

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85135; File No. SR-MSRB-2019-02)

February 14, 2019

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule A-16, on Examination Fees, to Establish a Test Development Fee for the Series 54 Examination

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 February 11, 2019 the Municipal Securities Rulemaking Board (“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 filed with the Commission a proposed rule change to amend Rule A-16, on examination fees, to establish a test development fee for the Municipal Advisor Principal Qualification Examination (“Series 54 examination”) (the “proposed rule change”). The MSRB has designated the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ thereunder.

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).

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-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 of \$150 for the new Series 54 examination to align with the MSRB's current test development fee of \$150 for each of its four existing professional qualification examinations.⁵ Section 15B of the Act authorizes the MSRB to prescribe "standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the

⁵ The four MSRB-owned examinations are the: Municipal Advisor Representative Qualification Examination; Municipal Fund Securities Limited Principal Qualification Examination; Municipal Securities Representative Qualification Examination; and the Municipal Securities Principal Qualification Examination and are all developed, implemented and maintained by the MSRB. In 2015, the MSRB filed amendments to A-16 to institute a test development fee for the Series 50 examination and to change the test development fee for each of the MSRB-owned examinations from \$60 to \$150 to address the growing disproportion between the examination fees collected and the program costs. See Exchange Act Release No. 74561 (March 23, 2015), 80 FR 16485 (March 27, 2015) (File No. SR-MSRB-2015-01).

protection of investors and municipal entities or obligated persons”⁶ and requires persons in any such class to pass tests prescribed by the Board.⁷ Section 15B(b)(2)(L)(iii) of the Act further requires the MSRB to establish professional standards for municipal advisors.⁸ A professional qualification examination is intended to determine whether an individual meets the MSRB’s required qualification standards. On November 20, 2018, the SEC approved the MSRB’s proposed rule change to, among other things, amend Rule G-3, on professional qualification requirements, to require persons who meet the definition of a municipal advisor principal⁹ to pass the Series 54 examination in order to become appropriately qualified as a municipal advisor principal.¹⁰ The Series 54 examination is designed to measure an individual’s ability to apply the applicable federal securities laws and MSRB rules to the municipal advisory activities of the municipal advisor. The establishment of qualification requirements for municipal advisor principals ensures that such persons have a specified level of competency that is appropriate in the public interest and for the protection of investors, and municipal entities and obligated persons.

⁶ 15 U.S.C. 78o-4(b)(2)(A).

⁷ 15 U.S.C. 78o-4(b)(2)(A)(iii).

⁸ 15 U.S.C. 78o-4(b)(2)(L)(iii).

⁹ Under Rule G-3(e), a “municipal advisor principal” is defined as “a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.”

¹⁰ See Exchange Act Release No. 84630 (November 20, 2018), 83 FR 60927 (November 27, 2018) (File No. SR-MSRB-2018-07).

The Series 54 examination, as with all MSRB-owned professional qualification examinations, has been developed by the MSRB in consultation with the MSRB’s Professional Qualification Advisory Committee (PQAC) and its retained psychometrician,¹¹ and in accordance with The Standards for Educational and Psychological Testing.¹² The MSRB adhered to recognized test development practices by performing a job study to determine the appropriate topics to be covered on the Series 54 examination and the weighting of such topics.¹³

The proposed test development fee to be assessed under Rule A-16 is intended to partially offset the overall program costs to the MSRB. As the MSRB has previously noted, the examination fee for each of its examinations has not previously been, and is not intended to fully offset the MSRB’s program costs, but is intended 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 ongoing maintenance of the examinations through a review of the content and questions.¹⁴ The MSRB believes the test development fee of \$150 for the Series 54 examination is appropriate and consistent with the fee assessed for other MSRB-owned examinations.

¹¹ A psychometrician is an expert in a field of study devoted to testing, measurement, and assessment.

¹² See American Educational Research Association, American Psychological Association and National Council on Measurement in Education, “The Standards for Educational and Psychological Testing” (2d ed. 2014).

¹³ The MSRB conducted a job study of municipal advisor principals via a web-based survey. The job study was sent to over 500 municipal advisors with the MSRB receiving 212 responses to the job study. A job study is an assessment of the essential skills that are required to complete a particular function and is used as a basis for defining relevant or suitable content for exam questions.

¹⁴ See supra note 5.

Municipal advisors who enroll an associated person to take the Series 54 examination, as with all MSRB-owned examinations, will also pay an administration and delivery fee to the Financial Industry Regulatory Authority (“FINRA”), which provides the online portal for examination enrollment and coordinates with the testing vendor for the delivery of the MSRB’s professional qualification examinations. The additional fee is assessed by FINRA at the time a municipal advisor enrolls an individual to take an examination.¹⁵

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act¹⁶ which provides 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. Such rules shall specify the amount of such fees and charges

The MSRB believes the proposed rule change appropriately aligns with the requirements under Section 15B(b)(2)(J) in that it provides for reasonable dues, fees and other charges for municipal advisors and seeks to partially offset program costs associated with staff’s effort to develop and deliver such examinations and represents an equitable allocation of fees for all MSRB-owned examinations.¹⁷

¹⁵ The total cost to take the Series 54 examination, inclusive of FINRA’s administration and test delivery fee would be \$265.00. This cost is comparable to the total fee charged to take FINRA-administered professional qualification examinations.

¹⁶ 15 U.S.C. 78o-4(b)(2)(J).

¹⁷ Id.

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

Section 15B(b)(2)(C) of the Act¹⁸ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act. The MSRB believes the proposed rule change is necessary and appropriate to ensure that municipal advisors contribute to defraying the expenses associated with the overall program costs for administering the MSRB’s professional qualification examinations, which was established, as authorized by the Act, to prescribe “standards of training, experience, competence, and such other qualifications as the Board finds necessary”¹⁹ As the MSRB has previously noted, revenue from the examination fee falls well-short of actual program costs.²⁰ Additionally, the proposed rule change would align with the existing test development fees, which are equitable to each dealer and municipal advisor without regard to the nature of that regulated entity’s business and are assessed only as to those individuals associated with a regulated entity that are engaging in activities that require such individuals to become appropriately qualified.

In addition, Section 15B(b)(2)(L)(iv) of the Act²¹ provides that MSRB rules may “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 MSRB believes that its professional qualification examinations, including the Series 54 examination, promote

¹⁸ 15 U.S.C. 78o-4(b)(2)(C).

¹⁹ 15 U.S.C. 78o-4(b)(2)(A).

²⁰ See supra note 5.

²¹ 15 U.S.C. 78o-4(b)(2)(L)(iv).

compliance with applicable laws and regulations and are necessary for the protection of investors, municipal entities and obligated persons. The MSRB does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of these provisions and their purposes under the Act. The fee for a professional qualification examination is a one-time fee for individuals who pass the examination and such fee is equitably applied across all municipal advisors. On net, the total examination fees to be assessed under Rule A-16 will correlate to the number of individuals associated with a municipal advisor that is required, pursuant to Rule G-3, to take the Series 54 examination, which likely would be less for smaller municipal advisors.

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 foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²² and Rule 19b-4(f)(2)²³ thereunder. 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.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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-2019-02 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-2019-02. 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. Persons submitting comments are

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2019-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.²⁴

Eduardo A. Aleman
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).