Dated: October 9, 2019.

Vanessa A. Countryman,

Committee Management Officer.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87256; File No. SR–MSRB–2019–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Amend and Restate the MSRB's August 2, 2012 Interpretive Notice Concerning the Application of Rule G–17 to Underwriters of Municipal Securities

October 8, 2019.

I. Introduction

On August 1, 2019, the Municipal Securities Rulemaking Board (''MSRB'') 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'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule (the ''original proposed rule change'') to amend and restate the MSRB's August 2, 2012 interpretive notice concerning the application of MSRB Rule G–17 to underwriters of municipal securities (the ''2012 Interpretive Notice'').[3] The original proposed rule change was published for comment in the **Federal Register** on August 9, 2019.[4] The Commission received three comment letters on the original proposed rule change.[5] On September 10, 2019, the MSRB granted an extension of time for the Commission to act on the filing until November 7, 2019. On October 7, 2019, the MSRB responded to the comments [6] and filed Amendment No. 1 to the original proposed rule change (''Amendment No. 1''). The text of Amendment No. 1 is available on the MSRB's website. [7] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

A. Delivery of Complex Municipal Securities Financing Disclosures

In response to concerns raised in the comments, the MSRB is proposing in Amendment No. 1 to modify the original proposed rule change to state that the underwriter making a recommendation to an issuer regarding a financing structure or product, including, when applicable, a Complex Municipal Securities Financing Recommendation,[8] has the fair dealing obligation to deliver the applicable transaction-specific disclosures.[9] Consequently, when the syndicate manager (or any other underwriter in the syndicate) is not the underwriter making the recommendation of a financing structure or product to the issuer, the MSRB proposes in Amendment No. 1 to provide that such underwriter does not have a fair dealing obligation under the proposed rule change, as amended by Amendment No.1, to deliver the transaction-specific disclosures.[10] The MSRB states that Amendment No. 1, thus, proposes to revise the text of the original proposed rule change to clearly state and underscore that the transaction-specific disclosures ''must be provided to the issuer by the underwriter who has recommended a financing structure or product to the issuer.'' [11] Similarly, Amendment No. 1 also proposes to add a footnote to the original proposed rule change stating: ''Each underwriter, whether a sole underwriter, syndicate manager, or other member of the underwriting syndicate, has a fair dealing obligation under this notice to deliver transaction-specific disclosures where such underwriter has made a recommendation to an issuer regarding a financing structure or product.'' [12] Consistent with this modification, the MSRB in Amendment No. 1 proposes to make conforming revisions throughout the original proposed rule intended by the MSRB to emphasize and clearly articulate: (1) The circumstances when an underwriter has made a recommendation to an issuer regarding a financing structure and (2) that only an underwriter that has made such a recommendation to an issuer has the responsibility to deliver the applicable transaction-specific disclosures.[13] As an example of the type of revisions resulting from this modification, the MSRB in Amendment No. 1 proposes to change the original proposed rule change's references to the ''sole underwriter'' or ''syndicate manager'' under the section of the interpretive notice entitled ''Timing and Manner of Disclosures'' by replacing these references with revised references to an ''underwriter,'' ''the underwriter who has made a recommendation,'' and similar conforming language to emphasize that the transaction-specific disclosures must be provided by an underwriter who makes, or has made, a recommendation to an issuer regarding a financing structure.[14]

B. Application to Underwriters Serving as Placement Agents

In response to concerns raised in the comments, the MSRB is proposing in Amendment No. 1 to modify the original proposed rule change to further supplement the text incorporated into the 2012 Interpretive Notice by the original proposed rule change from the Implementation Guidance [15] that describes the ability of dealers to modify certain standard disclosures when acting as an agent to place securities on behalf of an issuer.[16] Pursuant to Amendment No. 1, the MSRB proposes to supplement the text in the original proposed rule change with the following, ''[a]s a threshold matter, the disclosures delivered by an underwriter to an issuer must not be inaccurate or misleading, and nothing in this notice should be construed as requiring an underwriter to make a disclosure to an issuer that is false.'' [17] The MSRB believes this modification to be a clarifying change. By incorporating this additional language into the proposed rule change, the MSRB intends to further alleviate any potential

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The 2012 Interpretive Notice was approved by the SEC on May 4, 2012 and became effective on August 2, 2012. *See* Release No. 34–66927 (May 4, 2012); 77 FR 27509 (May 10, 2012) (File No. SR–MSRB–2011–09); and MSRB Notice 2012–25 (May 7, 2012). The 2012 Interpretive Notice is available here.

[4] Exchange Act Release No. 86572 (Aug. 5, 2019), 84 FR 39646 (Aug. 9, 2019) (''Notice''). The comment period closed on August 30, 2019.

