

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74561; File No. SR-MSRB-2015-01)

March 23, 2015

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to MSRB Rule A-16, on Examination Fees

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 March 17, 2015, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “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 filed with the Commission a proposed rule change consisting of amendments to MSRB Rule A-16, on examination fees (“proposed rule change”). The MSRB designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ thereunder, which renders the proposal effective upon filing with the Commission. The implementation date of the proposed rule change is April 1, 2015.

The text of the proposed rule change is available on the MSRB’s website at

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).

<http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-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 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 establish a test development fee for the MSRB's new municipal advisor representative qualification examination ("Series 50 examination") and to better align the MSRB's existing test development fees (which have not been adjusted since 2009) with the costs of developing, implementing and maintaining the tests (hereinafter, the "program costs"). Under the proposed rule change, the MSRB will institute a test development fee of \$150 for the Series 50 examination and change the test development fee for each of the three existing MSRB-owned examinations from \$60 to \$150. The development fee of \$150 will, on April 1, 2015, be assessed on brokers, dealers and municipal securities dealers ("dealers") and municipal advisors based on the number of their associated persons that take an MSRB-owned professional qualification examination.

Any person associated with a dealer who is engaged in or supervises municipal securities activities and any person associated with a municipal advisor who is engaged in or supervises

municipal advisory activities must be qualified in accordance with MSRB Rule G-3.⁵ As a prerequisite to qualification, each individual must pass the applicable examination to demonstrate a basic competence in the subject matter related to the professional qualification classification. The examinations seek to measure accurately and reliably the degree to which each candidate possesses the knowledge, skills and abilities necessary to perform the relevant job function. The examinations measure a candidate's knowledge of business activities, as well as the regulatory requirements, including MSRB rules, rule interpretations and other federal law applicable to a particular classification.

Generally, the MSRB recognizes two types of professional qualification examinations: MSRB-owned examinations and examinations owned by the Financial Industry Regulatory Authority (“FINRA”). There are three existing MSRB-owned examinations and one in development. The Municipal Fund Securities Limited Principal Qualification Examination (“Series 51 examination”), Municipal Securities Representative Qualification Examination (“Series 52 examination”), and Municipal Securities Principal Qualification Examination (“Series 53 examination”) are developed, implemented, maintained, and owned by the MSRB. The Series 50 examination, which is under development for municipal advisor representatives, is also owned by the MSRB. Each of the existing MSRB-owned examinations is administered by FINRA, and it is expected that FINRA also will administer the Series 50 examination.

MSRB-owned professional qualification examinations are developed by the MSRB in conjunction with industry-wide advisory committees and retained test design experts in

⁵ The SEC recently approved MSRB rule amendments, effective April 27, 2015, that establish professional qualification standards for municipal advisors. The amendments to MSRB Rule G-3 establish two professional qualification classifications for municipal advisors – municipal advisor representative and municipal advisor principal. See Exchange Act Release No. 74384 (Feb. 26, 2015), 80 FR 11706 (Mar. 4, 2015), File No. SR-MSRB-2014-08 (Nov. 18, 2014).

accordance with established national standards. The test development fee assessed under Rule A-16 is intended to partially offset the program costs. Pursuant to the proposed rule change, the MSRB will change the test development fee from \$60 to \$150 for the Series 51 examination, Series 52 examination and Series 53 examination. This is the first time the MSRB has adjusted its examination development fees since 2009 when the fees were first established under MSRB Rule A-16.⁶

The MSRB is amending Rule A-16 to better align the fees with the current program costs because the MSRB's current examination fees, as a percentage of the program costs, have decreased significantly since the fees were established in 2009. The examination development fees have not previously been, and are not intended to fully offset the program costs, but to help defray a portion of the cost of developing and implementing the examinations, as well as the costs associated with monitoring the examinations for effectiveness and updating the examinations' content and questions. To address the growing disparity between the examination fees collected and the program costs, the MSRB is changing the examination fee to \$150 for each MSRB-owned examination. The MSRB believes this fee adjustment is reasonable and appropriate.

The proposed rule change also amends Rule A-16 to clarify that the examination fee is assessed to dealers and municipal advisors, rather than their associated persons who take the professional qualification tests. In addition to the MSRB's examination fee, FINRA assesses an administrative fee for each examination that it administers. These fees are assessed by FINRA at the time a broker, dealer, municipal securities dealer or municipal advisor enrolls an associated

⁶ See Exchange Act Release No. 61023 (Nov. 18, 2009), 74 FR 61402 (Nov. 24, 2009), File No. SR-MSRB-2009-16 (Nov. 5, 2009).

person to take an examination and then FINRA remits the aggregate MSRB examination fees to the MSRB periodically.

