

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.

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## 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

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## 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 retail 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-

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

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

9           “(i) INITIAL BOARD.—Not later than  
 10           180 days after the date of enactment of  
 11           the ‘Municipal Securities Rulemaking  
 12           Board Reform Act of 2019’, the Commis-  
 13           sion shall, subject to clause (ii)—

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

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

20           “(ii) INTERIM BOARD.—

21           “(I) IN GENERAL.—Before ap-  
 22           pointing the initial members of the  
 23           Board under clause (i), the Commis-  
 24           sion may, without regard to the limi-  
 25           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-

1           ees, attorneys, and consultants as may be nec-  
2           essary or appropriate to carry out the functions  
3           of the Board under this section;

4           “(I) provide that each municipal securities  
5           broker, municipal securities dealer, and munic-  
6           ipal advisor shall pay to the Board such reason-  
7           able fees and charges as may be necessary or  
8           appropriate to defray the costs and expenses of  
9           operating and administering the Board, which  
10          shall specify the amount of such fees and  
11          charges, which may include charges for failure  
12          to submit to the Board, or to any information  
13          system operated by the Board, within the pre-  
14          scribed timeframes, any items of information or  
15          documents required to be submitted under any  
16          rule issued by the Board;

17          “(J) establish the terms and conditions  
18          under which any broker, dealer, or municipal  
19          securities dealer may sell, or prohibit any  
20          broker, dealer, or municipal securities dealer  
21          from selling, any part of a new issue of munic-  
22          ipal securities to a related account of a broker,  
23          dealer, or municipal securities dealer during the  
24          underwriting period; and

25          “(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)”;

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).

○