[5] *See* Letter to Secretary, Commission, from Tamara K. Salmon, Associate General Counsel, Investment Company Institute dated Aug. 30, 2019, Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated August 30, 2019; Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated August 30, 2017.

[6] *See* Letter from Gail Marshall, Chief Compliance Officer, MSRB, to Secretary, SEC, dated October 7, 2019, available at *https://www.sec.gov/comments/sr-msrb-2019-10/srmsrb201910-6261133-193028.pdf.*

[7] Amendment No. 1 is available at *http://msrb.org/~/media/Files/SEC-Filings/2019/MSRB-2019-10-A-1.ashx?.*

[8] As defined in Exhibit 5 to Amendment No. 1.

[9] *See* Amendment No. 1.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] As defined in the Notice.

[16] *See* Amendment No. 1.

[17] *Id.*

misperceptions that an underwriter's duty of fair dealing requires it to deliver particular disclosure language in situations where such language is not actually true.[18]

C. Application to Underwriters of Municipal Fund Securities

In response to concerns raised in the comments, the MSRB is proposing in Amendment No. 1 to delete text incorporated into the original proposed rule change from the Implementation Guidance that, as originally filed, defines the application of the original proposed rule change to the circumstances of a continuous offering of municipal fund securities.[19] As revised by Amendment No. 1, the proposed rule change would state, ''[t]his notice does not apply to a dealer acting as a primary distributor in a continuous offering of municipal fund securities.'' [20] Thus, the proposed rule change, as revised by Amendment No. 1, makes clear that the specific fair dealing duties outlined in the proposed rule change—which articulate the delivery of certain disclosures at particular times during the course of an underwriting transaction—would not be applicable to the situations of a dealer serving as a primary distributor in a continuous offering of municipal fund securities.[21]

The MSRB notes that Amendment No. 1 does not revise the portion of the text of the original proposed rule change indicating that the fair dealing obligations outlined in the interpretive notice may serve as one of many bases for dealers acting in a capacity not specifically addressed therein—such as a dealer serving as a primary distributor in a continuous offering of municipal fund securities—to determine how to establish appropriate policies and procedures for ensuring it meets its fair dealing obligations under Rule G–17.[22] Accordingly, the MSRB notes, dealers acting as a primary distributor in a continuous offering of municipal fund securities could use the proposed rule change as a basis to determine how to establish appropriate policies and procedures for ensuring it meets its fair dealing obligations under Rule G–17, until such time as the MSRB issues more specific guidance.[23]

D. Conforming the Personnel to Whom Disclosures May Be Delivered

The MSRB is proposing in Amendment No. 1 to revise the original proposed rule change to clarify the particular issuer personnel to whom a disclosure must be delivered and to articulate a uniform and consistent standard in each section of the revised interpretive notice.[24] Under the section entitled ''Acknowledgement of Disclosure,'' the text of the original proposed rule change modified the language of the 2012 Interpretive Notice to state that, ''[w]hen delivering a disclosure, the underwriter must attempt to receive a written acknowledgement by the official of the issuer identified by the issuer as the as the primary contact for the issuer of receipt of the foregoing disclosures. In the absence of such identification, an underwriter may seek acknowledgement from an official of the issuer whom the underwriter reasonably believes has authority to the bind the issuer by contract with the underwriter.'' However, under the section entitled ''Timing and Manner of Disclosures,'' the original proposed rule change maintains the original text of the 2012 Interpretive Notice without revision to state that the standard disclosures, transaction-specific disclosures, and dealer-specific disclosures, ''. . . must be made in writing to an official of the issuer that the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter and that, to the knowledge of the underwriter, is not a party to a disclosed conflict.'' The MSRB stated that it believes that the relevant provisions could be misinterpreted as inconsistent and potentially understood to result in different disclosure outcomes. Accordingly, the MSRB proposes in Amendment No. 1 to modify the proposed rule change to uniformly clarify the issuer personnel to whom a disclosure must be delivered, including by making revisions to the portion of the text under the sections entitled ''Timing and Manner of Disclosures,'' ''Acknowledgment of Disclosure,'' and ''Required Disclosures to Issuers.'' [25] The MSRB believes this amendment to be of a technical nature, intended to avoid potential confusion regarding an underwriter's fair dealing obligations to deliver certain disclosures to an issuer.[26]

E. Other Conforming Technical Amendments

The MSRB is proposing in Amendment No. 1 to modify the original proposed rule change with technical revisions that the MSRB intends to improve internal consistency of the proposed rule change and otherwise improve its clarity.[27] For example, the original proposed rule change stated in a footnote that:

