

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63095; File No. SR-MSRB-2010-10)

October 13, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Amendments to Rule A-13 to Increase Transaction Assessments for Certain Municipal Securities Transactions Reported to the Board and to Institute a New Technology Fee on Reported Sales Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“the Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 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, II and III below, which Items have been prepared by the MSRB. 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 has filed with the Commission a proposed rule change relating to assessments for brokers, dealers, and municipal securities dealers (“dealers”) under MSRB Rule A-13. The proposed rule change consists of amendments to Rule A-13 to increase transaction assessments for certain municipal securities transactions reported to the Board and to institute a new technology fee on reported sales transactions. The proposed rule change would amend Rule A-13 to (a) increase the existing transaction assessments for inter-dealer and customer sales from .0005% to .001% of the total par value of inter-dealer sales and sales to customers that are reported by dealers to the MSRB (the “transaction fee”), and (b) impose a technology fee of \$1.00 per transaction for inter-dealer and customer sales reported to the Board (the “technology

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

fee”). The technology fee would be transitional in nature and would be reviewed by the Board periodically to determine whether it should continue to be assessed.

The MSRB proposes an effective date for this proposed rule change of January 1, 2011.

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 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 purpose of the proposed rule change is to assess reasonable fees necessary to defray the costs and expenses of operating and administering the MSRB. The proposed rule change would amend Rule A-13 to (a) increase the existing transaction assessments for inter-dealer and customer sales from .0005% to .001% of the total par value of inter-dealer sales and sales to customers that are reported by dealers to the MSRB (the “transaction fee”), and (b) impose a technology fee of \$1.00 per transaction for inter-dealer and customer sales reported to the Board (the “technology fee”). The technology fee would be transitional in nature and would be reviewed by the Board periodically to determine whether it should continue to be assessed.

Current Sources of Revenue

The MSRB currently levies four types of fees that are generally applicable to dealers. Rule A-12 provides for a \$100 initial fee paid once by a dealer when it first begins to engage in municipal securities activities. Rule A-13 provides for an underwriting fee of \$.03 per \$1000 par value of municipal securities purchased in a primary offering (with specified exceptions), and a transaction fee of \$.005 per \$1000 par value of sale transactions of municipal securities (with specified exceptions). Finally, Rule A-14 provides for an annual fee of \$500 from each dealer who conducts municipal securities activities.

At present, approximately 90% of the Board's revenue is generated through underwriting fees and transaction fees. In fiscal year 2009, approximately 55% of the Board's revenue was generated by underwriting fees and approximately 36% of its revenue was generated by transaction fees. The underwriting and transaction fees assessed pursuant to Rule A-13 are generally proportionate to a dealer's activity within the industry, as based on the par value amount of underwriting and customer and inter-dealer transactions during the year. Underwriting fees are based on a dealer's participation in the underwriting of municipal securities, and transaction fees are based on a dealer's participation in the municipal securities market in terms of par value sold.

The transaction assessment was last modified in 2000 when the Board commenced assessments on customer sale transactions reported by dealers. The transaction fee has not been increased since that date, despite the additional activities undertaken by the MSRB over the last ten years. The amount of the underwriting assessment has not been increased since 1992, although in December 2009 the MSRB eliminated certain exemptions from the underwriting assessment.

Rationale for Proposed Rule Change

The Board is proposing to increase the transaction fee and establish a new technology fee for three reasons. First, the expenses of the MSRB are increasing and additional revenue is necessary in order to meet projected expenses associated with ongoing operations. Second, the MSRB needs additional revenue to cover anticipated expenses associated with its new regulatory responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”). Third, the MSRB needs additional revenue to replace aging and outdated information technology software and hardware. In particular, funding is needed to ensure the operational integrity of the MSRB’s information systems, retire and update computer hardware and software, and conduct ongoing risk management including business continuity activities and system maintenance. The new technology fee would be used to establish a new technology renewal fund, which would be segregated for accounting purposes. The technology renewal fund is intended to fund replacement of aging and outdated technology systems and to fund new technology initiatives.

As reflected in the 2009 audited financial statement, revenue decreased from fiscal year 2008 to 2009 from approximately \$22.2 million to approximately \$19.6 million, while expenses increased from approximately \$18.6 million to approximately \$21.3 million. Although revenue has increased in fiscal year 2010, primarily due to the elimination of certain exemptions from underwriting fees, expenses have also continued to increase. Moreover, the MSRB has not set aside separate reserves for major technology systems that will need replacement or upgrades in the near future.

Several factors have contributed to the recent, large increase in operating expenses. First, over the last two years, the MSRB has significantly improved transparency in the municipal

securities market by developing and implementing market information transparency systems for the (a) collection and dissemination of electronic official statements and other primary market documents and information, allowing dealers, in most instances, to discontinue sending paper copies of official statements to new issue customers; (b) collection and dissemination of electronic continuing disclosure documents and related information from issuers and their agents; (c) collection and dissemination of current interest rates and other information on auction rate securities and variable rate demand obligations (the “SHORT” system); (d) production and publication of statistical information on the municipal securities market; and (e) display on a publicly available, user-friendly website of the documents and information described above, as well as real-time trade information, which are made continuously available to the general public (the Electronic Municipal Market Access System or “EMMA” website).

