

SECURITIES AND EXCHANGE COMMISSION  
(RELEASE NO. 34-65015; File No. SR-MSRB-2011-08)

August 2, 2011

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed New Rule A-11, on Municipal Advisor Assessments, and New Form A-11-Interim

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 July 26, 2011, 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 is filing with the SEC a proposed rule change consisting of (i) proposed new Rule A-11, on municipal advisor assessments, and (ii) new Form A-11-Interim (the “proposed rule change”). The MSRB requests that the proposed rule change be made effective October 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/2011-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-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

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

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

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 proposed rule change consists of new Rule A-11, on municipal advisor assessments, and new Form A-11-Interim. The purpose of the proposed rule change is to levy a reasonable interim assessment to defray a portion of the costs and expenses of operating and administering the MSRB, including in particular the increased costs and expenses attributable to the regulation of municipal advisors that the MSRB began to incur upon being vested with rulemaking authority in this area under the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>3</sup> The MSRB expects the interim assessment to remain in effect in the form proposed in the proposed rule change for a limited period of time during which the MSRB would examine the nature of the municipal advisory activities undertaken by municipal advisors as well as the manner and level of compensation received by municipal advisors for such municipal advisory activities (the "MSRB municipal advisor study").<sup>4</sup> Based on the MSRB's findings, the MSRB would then consider whether to replace the interim assessment with a permanent form of

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<sup>3</sup> Public Law No. 111-203.

<sup>4</sup> Concurrent with the filing of this proposed rule change, the MSRB published for comment a draft amendment to proposed Rule A-11 and draft Form A-11-Survey pursuant to which the MSRB would collect the necessary information from municipal advisors to undertake such examination. See MSRB Notice 2011-34 (July 26, 2011). The MSRB would file the draft Rule A-11 amendment and draft Form A-11-Survey with the Commission prior to undertaking such collection of information.

assessment on municipal advisors that would, together with other MSRB assessments payable by municipal advisors, brokers, dealers and municipal securities dealers, provide for reasonable assessments that are fairly and equitably apportioned among all market participants subject to MSRB regulation and that do not impose an undue burden on small municipal advisors.

The interim assessment under proposed Rule A-11 would consist of an annual assessment equal to \$300 for each assessable professional reported or required to be reported by a municipal advisor to the MSRB on Form A-11-Interim for each fiscal year. Completed Form A-11-Interim and payment of the interim assessment would be due by November 30 of each year. Form A-11-Interim would be completed and submitted, and the interim assessment would be paid, in the manner set forth in the Instructions for Interim Municipal Advisor Assessment and Form A-11-Interim.

For purposes of the interim assessment, an assessable professional of a municipal advisor would, pursuant to proposed Rule A-11(b)(i), consist of any natural person who is an associated person of the municipal advisor who has received compensation or other payments from the municipal advisor (excluding reimbursement for out-of-pocket expenses) includable in such person's gross income for federal income tax purposes in the amount of \$10,000 or more during the fiscal year of the MSRB for which the municipal advisor is submitting Form A-11-Interim and who provides services in connection with the municipal advisor's municipal advisory activities as defined in Rule D-13. Such services include, but are not limited to:

(A) engaging in municipal advisory business<sup>5</sup> with a municipal entity or obligated person;

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<sup>5</sup> Proposed Rule A-11(b)(ii) would define municipal advisory business as the provision of advice to or on behalf of a municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities.

(B) soliciting<sup>6</sup> municipal advisory business with a municipal entity or obligated person on its own behalf or soliciting third-party business;<sup>7</sup>

(C) providing research or analytical services to other personnel of the municipal advisor engaged in the services described in paragraph (A) or (B) above or to clients of the municipal advisor, where such research or analytic services are related to the services described in paragraph (A) or (B) above;

(D) acting as supervisor of any person described in paragraph (A), (B) or (C) above with respect to such person's services as described in paragraph (A), (B) or (C) above;

(E) acting as supervisor of any person described in paragraph (D) above up through and including the Chief Executive Officer or similarly situated official; or

(F) serving as a member of the municipal advisor's executive or management committee or similarly situated officials, if any.

