

116TH CONGRESS
1ST SESSION

S. 1236

To amend the Securities Exchange Act of 1934 to clarify the composition of the membership of the Municipal Securities Rulemaking Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2019

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to clarify the composition of the membership of the Municipal Securities Rulemaking Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Municipal Securities
5 Rulemaking Board Reform Act of 2019”.

6 **SEC. 2. THE MUNICIPAL SECURITIES RULEMAKING BOARD.**

7 (a) IN GENERAL.—Section 15B of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78o–4) is amended—

1 (1) by striking subsection (b) and inserting the
2 following:

3 “(b) MUNICIPAL SECURITIES RULEMAKING
4 BOARD.—

5 “(1) MEMBERSHIP.—

6 “(A) DEFINITIONS.—For the purposes of
7 this paragraph, a person is associated with—

8 “(i) a municipal securities broker if
9 that person is—

10 “(I) a partner, officer, director,
11 or branch manager of a municipal se-
12 curities broker;

13 “(II) a person occupying a simi-
14 lar status as, or performing similar
15 functions as, a person described in
16 subclause (I);

17 “(III) any other employee of a
18 municipal securities broker who is en-
19 gaged in the management, direction,
20 supervision, or performance of any ac-
21 tivities relating to the business of ef-
22 fecting transactions in municipal secu-
23 rities for the account of others; or

24 “(IV) a person directly or indi-
25 rectly controlling, controlled by, or

1 under common control with a munic-
 2 ipal securities broker;

3 “(ii) a municipal securities dealer if
 4 the person is a person associated with a
 5 municipal securities dealer; and

6 “(iii) a municipal advisor if the person
 7 is a person associated with a municipal ad-
 8 visor.

9 “(B) COMPOSITION OF BOARD.—

10 “(i) IN GENERAL.—The Municipal Se-
 11 curities Rulemaking Board (referred to in
 12 this section as the ‘Board’) shall be com-
 13 posed of 15 members, or such other num-
 14 ber of members as specified by the Com-
 15 mission under clause (ii), who shall be—

16 “(I) appointed from among
 17 prominent individuals of integrity and
 18 reputation; and

19 “(II) knowledgeable of matters
 20 relating to the municipal securities
 21 markets.

22 “(ii) COMMISSION ALTERATIONS.—
 23 The Commission may alter the number of
 24 members that constitute the Board if that
 25 number is an odd number.

1 “(C) PUBLIC REPRESENTATIVES AND REG-
2 ULATED REPRESENTATIVES.—

3 “(i) PUBLIC REPRESENTATIVES.—A
4 majority of the membership of the Board
5 shall be individuals who were not associ-
6 ated with a municipal securities broker,
7 municipal securities dealer, or municipal
8 advisor during the 5-year period preceding
9 the date on which those individuals are ap-
10 pointed to the Board (referred to in this
11 subsection as ‘public representatives’)—

12 “(I) not less than 1 of whom
13 shall be representative of institutional
14 or retain investors in municipal secu-
15 rities;

16 “(II) not less than 1 of whom
17 shall be representative of municipal
18 entities; and

19 “(III) not less than 1 of whom
20 shall be a member of the public with
21 knowledge or experience in the munic-
22 ipal industry.

23 “(ii) REGULATED REPRESENTA-
24 TIVES.—Other than public representatives,
25 the members of the Board shall be individ-

1 uals who are associated with a broker,
 2 dealer, municipal securities dealer, or mu-
 3 nicipal advisor (referred to in this sub-
 4 section as ‘regulated representatives’)—

5 “(I) not less than 1 of whom
 6 shall be associated with and rep-
 7 resentative of brokers, dealers, or mu-
 8 nicipal securities dealers that are not
 9 banks or subsidiaries, departments, or
 10 divisions of banks (referred to in this
 11 subsection as ‘broker-dealer represent-
 12 atives’);

13 “(II) not less than 1 of whom
 14 shall be associated with and rep-
 15 resentative of municipal securities
 16 dealers that are banks or subsidiaries,
 17 departments, or divisions of banks
 18 (referred to in this subsection as
 19 ‘bank representatives’); and

20 “(III) not less than 1 of whom
 21 shall be associated with a municipal
 22 advisor (referred to in this subsection
 23 as ‘advisor representatives’).

24 “(D) LIMITATION.—The membership of
 25 the Board shall, at all times, be as evenly di-

vided as possible between the number of public
 representatives and regulated representatives,
 taking into account the requirement under sub-
 paragraph (C)(i) that the majority of the mem-
 bership of the Board shall be public representa-
 tives.

