

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76443; File No. SR-MSRB-2015-12)

November 16, 2015

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Proposed New MSRB Rule A-18, on Mandatory Participation in Business Continuity and Disaster Recovery Testing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 2, 2015, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (“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 adopt proposed new MSRB Rule A-18 to require certain brokers, dealers, municipal securities dealers and municipal advisors registered with the MSRB (“MSRB Registrants”) to participate in business continuity and disaster recovery plans (“BC/DR Plans”) testing in connection with Regulation Systems Compliance and Integrity (“Regulation SCI”)³ (the “proposed rule change”). The MSRB has designated the proposed rule change as “non-controversial” pursuant to Section 19(b)(3)(A)(iii)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (“SCI Adopting Release”).

of the Act⁴ and Rule 19b-4(f)(6)(iii)⁵ thereunder, which renders it effective upon filing with the Commission. A proposed rule change filed under Rule 19b-4(f)(6)⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The MSRB is requesting the Commission waive the 30-day operative delay so that the proposed rule change to require participation in BC/DR Plans testing as mandated by Regulation SCI may become operative immediately upon filing.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-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

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ Id.

⁷ Id.

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the MSRB), alternative trading systems, plan processors, and exempt clearing agencies (collectively, “SCI entities”), and mandates these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the MSRB and other SCI entities to maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”⁸

The MSRB has put extensive time and resources toward planning for system failures and already maintains robust procedures for business continuity and disaster recovery. As set forth below, in connection with Regulation SCI, the MSRB is proposing to require certain MSRB Registrants to participate in the testing of the operation of the MSRB’s BC/DR Plans. With respect to an SCI entity’s BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁹ Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency

⁸ 17 CFR 242.1001(a)(2)(v).

⁹ 17 CFR 242.1004(a).

specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”¹⁰ In order to comply with Rule 1004 of Regulation SCI, the MSRB proposes to adopt new Rule A-18 to provide for the mandatory participation of certain MSRB Registrants (“Participants”) in the testing of the MSRB’s BC/DR Plans, as described below.

Section (a) of new Rule A-18 includes language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the MSRB’s obligation pursuant to such rule. Specifically, the MSRB proposes to state that “[p]ursuant to Regulation Systems Compliance and Integrity under the Securities Exchange Act of 1934 and with respect to the MSRB’s business continuity and disaster recovery plans, including its backup systems, the MSRB is required to establish standards for the designation of MSRB Registrants that the MSRB reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The MSRB further proposes that section (a) indicate that the “MSRB has established standards and will designate Participants according to those standards as set forth” in new Rule A-18. Any changes to the standards by which MSRB Registrants might be designated Participants would be applied prospectively and would be publicly announced with reasonable advance notice. The MSRB would first announce the methodology for designating Participants on or before November 3, 2015.

Second, in section (b) of new Rule A-18, the MSRB proposes to specify that it “shall designate Participants as those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during the Measurement Period” and that “[t]he percentage of data submission volume and the minimum number of Participants that

¹⁰ 17 CFR 242.1004(b).

the MSRB considers to be meaningful and the Measurement Period will be determined by the MSRB, published to MSRB Registrants in advance of the Measurement Period, and applied during the Measurement Period (not retroactively).” The MSRB further proposes that section (b) indicate that the MSRB will, at least forty-five (45) calendar days prior to a functional and performance testing of the operation of the MSRB’s BC/DR Plans, individually notify all Participants that are required to participate in such testing. The MSRB believes the proposed notice requirement is necessary to provide sufficient advance notice to those MSRB Registrants that are designated as Participants in mandatory business continuity and disaster recovery testing under new Rule A-18.

In adopting the requirements of new Rule A-18(b), the MSRB intends to subject certain MSRB Registrants to mandatory testing as the minimum necessary to maintain fair and orderly markets in the event of the activation of such BC/DR plans. The MSRB believes that designating Participants to participate in mandatory testing because they are among those entities whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants is a measured approach to a threshold criteria to ensure the maintenance of a fair and orderly market.

Third, in section (c) of new Rule A-18, the MSRB proposes that Participants will be required to participate in functional and performance testing of the operation of the MSRB’s BC/DR Plans, in the manner and frequency specified by the MSRB. In addition, new Rule A-18 provides that such testing shall occur at least once every 12 months.

Lastly, in section (d) of new Rule A-18, the MSRB proposes to set forth definitions for purposes of new Rule A-18 of “MSRB Registrants” and “Participants.” For purposes of new Rule A-18, “MSRB Registrants” means “brokers, dealers, municipal securities dealers or

municipal advisors registered with the MSRB” and “Participants” means “those MSRB Registrants that the MSRB has determined, pursuant to section (b) of [Rule A-18], are among those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during the Measurement Period, which percentage of data submissions volume represents the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the MSRB’s BC/DR Plans.” Further, for purposes of new Rule A-18, “Measurement Period” means “the time period, whether monthly or quarterly, during which time MSRB measures data submission required to be provided by MSRB Registrants for purposes of designating Participants in accordance with section (b).”

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act,¹¹ which requires, in pertinent part, that the MSRB’s rules shall be designed

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

The proposed rule change will provide that MSRB Registrants necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI.¹²

¹¹ 15 U.S.C. 78o-4(b)(2)(C).

¹² 17 CFR 242.1004.

Specifically, the proposed rule change will adopt standards with respect to the designation of MSRB Registrants that are required to participate in the testing of the MSRB's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release,

SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹³

Though the MSRB is not a national securities exchange as provided in Section 6 of the Act,¹⁴ the MSRB believes that the proposed rule change is consistent with its authority and legal responsibility under Section 15B(b)(2)(C) of the Act.¹⁵

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

Section 15B(b)(2)(C) of the Act¹⁶ 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 MSRB does not believe that the proposed rule change would impose any additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received on the proposed rule change.

¹³ See SCI Adopting Release, supra note 3 at 72350.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78o-4(b)(2)(C).

¹⁶ Id.

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

Pursuant to Section 19(b)(3)(A)¹⁷ of the Act and Rule 19b-4(f)(6)¹⁸ thereunder, the MSRB has designated the proposed rule change as one that affects a change that 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. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.¹⁹ However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the 30 day operative delay if such action is consistent with the protection of investors and the public interest.²⁰

The MSRB has requested that the Commission designate the proposed rule change operative upon filing on November 2, 2015, which is less than 30 days after the date of filing of the proposed rule change, as specified in Rule 19b-4(f)(6)(iii).²¹ According to the MSRB, the proposed rule change is necessary for the MSRB to comply with Regulation SCI and the waiver of the 30 day operative delay allows the MSRB to conform its rules prior to the Regulation SCI compliance date of November 3, 2015. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ Id.

²⁰ 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.

²¹ See SR-MSRB-2015-12 (filed with the Commission on November 2, 2015).

allow the MSRB to incorporate changes required under Regulation SCI, such as requiring participation in BC/DR Plans testing, prior to the Regulation SCI compliance date. Accordingly, the Commission designates the proposed rule change to be operative upon filing on November 2, 2015.²²

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2015-12 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-2015-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²² For purposes only 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).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2015-12 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

Robert W. Errett
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).