investor protection.

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.

under their particular operating conditions, electing to conduct the required office inspections remotely would be reasonable under facts and circumstances.

²⁰ 15 U.S.C. 78o-4(b)(2)(C).

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) of the Act²¹ and Rule 19b-4(f)(6)²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2023-04 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-MSRB-2023-04. This file number should be

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2023-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.²³

Sherry R. Haywood
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).