“(E) APPOINTMENT OF BOARD MEM-
 BERS.—

“(i) INITIAL BOARD.—Not later than
 180 days after the date of enactment of
 the ‘Municipal Securities Rulemaking
 Board Reform Act of 2019’, the Commis-
 sion shall, subject to clause (ii)—

“(I) appoint a Chairperson of the
 Board and all other initial members of
 the Board; and

“(II) designate a term of service
 for each member appointed under
 subclause (I).

“(ii) INTERIM BOARD.—

“(I) IN GENERAL.—Before ap-
 pointing the initial members of the
 Board under clause (i), the Commis-
 sion may, without regard to the limi-
 tations in subparagraph (C), appoint

1 not more than 3 individuals to serve
 2 as interim members of the Board who
 3 shall be responsible for ensuring the
 4 continuity of the operations of the
 5 Board until the Commission appoints
 6 those initial members.

7 “(II) MEMBERSHIP.—In making
 8 an appointment under subclause (I),
 9 the Commission shall select from
 10 among individuals of integrity and
 11 reputation and who are knowledgeable
 12 of matters relating to the municipal
 13 securities markets.

14 “(III) AUTHORITY.—The mem-
 15 bers of the interim Board appointed
 16 under this subparagraph may exercise
 17 all of the authority of the Board
 18 under this section.

19 “(F) VACANCIES.—A vacancy on the
 20 Board—

21 “(i) shall not affect the authority of
 22 the Board under this section; and

23 “(ii) shall be filled by the Commission.

24 “(G) TERM OF SERVICE.—The term of
 25 service for each Board member shall be 3 years,

1 plus the amount of time necessary for the ap-
 2 pointment of a successor, except that—

3 “(i) the term of service for a member
 4 appointed under subparagraph (E)(i),
 5 other than the Chairperson of the Board,
 6 shall expire in increments, with—

7 “(I) $\frac{1}{3}$ of the terms of the mem-
 8 bers so appointed expiring on the date
 9 that is 1 year after the date on which
 10 those members are appointed;

11 “(II) $\frac{1}{3}$ of the terms of the
 12 members so appointed expiring on the
 13 date that is 2 years after the date on
 14 which those members are appointed;
 15 and

16 “(III) $\frac{1}{3}$ of the terms of the
 17 members so appointed expiring on the
 18 date that is 3 years after the date on
 19 which those members are appointed;

20 “(ii) the term of service for a member
 21 appointed under subparagraph (E)(ii) shall
 22 be not more than 180 days; and

23 “(iii) any Board member appointed to
 24 fill a vacancy on the Board before the expi-
 25 ration of the term with respect to that va-

1 cancy shall be appointed only for the re-
2 mainder of that term.

3 “(H) REMOVAL.—A member of the Board
4 shall be removable at will by the Commission.

5 “(2) RULES.—The Board shall propose and
6 adopt rules to effect the purposes of this title with
7 respect to transactions in municipal securities ef-
8 fected by brokers, dealers, and municipal securities
9 dealers and advice provided to or on behalf of mu-
10 nicipal entities or obligated persons by brokers, deal-
11 ers, municipal securities dealers, and municipal advi-
12 sors with respect to municipal financial products, the
13 issuance of municipal securities, and solicitations of
14 municipal entities or obligated persons undertaken
15 by brokers, dealers, municipal securities dealers, and
16 municipal advisors and that, at a minimum, shall—

17 “(A) provide that no municipal securities
18 broker or municipal securities dealer shall effect
19 any transaction in, or induce or attempt to in-
20 duce the purchase or sale of, any municipal se-
21 curity, and no broker, dealer, municipal securi-
22 ties dealer, or municipal advisor shall provide
23 advice to or on behalf of a municipal entity or
24 obligated person with respect to municipal fi-
25 nancial products or the issuance of municipal

1 securities, unless such municipal securities
2 broker or municipal securities dealer meets such
3 standards of operational capability and such
4 municipal securities broker or municipal securi-
5 ties dealer and every natural person associated
6 with such municipal securities broker or munic-
7 ipal securities dealer meets such standards of
8 training, experience, competence, and such
9 other qualifications as the Board finds nec-
10 essary or appropriate in the public interest or
11 for the protection of investors and municipal
12 entities or obligated persons. In connection with
13 the definition and application of such standards
14 the Board may—

15 “(i) appropriately classify municipal
16 securities brokers, municipal securities
17 dealers, and municipal advisors (taking
18 into account relevant matters, including
19 types of business done, nature of securities
20 other than municipal securities sold, and
21 character of business organization), and
22 persons associated with municipal securi-
23 ties brokers, municipal securities dealers,
24 and municipal advisors;