The EMMA and SHORT systems were initially developed and launched using general revenue and cash reserves. Since inception, significant demand from users of these systems and regulatory requirements established by the SEC have resulted in the development of new functionality, with an attendant rise in development and operating costs. Additionally, the rapid adoption by the marketplace of these systems as key sources for market disclosures, trade prices and interest rate information has resulted in an accelerated investment in resources to support the technology systems.

In addition, Congress recently passed, and the President signed into law, comprehensive financial reform legislation, the Dodd-Frank Act. Effective October 1, 2010, the Dodd-Frank Act expands the MSRB’s mission in a number of ways that will require a more substantial commitment of staff and technical resources. The expansion of the MSRB’s jurisdiction to include regulation of municipal advisors will require additional rulemaking capabilities. The

MSRB will also need to focus additional resources on establishing regulatory protections for municipal entities. The MSRB has also been given additional responsibilities in connection with providing enforcement and examination support to the Commission, the Financial Industry Regulatory Authority (“FINRA”) and the federal bank regulators, and the MSRB has been authorized to develop information systems with other federal regulators in furtherance of their missions.

Given the significant resource commitments needed to further develop its information systems, and the additional statutory obligations imposed on the MSRB by the Dodd-Frank Act, the MSRB must generate sufficient revenue to ensure that these systems operate in a continuous, reliable manner while at the same time devoting substantial staff resources to developing an extensive new body of regulatory requirements.

Description of Proposed Rule Change

In order to address the projected revenue shortfall, the MSRB proposes to increase revenue in two ways. First, the MSRB proposes to increase the amount of the transaction fee assessed on the par value of inter-dealer and customer sale transactions reported to the MSRB by dealers under MSRB Rule G-14(b), except for transactions currently exempted from the transaction fee as provided in MSRB Rule A-13(c)(iii), from \$.005 per \$1000 par value to \$.01 per \$1000 par value of such sale transactions. Transactions exempted from the transaction fee consist of sale transactions in municipal securities that have a final stated maturity of nine months or less or that, at the time of trade, may be tendered at the option of the holder to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an

issuer or its designated agent. This increase in the transaction fee is expected to generate an estimated \$7 million in revenue annually.

The second fee proposed by the MSRB would consist of a technology fee assessed at \$1.00 per transaction for each sale transaction reported to the MSRB by dealers under MSRB Rule G-14(b). The exemptions from the transaction fee, as described above, would not apply to the technology fee. The technology fee is expected to generate an estimated \$10 million in revenue annually, and would be transitional in nature, in that it would be reviewed periodically by the MSRB in relation to the level of funding needed for capital expenditures and to maintain the technology renewal fund. The funds accumulated in the technology renewal fund would be solely dedicated to funding capital expenses for technology investments.

As noted above, the bulk of the MSRB's revenue is derived from the underwriting and transaction fees, which are generally proportionate to a dealer's activity within the industry, as based on the par value amount of underwriting and customer and inter-dealer transactions during the year. The proposed new technology fee would help to establish a more balanced assessment of overall fees paid by dealers since it would be based on a dealer's participation in the market as measured by the total number of inter-dealer and customer sale transactions reported to the MSRB, rather than par value, and therefore would help to more evenly distribute the burden of dealer assessments. The MSRB believes these fees are fair and balanced, based on the activities of regulated market participants.

Finally, with regard to the expansion of the MSRB's regulatory mandate to include regulation of municipal advisors and the protection of municipal entities, the MSRB will continue to review its assessments on the market participants it regulates to ensure that costs of rulemaking are appropriately allocated among the entities it regulates. Although the MSRB

recognizes that an appropriate allocation of such regulatory costs may not be feasible during the transition of the MSRB to its broader mission, it expects to revisit the manner in which its activities are funded in the coming years, as appropriate. The MSRB is committed to ensuring that its assessments are balanced based in large measure on the level of activity of all of its regulated entities.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act³, which requires, in pertinent part, that the MSRB's rules shall:

Provide that each municipal securities broker and each municipal securities dealer 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. Such rules shall specify the amount of such fees and charges.

The proposed rule change provides for commercially reasonable fees to partially offset costs associated with operating RTRS⁴ and producing and disseminating transaction reports to subscribers.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all market participants that chose to subscribe to the services.⁵

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

³ 15 U.S.C. 78o-4(b)(2)(J).

⁴ RTRS refers to the MSRB's Real-time Transaction Reporting System.

⁵ The Commission notes that this filing does not appear to relate to a subscription service.

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-MSRB-2010-10 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MSRB-2010-10. 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 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, NE, 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-2010-10 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.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).