Notwithstanding the foregoing, a municipal advisor would not be required to include on Form A-11-Interim as an assessable professional any associated person (i) who otherwise qualifies as an assessable professional if such associated person is included on Form A-11-Interim for such

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<sup>6</sup> Under proposed Rule A-11(b)(iii), an associated person of a municipal advisor would be viewed as soliciting municipal advisory business if the associated person undertakes any direct or indirect communication with a municipal entity or obligated person for the purpose of obtaining or retaining: (A) municipal advisory business for such municipal advisor with a municipal entity or obligated person; or (B) third-party business.

<sup>7</sup> Proposed Rule A-11(b)(iv) would define third-party business as an engagement by a municipal entity of another person that does not control, is not controlled by, or is not under common control with the person soliciting such engagement, where such other person is: (A) a broker, dealer, municipal securities dealer, or municipal advisor engaging or seeking an engagement with such municipal entity in connection with municipal financial products or the issuance of municipal securities; or (B) an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) providing or seeking to provide investment advisory services to or on behalf of such municipal entity.

fiscal year as an assessable professional of another municipal advisor that controls, is controlled by, or is under common control with such municipal advisor, or (ii) whose functions are solely clerical or ministerial.

Proposed Form A-11-Interim would require that municipal advisors provide information about the number of assessable professionals who, during the fiscal year for which the assessment is calculated, were principal/supervisory personnel or other advisory personnel. Principal/supervisory personnel would consist of any assessable professional who is either described in paragraph (D), (E) or (F) of the definition of assessable professional or who is a partner or other equity owner of the municipal advisor firm having a cumulative ownership interest representing at least 2.5% of the firm. All other assessable professionals would be reported as other advisory personnel. The interim assessment would be calculated based on the sum of principal/supervisory personnel and other advisory personnel.<sup>8</sup> Because of the gross income threshold in the definition of assessable professional, municipal advisors that generate revenues of less than \$10,000 in connection with their municipal advisory activities during the fiscal year typically would not have any assessable professionals to report for such fiscal year and therefore would not be required to pay the interim assessment.<sup>9</sup>

The MSRB requests that the proposed rule change be made effective October 1, 2011, which is the first day of the MSRB's fiscal year. Municipal advisors would be required to

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<sup>8</sup> Proposed Form A-11-Interim also would require that municipal advisors provide information about the number of personnel at the firm that are engaged solely in non-municipal advisory activities. This information would be used to better understand the extent to which municipal advisory activities represent only a portion of firms' overall activities but would not be used to calculate the interim assessment.

<sup>9</sup> All municipal advisors would be required to submit completed Form A-11-Interim, even if such municipal advisors have no assessable professionals to report.

submit completed Form A-11-Interim and to make payment of the interim assessment by November 30, 2011, based on information for the period from October 1, 2010 through September 30, 2011. If in any subsequent fiscal year the MSRB has not yet replaced the interim assessment with a permanent form of assessment as described above, municipal advisors would be required to submit completed Form A-11-Interim and to make payment of the interim assessment by November 30 of such fiscal year based on information for the prior fiscal year.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which provides that the MSRB’s rules shall:

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.

In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the MSRB:

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 would establish an interim assessment on municipal advisors that would help to defray a portion of the costs and expenses of operating and administering the MSRB’s regulatory and related activities in connection with municipal advisors until such time as a permanent assessment is established based on the planned MSRB municipal advisor study described above. Although the amounts raised through the interim assessment would not be

sufficient to pay all on-going costs of regulation of municipal advisors and also would be insufficient to cover costs already incurred in connection with the regulation of municipal advisors since the MSRB commenced such regulatory activities on October 1, 2010, the MSRB believes that it is reasonable and appropriate to impose the interim assessment pending establishment of the final form of municipal advisor assessment.