1 “(ii) specify that all or any portion of
2 such standards shall be applicable to any
3 such class; and

4 “(iii) require persons in any such
5 class to pass tests administered in accord-
6 ance with subsection (c)(7);

7 “(B) be designed to prevent fraudulent and
8 manipulative acts and practices, to promote just
9 and equitable principles of trade, to foster co-
10 operation and coordination with persons en-
11 gaged in regulating, clearing, settling, proc-
12 essing information with respect to, and facili-
13 tating transactions in municipal securities and
14 municipal financial products, to remove impedi-
15 ments to and perfect the mechanism of a free
16 and open market in municipal securities and
17 municipal financial products, and, in general, to
18 protect investors, municipal entities, obligated
19 persons, and the public interest; and not be de-
20 signed to permit unfair discrimination among
21 customers, municipal entities, obligated persons,
22 municipal securities brokers, municipal securi-
23 ties dealers, or municipal advisors, to fix min-
24 imum profits, to impose any schedule or fix
25 rates of commissions, allowances, discounts, or

1 other fees to be charged by municipal securities
2 brokers, municipal securities dealers, or munic-
3 ipal advisors, to regulate by virtue of any au-
4 thority conferred by this title matters not re-
5 lated to the purpose of this title or the adminis-
6 tration of the Board, or to impose any burden
7 on competition not necessary or appropriate in
8 furtherance of the purposes of this title;

9 “(C) if the Board deems appropriate, pro-
10 vide for the arbitration of claims, disputes, and
11 controversies relating to transactions in munic-
12 ipal securities and advice concerning municipal
13 financial products, except that no person other
14 than a municipal securities broker, municipal
15 securities dealer, municipal advisor, or person
16 associated with such a municipal securities
17 broker, municipal securities dealer, or municipal
18 advisor may be compelled to submit to such ar-
19 bitration except at his instance and in accord-
20 ance with section 29;

21 “(D) provide for the periodic examination
22 in accordance with subsection (c)(7) of munic-
23 ipal securities brokers, municipal securities
24 dealers, and municipal advisors to determine
25 compliance with applicable provisions of this

1 title, the rules and regulations thereunder, and
2 the rules of the Board. Such rules shall specify
3 the minimum scope and frequency of such ex-
4 aminations and shall be designed to avoid un-
5 necessary regulatory duplication or undue regu-
6 latory burdens for any such municipal securities
7 broker, municipal securities dealer, or municipal
8 advisor;

9 “(E) include provisions governing the form
10 and content of quotations relating to municipal
11 securities which may be distributed or published
12 by any municipal securities broker, municipal
13 securities dealer, or person associated with such
14 a municipal securities broker or municipal secu-
15 rities dealer, and the persons to whom such
16 quotations may be supplied. Such rules relating
17 to quotations shall be designed to produce fair
18 and informative quotations, to prevent fictitious
19 or misleading quotations, and to promote or-
20 derly procedures for collecting, distributing, and
21 publishing quotations;

22 “(F) prescribe records to be made and
23 kept by municipal securities brokers, municipal
24 securities dealers, and municipal advisors and

1 the periods for which such records shall be pre-
2 served;

3 “(G) define the term ‘separately identifi-
4 able department or division’, as that term is
5 used in section 3(a)(30), in accordance with
6 specified and appropriate standards to assure
7 that a bank is not deemed to be engaged in the
8 business of buying and selling municipal securi-
9 ties through a separately identifiable depart-
10 ment or division unless such department or di-
11 vision is organized and administered so as to
12 permit independent examination and enforce-
13 ment of applicable provisions of this title, the
14 rules and regulations thereunder, and the rules
15 of the Board and so that a separately identifi-
16 able department or division of a bank may be
17 engaged in activities other than those relating
18 to municipal securities;

19 “(H) provide for the operation and admin-
20 istration of the Board, the compensation of the
21 members of the Board (subject to the rule
22 issued by the Commission under section
23 2(b)(1)(B) of the ‘Municipal Securities Rule-
24 making Board Reform Act of 2019’), and the
25 appointment and compensation of such employ-

ees, attorneys, and consultants as may be necessary or appropriate to carry out the functions of the Board under this section;

“(I) provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board, which shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board;

“(J) establish the terms and conditions under which any broker, dealer, or municipal securities dealer may sell, or prohibit any broker, dealer, or municipal securities dealer from selling, any part of a new issue of municipal securities to a related account of a broker, dealer, or municipal securities dealer during the underwriting period; and

