

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60783; File No. SR-MSRB-2009-15)

October 2, 2009

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendments to Rule A-13, on Underwriting Assessments and Rule G-32, on Disclosures in Connection with Primary Offerings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2009, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as changing a fee applicable to brokers, dealers and municipal securities dealers pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 amendments to Rule A-13, which provides for fee assessments based on underwriting activity and Rule G-32, by adding a definition of commercial paper. The proposed rule change would apply to primary offerings of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

municipal securities for which submission of Form G-32 under Rule G-32(b)(i)(A) is initiated on or after December 1, 2009. The text of the proposed rule change is available on the MSRB's Web site at www.msrb.org/msrb1/sec.asp, 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 MSRB 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 partially accomplish this purpose by amending Rule A-13 to eliminate exemptions in Rule A-13 pertaining to underwriting assessments for primary offerings of municipal securities that: (i) have an aggregate par value less than \$1,000,000; (ii) have a final stated maturity of nine months or less, except commercial paper; (iii) at the option of the holder thereof, may be tendered 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; and (iv) have authorized denominations of \$100,000 or more and are sold to no

more than thirty-five persons each of whom the broker, dealer or municipal securities dealer (“dealer”) reasonably believes: (A) has the knowledge and experience necessary to evaluate the merits and risks of the investment; and (B) is not purchasing for more than one account, with a view toward distributing the securities (“limited offering”). The underwriting fee for primary offerings of these securities will be \$.03 per \$1000 par value, which is the current underwriting fee for primary offerings of municipal bonds. Additionally, the proposed rule change will further harmonize the underwriting fees of notes and bonds by changing the underwriting fee on primary offerings in which all securities offered have a final stated maturity less than two years to the rate of \$.03 per \$1000 par value. For purposes of the underwriting assessment under Rule A-13, a primary offering will be defined to mean a primary offering under Exchange Act Rule 15c2-12, but excludes subsequent remarketings after the initial issuance of the bonds or notes. Rule G-32 has also been amended to include a new definition of commercial paper.

The MSRB currently levies three 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 enters the municipal securities business. Rule A-13 provides for an underwriting fee of \$.03 per \$1000 par value of bonds and \$.01 per \$1000 par value of notes (with specified exceptions), and a transaction fee of \$.005 per \$1000 par value of sale transactions of specified securities. Rule A-14 provides for an annual fee of \$500 from each dealer who conducts municipal securities activities.

The underwriting and transaction fees in Rule A-13 assess fees that are generally proportionate to a dealer’s activity within the industry. Historically, municipal notes

were either exempt from underwriting fees or were subject to reduced underwriting fees (\$.01 per \$1000), and variable rate demand obligations, small issues, and limited offerings also were exempt from underwriting fees. The MSRB believes that such a fee structure has become increasingly inequitable as the volume of primary offerings in these categories (including in particular note issues) has grown, and the MSRB's resources have been devoted to supporting both notes and bonds. The elimination of exemptions for these categories of primary offerings will result in fees that are more fairly, reasonably and equitably allocated to reflect dealer participation in the overall municipal debt market.

During the past five years, the Board's ongoing expenses have increased significantly due to increased regulatory activities and expanded market information products and services, including the new Electronic Municipal Market Access system ("EMMA") to implement the new "access equals delivery" primary market disclosure service under MSRB Rule G-32 and the new continuing disclosure service to implement the Commission's amendments to Exchange Act Rule 15c2-12 as well as the Short-term Obligation Rate Transparency system ("SHORT") for interest rate transparency for variable rate demand obligations and auction rate securities. These new systems and their associated rules greatly enhance the efficiency of the municipal securities market and provide critical information to dealers and investors. The proposed rule change is designed to better match the MSRB's revenues with the operating costs associated with these important new systems and the costs of regulating the municipal securities market.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(J) of the Act,⁵ 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 reasonable fees, based on dealer involvement in the municipal securities market that are necessary to defray MSRB expenses. The proposed rule change will result in a more equitable distribution of fees among dealers in the municipal securities market based on their level of activity in the primary market for municipal bonds and notes.

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 Act, since it would apply equally to all dealers and would be apportioned based on such dealers' level of participation in the municipal securities primary market.

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.

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

⁵ 15 U.S.C. 78o-4(b)(2)(J).

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2) thereunder,⁷ in that the proposed amendments to Rule A-13 and Rule G-32 change fees applicable to brokers, dealers and municipal securities dealers. The proposed rule change would apply to primary offerings of municipal securities for which submission of Form G-32 under MSRB Rule G-32(b)(i)(A) is initiated on or after December 1, 2009. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.⁸

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-2009-15 on the subject line.

Paper comments:

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

- 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-2009-15. 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 comments on the Commission's Internet Web site (<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 inspection and copying 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 principal office of the MSRB. 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-2009-15 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).