> For the avoidance of doubt, in offerings where a syndicate is formed, the disclosure obligation for an underwriter to make its dealer-specific disclosures is triggered—if any such actual material conflicts of interest or potential material conflicts of interest must be so disclosed—when such underwriter becomes engaged as a member of the underwriting syndicate (except with regard to conflicts discovered or arising after such co-managing underwriter has been engaged). Consistent with the obligation of sole underwriters and syndicate managers, each underwriter in the syndicate must make any applicable dealer-specific disclosures discovered or arising after being engaged as an underwriter in the syndicate as soon as practicable after being discovered and with sufficient time for the issuer to fully evaluate such a conflict and its implications.[28]

The MSRB proposes in Amendment No. 1 to delete the ''for avoidance of doubt'' phrase and to add a comma to the final sentence to improve the clarity of the footnote. The MSRB believes this revision and others similar to it to be of a technical nature.[29] Similarly, the original proposed rule change defines the term ''issuers'' to mean ''states and their political subdivisions that are issuers of municipal securities,'' but then uses the phrase ''issuers of municipal securities'' in several instances. The MSRB believes the phrases to be redundant with the term ''issuers'' as defined in the original proposed rule change and so proposes to revise the relevant text to just state ''issuers'' or ''issuer,'' as appropriate.[30]

Relatedly, the original proposed rule change revised the 2012 Interpretive Notice to pluralize certain references to underwriters. The MSRB proposes in Amendment No. 1 to reverse these changes to promote clarity. The proposed rule change also incorporated various references from the Implementation Guidance related to an underwriter's recommendation of a ''structure or product,'' but did not make conforming references throughout the text. The MSRB proposes in Amendment No. 1 to avoid potential confusion in this regard by revising

[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *See* Exhibit 5 to the Notice.
[29] *See* Amendment No. 1.
[30] *Id.*

relevant portions of the original proposed rule change to reference a ''financing structure or product'' where a conforming reference is appropriate.[31]

As a final example, the original proposed rule change defines the terms ''complex municipal securities financing'' and ''Complex Municipal Financing Recommendation.'' In Amendment No. 1, the MSRB proposes to revise the proposed rule change to promote consistency of these concepts by redefining the latter term to ''Complex Municipal Securities Financing Recommendation'' and make conforming changes throughout the document.[32]

III. Date of Effectiveness of the Proposed Rule Change and Amendment No. 1

As stated in the original proposed rule change, following the approval of the proposed rule change, the MSRB will publish a regulatory notice within 90 days of the publication of approval in the **Federal Register** (the 2012 Interpretive Notice, so amended by the proposed rule change, is referred to herein as the ''Revised Interpretive Notice''), and such notice shall specify the compliance date for the amendments described in the proposed rule change, which in any case shall be not less than 90 days, nor more than one year, following the date of the notice establishing such compliance date.[33]

The MSRB is requesting accelerated approval of Amendment No. 1.[34] The MSRB believes the Commission has good cause, pursuant to Section 19(b)(2) of the Act, for granting accelerated approval of Amendment No. 1.[35] The MSRB believes that the Commission has good cause, pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, for granting accelerated approval of Amendment No. 1. Specifically, the MSRB believes that the modifications to the original proposed rule change are responsive to commenters. The MSRB states that Amendment No. 1 proposes to revise the original proposed rule change to state that (1) the underwriter making a recommendation to the issuer regarding a financing structure, including, when applicable, a Complex Municipal Securities Financing Recommendation, has the fair dealing obligation to deliver the applicable transaction-specific disclosures and (2) the notice does not apply to a dealer acting as a primary distributor in a continuous offering of municipal fund securities. Beyond these modifications, the MSRB states that Amendment No. 1 otherwise proposes to revise the original proposed rule change with technical modifications intended to more precisely define the scope of its application and/or to promote clarity in its interpretation. The MSRB believes that these modifications are consistent with the original proposed rule change.[36]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the filing as amended by Amendment No. 1 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–2019–10 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–2019–10. 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 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–2019–10 and should be submitted on or before October 29, 2019.

For the Commission, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Deputy Secretary.

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[31] *Id.*

[32] *Id.*

[33] *See* Notice.

[34] *See* Amendment No. 1.

[35] *Id.*

[36] *Id.*

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87257; File No. SR–OCC–2019–805]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

October 8, 2019.

I. Introduction

On August 9, 2019, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2019–805 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to adopt a policy concerning capital management at OCC, which includes OCC's plan to replenish its capital in the event it falls close to or below target capital levels.[4] The Advance Notice was published for public comment in the **Federal Register** on September 11, 2019,[5] and the

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 5, at 84 FR 47990.

[5] Securities Exchange Act Release No. 86888 (Sep. 5, 2019), 84 FR 47990 (Sep. 11, 2019) (File No. SR–OCC–2019–805) (''Notice of Filing''). On August 9, 2019, OCC also filed a related proposed rule change (SR–OCC–2019–007) with the Commission pursuant to Section 19(b)(1) of the Exchange Act