“(K) with respect to municipal advisors—

1 “(i) prescribe means reasonably de-
 2 signed to prevent acts, practices, and
 3 courses of business as are not consistent
 4 with a municipal advisor’s fiduciary duty
 5 to its clients;

6 “(ii) provide continuing education re-
 7 quirements for municipal advisors;

8 “(iii) provide professional standards;
 9 and

10 “(iv) not impose a regulatory burden
 11 on small municipal advisors that is not
 12 necessary or appropriate in the public in-
 13 terest and for the protection of investors,
 14 municipal entities, and obligated persons,
 15 provided that there is robust protection of
 16 investors against fraud.

17 “(3) BOARD AUTHORITY.—The Board, in con-
 18 junction with or on behalf of any Federal financial
 19 regulator or self-regulatory organization, may—

20 “(A) establish information systems; and

21 “(B) assess such reasonable fees and
 22 charges for the submission of information to, or
 23 the receipt of information from, such systems
 24 from any persons which systems may be devel-
 25 oped for the purposes of serving as a repository

1 of information from municipal market partici-
2 pants or otherwise in furtherance of the pur-
3 poses of the Board, a Federal financial regu-
4 lator, or a self-regulatory organization, except
5 that the Board—

6 “(i) may not charge a fee to municipal
7 entities or obligated persons to submit doc-
8 uments or other information to the Board
9 or charge a fee to any person to obtain, di-
10 rectly from the Internet site of the Board,
11 documents or information submitted by
12 municipal entities, obligated persons, bro-
13 kers, dealers, municipal securities dealers,
14 or municipal advisors, including documents
15 submitted under the rules of the Board or
16 the Commission; and

17 “(ii) shall not be prohibited from
18 charging commercially reasonable fees for
19 automated subscription-based feeds or
20 similar services, or for charging for other
21 data or document-based services cus-
22 tomized upon request of any person, made
23 available to commercial enterprises, munic-
24 ipal securities market professionals, or the
25 general public, whether delivered through

1 the Internet or any other means, that con-
2 tain all or part of the documents or infor-
3 mation, subject to approval of the fees by
4 the Commission under section 19(b).

5 “(4) GUIDANCE.—The Board may provide guid-
6 ance and assistance in the enforcement of, and ex-
7 amination for, compliance with the rules of the
8 Board to the Commission, a registered securities as-
9 sociation under section 15A, or any other appro-
10 priate regulatory agency, as applicable.

11 “(5) MEETINGS.—The Board, the Commission,
12 and a registered securities association under section
13 15A, or the designees of the Board, the Commission,
14 or such association, shall meet not less frequently
15 than 2 times a year—

16 “(A) to describe the work of the Board,
17 the Commission, and the registered securities
18 association involving the regulation of municipal
19 securities; and

20 “(B) to share information about—

21 “(i) the interpretation of the Board,
22 the Commission, and the registered securi-
23 ties association of Board rules; and

24 “(ii) examination and enforcement of
25 compliance with Board rules.

1 “(6) RULE OF CONSTRUCTION.—Nothing in
2 this section shall be construed to impair or limit the
3 power of the Commission under this title.”; and

4 (2) in subsection (c)(7)—

5 (A) in subparagraph (A), in the matter
6 preceding clause (i), by striking “(b)(2)(E)”
7 and inserting “(b)(2)(D)”; and

8 (B) in subparagraph (B), in the first sen-
9 tence, by striking “(b)(2)(E)” and inserting
10 “(b)(2)(D)”.

11 (b) RULEMAKINGS.—

12 (1) SECURITIES AND EXCHANGE COMMIS-
13 SION.—The Securities and Exchange Commission—

14 (A) may issue any rules to carry out this
15 Act that may be necessary or appropriate in the
16 public interest or for the protection of investors;
17 and

18 (B) shall issue a final rule that provides
19 the maximum compensation for a member of
20 the Municipal Securities Rulemaking Board.

21 (2) MUNICIPAL SECURITIES RULEMAKING
22 BOARD.—Not later than 60 days after the date on
23 which the Securities and Exchange Commission has
24 completed the appointment of the initial members of
25 the Municipal Securities Rulemaking Board under

1 section 15B(b)(1)(E) of the Securities Exchange Act
2 of 1934, as added by subsection (a), the Municipal
3 Securities Rulemaking Board shall submit to the
4 Commission any notice of a proposed change to the
5 rules of the Board that is required as a result of the
6 amendments made by subsection (a).

○