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,⁷ which requires, in pertinent part, that the MSRB promulgate rules to require dealers and municipal advisors to pay such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB. The proposed rule change provides for reasonable fees to partially defray the program costs.

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

Section 15B(b)(2)(C) of the Act⁸ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 15B(b)(2)(L)(iv) of the Act requires that MSRB rules 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.⁹

In considering these standards, the MSRB was guided by the Board's Policy on the Use of Economic Analysis. 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.

⁷ 15 U.S.C. 78o-4(b)(2)(J).

⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁹ 15 U.S.C. 78o-4(b)(2)(L)(iv).

The MSRB considered as alternatives whether to maintain the current fee, or to propose an increase that was lower or higher than the proposed increase. Since the current examination fees were instituted, the costs relating to the development, implementation and maintenance of the examinations have increased. The examination fees have, as noted, remained unchanged since 2009 and the proposed rule change is designed to better align the fees with the current program costs. The revenue from such fees will still fall well-short of the actual program costs. Finally, the examination fees are equitable to each dealer and municipal advisor without regard to the nature of that entity's business and are assessed only as to those individuals who are associated with the entity who enroll to take an MSRB-owned qualification examination.

To evaluate the impact of the adjustment in the MSRB test development fees for the Series 51, 52, and 53 examinations and the establishment of a development fee of \$150 for the Series 50 examination, the MSRB considered the fees charged to take other professional qualification examinations in the financial services field. When including the administrative fee assessed by FINRA, the total fee that will be charged to take any MSRB-owned examination is comparable to the total fee charged to take other FINRA-administered professional qualification examinations, which currently range from \$70-\$335.¹⁰ As another example, in the financial services field, the fee to take the Chartered Financial Analyst Level I examination is \$630.

In addition, the MSRB considered the fees charged to take professional qualification examinations in other fields. The average state bar examination fee as of 2013 was

¹⁰ See FINRA Administered Qualification Examinations www.finra.org/industry/compliance/registration/qualificationsexams/qualifications/p0110_96. Effective April 1, 2015, the total fee charged to take other FINRA-administered professional qualification examinations will range from \$75-\$350. See File No. SR-FINRA-2015-006.

approximately \$490.¹¹ Note that nearly 50 percent of the attorneys who were in private practice that year, were sole practitioners and an additional 14 percent work in firms made up of five or fewer attorneys.¹² As another example, the Project Management Professional examination fee is \$250. The MSRB is not aware of evidence that the fees associated with other examinations represent a significant burden on smaller firms or that they negatively impact the competitiveness of the associated professional services markets.

While the MSRB recognizes that examination fees do represent an initial barrier to entry in markets where they are required, the MSRB also recognizes that professionals wishing to engage in municipal securities activities and/or municipal advisory activities face other costs associated with complying with applicable laws and regulations. The fees for professional qualification examinations, which are one-time fees for those who pass, typically represent a relatively small share of all legal and compliance costs associated with a government-regulated activity. The MSRB anticipates that potential market entrants that are actually deterred by a professional examination fee would find it difficult to bear the costs to fully comply with the other regulatory and legal requirements associated with the market in which they wish to offer services.

With regard to the impact on small municipal advisors, the MSRB notes that because the total fee assessed to a firm is based on the number of individuals associated with that firm who

¹¹ See American Bar Association Bar Exam Directory, www.americanbar.org/publications/student_lawyer/2012-13/nov/2012_2013_bar_exam_directory.html. The cost of examinations varies substantially from state to state, as does whether the fee includes other professional certification costs (e.g., moral character reviews).

¹² See American Bar Association Bar Lawyer Demographics, http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf.

enroll to take an MSRB-owned qualification examination, the total costs assessed will bear a reasonable relationship to the size of the firm, with smaller firms likely to be assessed lower fee totals. Nonetheless, larger, more diversified firms may have a larger overall revenue base than smaller firms and may be more able to pass expenses on to clients than smaller firms. On net, the MSRB believes that the burdens associated with the proposed rule change on small municipal advisors are limited and that, as the SEC concluded in its final rule on the permanent registration of municipal advisors, the market would be likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors), consolidation of municipal advisors, or lack of new entrants into the market.¹³ The MSRB also believes that its professional qualification examinations promote compliance with applicable laws and regulations are necessary for the protection of investors, municipal entities, and obligated persons.

Therefore, the MSRB believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

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

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of

¹³ See Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67467 (Nov. 12, 2013).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR § 240.19b-4(f).

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.

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-2015-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MSRB-2015-01. 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 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 the 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-2015-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁶

Brent J. Fields
Secretary

¹⁶ 17 CFR § 200.30-3(a)(12).