

SECURITIES AND EXCHANGE COMMISSION  
(RELEASE NO. 34-63308; File No. SR-MSRB-2010-15)

November 12, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Rule D-13, on a Definition of “Municipal Advisory Activities”, Rule D-14, on a Definition of “Appropriate Regulatory Agency”, and Amendments to Rule D-11 (“Associated Persons”), Rule G-40 on Electronic Mail Contacts, and Form G-40, on Electronic Mail Contacts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“the Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 10, 2010, the Municipal Securities Rulemaking Board (“Board” or “MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Board has designated the proposed rule change as concerned solely with the administration of the Board or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of Section 19(b)(2) of the Act. 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 is filing a proposed rule change relating to municipal advisors, consisting of: (i) amendments to Rule D-11 (definition of “associated persons”); (ii) new Rule D-13 (definition of “municipal advisory activities”); (iii) new Rule D-14 (definition of “appropriate regulatory agency”); (iv) amendments to Rule G-40, on electronic mail contacts, by municipal advisors;

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

and (v) amendments to Form G-40, on electronic mail contacts. The proposed rule change is effective 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/2010-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-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 Board 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

The purposes of the proposed rule change are: (i) to complete the rulemaking that is necessary for the registration of municipal advisors with the MSRB (amended Rule G-40 and amended Form G-40) and (ii) to define certain terms that are necessary to the MSRB rules governing rulemaking concerning municipal advisors and the process of registering municipal advisors with the MSRB. Specifically, the proposed rule change consists of: (i) an amendment to Rule D-11 to provide that the term "municipal advisor" in MSRB rules shall include the associated persons of such municipal advisor unless otherwise specified, (ii) a new Rule D-13 that defines "municipal advisory activities" with respect to the activities of municipal advisors described in Section 15B(e)(4)(A)(i) and (ii) of the Act, (iii) a new Rule D-14 that defines

“appropriate regulatory agency” to have the meaning set forth in Section 3(a)(34) of the Act with respect to a broker, dealer, or municipal securities dealer and to mean the Commission with respect to a municipal advisor; (iv) amendments to Rule G-40 concerning the provision of electronic mail contacts by municipal advisors, and (v) amended Form G-40 concerning the provision of electronic mail contacts by municipal advisors.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

The proposed rule change is consistent with Section 15B(b)(2) of the Act, because it: (i) is essential to the registration with the MSRB of the municipal advisors described in Section 15B(b)(2) of the Act and (ii) defines certain terms that are necessary to the MSRB rules governing such municipal advisors and the process of registering such advisors with the MSRB.

Section 15B(2)(L) of the Act requires that rules adopted by the Board

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change does not impose a regulatory burden on small advisors that is not necessary or appropriate in the public interest and for the protection of

investors, municipal entities, and obligated persons and for the robust protection of investors against fraud. Rule G-40, as amended by the proposed rule change, only requires municipal advisors to submit basic contact information and to select the categories of municipal advisors that best describe them. The MSRB expects that municipal advisors will need no more than 15 minutes to complete electronic Form G-40, but the MSRB will have staff ready to assist them should they have any questions. Any burden on municipal advisors is *de minimis*. The portion of the proposed rule change that consists of definitions will impose no burden on any municipal advisor. While the proposed rule change, at best, imposes only a *de minimis* burden on municipal advisors, the proposed rule change is necessary for the MSRB to have a record of the municipal advisors it regulates, so that it may keep them abreast of regulatory developments, better target its rulemaking and professional qualifications examinations to different types of municipal advisors, and identify to the Commission those municipal advisors who have reportedly violated MSRB rules.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all municipal advisors.

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

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

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

The MSRB represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> thereunder, because it: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after filing or such shorter time as the Commission may designate consistent with the protection of investors and the public interest.<sup>4</sup>

The MSRB provided the required written notice of its intention to file the proposed rule change to the Commission on October 22, 2010.

The MSRB has requested that the Commission designate a shorter time period for the proposed rule change to become operative, that is, on November 15, 2010, and has represented that the proposed rule change is not controversial, that it is integrally related to SR-MSRB-2010-14, which became effective November 9, 2010, and that it is necessary for the completion of rulemaking related to the registration of municipal advisors with the MSRB. The MSRB has stated that an earlier operative date of November 15, 2010 will permit the MSRB to begin to register municipal advisors and will provide municipal advisors with additional time to complete their registration process with the MSRB by no later than January 1, 2011. The Commission hereby grants the MSRB's request and believes that waiving the 30-day operative delay is consistent

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<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

with the protection of investors and the public interest.<sup>5</sup> The earlier operative date will allow municipal advisors additional time to register with the MSRB.

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.<sup>6</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2010-15 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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<sup>5</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

comments on the Commission's 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, N.E., Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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-2010-15 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).