In approving a 2010 MSRB proposal to increase the MSRB's transaction fee and to establish a new technology fee payable by brokers, dealers and municipal securities dealers,<sup>10</sup> the Commission recognized "the concerns raised by some commenters that the increase in transaction fees and the new technology fee will be used to subsidize municipal advisor regulation" and noted that the MSRB had taken certain initial steps to assess municipal advisor fees<sup>11</sup> and expected to assess other fees on municipal advisors as appropriate. Currently, under MSRB Rule A-13, brokers, dealers and municipal securities dealers pay an underwriting fee of \$.03 per \$1000 par value of municipal securities purchased in a primary offering (with certain exceptions), a transaction fee of \$.01 per \$1000 par value of sale transactions of municipal securities (with certain exceptions), and a technology fee of \$1 for each sale transaction of municipal securities, in addition to an initial fee of \$100 under MSRB Rule A-12 and an annual fee of \$500 under MSRB Rule A-14. For the MSRB fiscal year ended September 30, 2010, the

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<sup>10</sup> See Exchange Act Release No. 63621 (File No. SR-MSRB-2010-10) (December 29, 2010) (the "2010 Dealer Fee Order").

<sup>11</sup> See Exchange Act Release No. 63313 (File No. SR-MSRB-2010-14) (November 12, 2010) (the "2010 Municipal Advisor Fee Order"). Municipal advisors pay an initial fee of \$100 under MSRB Rule A-12 and an annual fee of \$500 under MSRB Rule A-14, both amounts being equal to the annual and initial fees paid by brokers, dealers and municipal securities dealers under those rules.

underwriting fee generated \$13,984,780 and the transaction fee generated \$6,940,551.<sup>12</sup> The technology fee became effective on January 1, 2011 and therefore the MSRB did not generate any revenue from this fee for the MSRB fiscal year ended September 30, 2010.<sup>13</sup> In addition, for the MSRB fiscal year ended September 30, 2010, the initial fee generated \$8,500 and the annual fee generated \$1,010,321.

Municipal advisors do not pay the underwriting, transaction or technology fee described above. The payment of the initial fee became obligatory for municipal advisors on January 1, 2011 and, as of July 22, 2011, approximately 495 municipal advisors not previously registered with the MSRB have paid the initial fee in connection with registering with the MSRB as municipal advisors, generating approximately \$49,500 from these new municipal advisor registrants.<sup>14</sup> The payment of the annual fee also became obligatory for municipal advisors on January 1, 2011 and, as of July 22, 2011, these newly registered municipal advisors have paid the annual fee in connection with their first year as registered municipal advisors in an aggregate amount of approximately \$247,500. The MSRB expects that, together with the initial fee and annual fee, the proposed interim assessment payable by municipal advisors would generate well under 10 percent of the MSRB's total annual revenue in the fiscal year beginning October 1,

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<sup>12</sup> The amount of the transaction fee was increased from \$.005 per \$1000 par value of sale transactions to .01 per \$1000 par value of sale transactions beginning January 1, 2011. The MSRB previously estimated that this increase in the transaction fee would generate an estimated \$7 million of additional revenue annually. See 2010 Dealer Fee Order.

<sup>13</sup> The MSRB previously estimated that the new technology fee would generate an estimated \$10 million of revenue annually. See 2010 Dealer Fee Order.

<sup>14</sup> The amount generated from the initial fee is expected to be significantly lower in future years since such fee is payable by each municipal advisor only once upon initial registration with the MSRB.



2011.<sup>15</sup> Thus, the MSRB believes that the burden on municipal advisors of the proposed interim assessment would be reasonable and appropriate and would be relatively small compared to the burden of fees and assessments paid by brokers, dealers and municipal securities dealers.

The amount of the interim assessment payable by each municipal advisor firm would be dependent on the number of assessable professionals of the firm and therefore would result in lower assessments for smaller municipal advisor firms and would bear a reasonable relationship with the level of municipal advisory activities undertaken by each municipal advisor firm. In addition, as noted above, because of the gross income threshold in the definition of assessable professional, municipal advisors that generate revenues of less than \$10,000 in connection with their municipal advisory activities during the fiscal year typically would not have any assessable professionals to report for such fiscal year and therefore would not be required to pay the interim assessment. Accordingly, the interim assessment would minimize the regulatory burden on small municipal advisors.

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 not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all municipal advisors based on the number of assessable professionals of each firm.

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

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

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<sup>15</sup> Approximately 185 brokers, dealers and municipal securities dealers previously registered with the MSRB as such have also registered with the MSRB as municipal advisors as of July 22, 2011 and such firms also would be subject to the proposed interim assessment.

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2011-08 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-2011-08. 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-2011-08 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>16</sup>

Elizabeth M. Murphy  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).