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**Category**

Administration

**Affected Rules**

[Rule A-8](#)

## MSRB Updates Rule A-8, on Rulemaking Procedures

### Overview

The Municipal Securities Rulemaking Board (MSRB) filed an immediately effective rule change with the U.S. Securities and Exchange Commission (SEC or “Commission”) on May 19, 2021 that makes certain changes to the Board’s rulemaking procedures.<sup>1</sup> These amendments update descriptions of Board rulemaking processes and eliminate redundant or obsolete provisions.

### Brief Summary of the Amendments

MSRB rulemaking is governed by Section 19 of the Exchange Act<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> which describe the processes self-regulatory organizations must follow to file proposed rule changes with the Commission. MSRB Rule A-8 reflects, and to some extent incorporates, these requirements and includes provisions that describe Board processes for complying with them. The proposed rule change is intended to update these provisions and reduce unnecessary complexity, as follows.

#### Eliminating Unnecessary Descriptions of Statutory Requirements

Section (a) of MSRB Rule A-8 notes the statutory requirements with which the Board must comply when it adopts rules and also restates the statutory authority granted to the Board in Section 15B(b) of the Exchange Act.<sup>4</sup> The amendments delete a detailed description of the Board’s statutory authority that adds unnecessary length and complexity. Removing this description streamlines the section without changing the substance of the rule. The amendments

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<sup>1</sup> File No. SR-MSRB-2021-03

<sup>2</sup> 15 U.S.C. 78s.

<sup>3</sup> 17 CFR 240.19b-4

<sup>4</sup> 15 U.S.C. 78o-4(b).



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further improve the readability of section (a) by moving the sentence describing who must sign rule filings – a separate topic – into a new section (b).

### **Removing Outdated or Obsolete References**

Former section (b) of MSRB Rule A-8 (section (c) in the rule as amended) notes that the Board may “render or cause to be rendered advisory opinions and interpretations of rules of the Board at the request of any interested person.”<sup>5</sup> The amendments remove the reference to “advisory opinions,” a term that the Board once used, but no longer uses, to describe certain interpretations. Removing this reference eliminates the potential for confusion about the meaning of the term without limiting the kinds of interpretive and other materials relating to rulemaking that the Board may issue.<sup>6</sup>

In addition, because the Board may interpret its rules on its own initiative, in addition to upon request, the amendments remove the reference to “the request of any interested person.” Finally, the amendments replace the words “render” and “rendered” in the first sentence with “issue” and “issued” and revise the second sentence to say that interpretations shall “be consistent with,” rather than “represent,” the Board’s intent in adopting the rules being interpreted. The Board believes that the new phrasing is clearer.

Former section (c) of MSRB Rule A-8 provided that the Board may approve procedures relating to the administration of MSRB rules pursuant to MSRB Rule A-4(d), which describes requirements for taking Board action without a meeting. Adopted at a time when the Board’s rules required the Board to approve changes to Board rules at a meeting of the Board (rather than through action without a meeting), Former Rule A-8(c) permitted the Board to approve minor changes to an MSRB form, for example, without a meeting. Because the Board’s rules have for some time allowed it to take any

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<sup>5</sup> The Board is currently engaged in a retrospective review of the catalogue of interpretive guidance in its rule book. The multi-year initiative is intended to streamline and modernize the rule book by clarifying, amending and/or retiring guidance that no longer achieves its intended purposes. See MSRB Notice 2021-02 (February 11, 2021).

<sup>6</sup> Depending on its substance, an interpretation may be deemed to be a proposed rule change pursuant to Exchange Act Rule 19b-4, in which case it must be filed with the Commission.

permissible action, including actions relating to rulemaking, without a meeting,<sup>7</sup> this section is obsolete and the amendments delete it.

## Better Reflecting Current Transparency Practices

Prior to the amendments, Section (d) of MSRB Rule A-8 directed the Board to establish procedures to provide “access by all interested persons to rules of the Board and other official Board action.” As required by Exchange Act Rule 19b-4(m)(1),<sup>8</sup> the Board posts and maintains a complete version of its rules on its website available for the public to access. The amendments update section (d) to mirror that requirement and current practice.

Questions about this notice may be directed to Jake Lesser, General Counsel, at 202-838-1500.

May 19, 2021

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## Text of Amendments\*

### Rule A-8: Rulemaking Procedures

(a) *Adoption of Proposed Rules and Submission to Commission.* The Board shall adopt such proposed rules as the Board shall deem necessary or appropriate to effect the purposes of the Act ~~with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers, and municipal advisory activities engaged in by municipal advisors, including, as a minimum, proposed rules relating to those matters prescribed in section 15B(b)(2)(A) through (L) of the Act.~~ Upon their adoption by the Board, the Board shall submit proposed rules to the Commission in accordance with the procedures set forth in section 19(b) of the Act and shall file such proposed rules with the appropriate regulatory agencies in accordance with the provisions of section 17(c) of the Act. A proposed rule of the Board shall become a rule of the Board upon its approval by the Commission, pursuant to section 19(b)(2) of the Act,

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<sup>7</sup> MSRB Rule A-4(d) provides that action by the Board may be taken without a meeting by unanimous written consent. As the Board noted when it last amended MSRB Rule A-4(d), “[t]he Board takes action without a meeting infrequently, generally when a matter requires prompt attention in between scheduled meetings and circumstances preclude convening a special meeting.” Exchange Act Release No. 89998 (September 25, 2020); 85 FR 62001, 62002 (October 1, 2020); File No. SR-MSRB 2020-05.

<sup>8</sup> 17 CFR 240.19b-4(m)(1).

\* Underlining indicates new language; strikethrough denotes deletions.

or upon filing with the Commission in accordance with the provisions of section 19(b)(3)(A) of the Act, or upon the determination of the Commission in accordance with the provisions of section 19(b)(3)(B) of the Act.

(b) Signatures. Documents required to be submitted to the Commission in connection with the proposed rules of the Board shall be signed on behalf of the Board by the Secretary of the Board, or by any person designated by the Board for that purpose by resolution.

~~(c) Advisory Opinions and Interpretations.~~ The Board may from time to time issue ~~render~~ or cause to be issued ~~rendered~~ advisory opinions and interpretations of rules of the Board ~~at the request of any interested person~~. Such ~~opinions and~~ interpretations shall be consistent with ~~represent~~ the Board's intent in adopting the rules which are the subject of such ~~opinions and~~ interpretations.

~~(c) Procedures.~~ The Board may from time to time ~~prescribe and amend procedures relating to the administration of Board rules. Such procedures and amendments may be approved by the Board pursuant to rule A-4(d).~~

~~Each broker, dealer, municipal securities dealer, and municipal advisor shall be subject to such procedures and amendments thereto in the same manner as the broker, dealer, municipal securities dealer, and municipal advisor is subject to the rules of the Board.~~

~~Procedures and amendments thereto shall become effective no earlier than 10 business days after publication of such procedures and amendments.~~

(d) Access to Board Rules and Other Action. The Board shall post and maintain a current and complete version of its rules on its website ~~establish procedures designed to provide access by all interested persons to rules of the Board and other official Board action, and otherwise to keep all interested persons informed and advised of all such rules and action.~~