

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88986; File No. SR-MSRB-2020-03)

June 1, 2020

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Waive MSRB Market Activity Fees Related to Transactions with the Municipal Liquidity Facility Established by the Board of Governors of the Federal Reserve System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 28, 2020 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 consisting of a proposed amendment to MSRB Rule A-13 regarding underwriting and transaction assessments for brokers, dealers and municipal securities dealers (collectively “dealers”) to waive certain underwriting, transaction and technology assessments (“market activity fees”) related to transactions with the Municipal Liquidity Facility (“Facility” or “MLF”) established by the Board of Governors of the Federal Reserve System (“Federal Reserve”) (the “proposed rule change”) as described below. The MSRB has designated the proposed rule change as “establishing or changing a due, fee, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-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 MSRB is closely monitoring the impact of the coronavirus disease (“COVID-19”) pandemic on the municipal market and municipal market participants, including issuers, investors, dealers and municipal advisors.⁵ The Federal Reserve, noting that “[t]he municipal securities market is an important part of the financial system, which helps provide states, cities,

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Wall Street Journal: How the Muni Market Became the Epicenter of the Liquidity Crisis (April 2, 2020) <https://www.wsj.com/articles/how-the-muni-market-became-the-epicenter-of-the-liquidity-crisis-11585823404>.

and counties (and their political subdivisions and other governmental entities) with the funding needed to provide essential public services to their citizens,”⁶ established the MLF, which has been authorized under Section 13(3) of the Federal Reserve Act.⁷ “The immediate purpose of the MLF is to enhance the liquidity of the primary short-term municipal securities market through the purchase at issuance of Tax Anticipation Notes (“TANs”), Tax and Revenue Anticipation Notes (“TRANs”), Bond Anticipation Notes (“BANs”), and similar short-term notes” (collectively, “Eligible Notes”).⁸

The MSRB continues to monitor announcements by the Federal Reserve to understand how the Facility will operate in conjunction with MSRB rules.⁹ The Facility intends to provide a liquidity backstop to certain issuers through a special purpose vehicle (“SPV”). The SPV may purchase certain Eligible Notes through a direct sale to the SPV or, if there is a competitive sale process, the SPV generally will not submit a bid in the competitive sale process, but instead may agree to purchase such municipal securities that are not awarded to other bidders.¹⁰

Based on the information currently available regarding the operation of the MLF, the MSRB believes that the MLF would be a customer for purposes of Rule A-13 and, therefore, the

⁶ Federal Reserve Bank of New York, FAQs: Municipal Liquidity Facility (“Fed FAQs”) <https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq>.

⁷ 12 U.S.C. 343 (1932).

⁸ Fed FAQs.

⁹ See e.g., Federal Reserve Bank of New York, Term Sheet regarding the Facility (May 11, 2020) (“Fed Term Sheet”) <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200511a1.pdf>.

¹⁰ See Fed FAQs.

underwriting, transaction and technology assessments under Rule A-13 would be applicable to dealers' transactions with the MLF. The MSRB recognizes that dealers are experiencing operational challenges coupled with unprecedented conditions in the municipal market due to the COVID-19 pandemic.¹¹ The MSRB is proposing to waive these market activity fees for transactions conducted with the MLF. Specifically, the MSRB is proposing to provide a temporary waiver to dealers for the assessment of the:

- Underwriting fee in the amount .00275% (\$.0275 per \$1,000) of the par value pursuant to Rule A-13(c)(i) on the par amount of the primary offering that is purchased by or on behalf of the MLF;
- Transaction fee on sales to the MLF in the amount equal to .001% (\$.01 per \$1,000) of the total par value of sales to customers that it reports to the Board under MSRB Rule G-14(b), on reports of sales and purchases, pursuant to Rule A-13(d)(ii); and
- Technology fee of \$1.00 per transaction for sales to the MLF that it reports to the Board under Rule G-14(b), pursuant to Rule A-13(d)(iv)(b).

The MSRB intends the waiver to be temporary and to expire at the same time as the MLF. The MLF is currently scheduled to cease purchasing Eligible Notes on December 31, 2020, unless the Federal Reserve Board of Governors and the Treasury Department extend the program.¹² The MSRB will waive the market activity fees assessed on transactions with the MLF by issuing a credit for the amount of the applicable assessment. The amount of the fees to be waived will be displayed on a monthly statement as a credit against the gross billing and netted

¹¹ Supra note 5.

¹² The Federal Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold. See Fed Term Sheet.

to indicate the amount due. Consistent with Rule A-13(e), the amount due is to be paid within 30 days of the sending of the invoice by the Board.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹³ which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that dealers' transactions with the MLF will serve to facilitate the smooth functioning of the municipal securities market during times of strain resulting from the COVID-19 pandemic. Providing a waiver of market activity fees resulting from such transactions will help to provide liquidity for the municipal market and serve to remove impediments to and perfect the mechanism of a free and open market in municipal securities without impacting the protection of investors, municipal entities, obligated persons, and the public interest.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act¹⁴ which requires, in pertinent part, 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

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78o-4(b)(2)(J).

the costs and expenses of operating and administering the Board and that such rules shall specify the amount of such fees and charges.

The MSRB recognizes that dealers are experiencing operational challenges coupled with unprecedented conditions in the municipal market due to the COVID-19 pandemic and believes this temporary waiver of certain market activity fees will provide some relief. The temporary waiver would be applicable to a limited number of transactions for a limited duration, consistent with the operation of the MLF.¹⁵ The MSRB believes that the waiver would not materially alter the total amount of fees collected by the MSRB or negatively impact its long-term sustainability, thereby continuing to ensure that the MSRB is sufficiently capitalized to meet its regulatory responsibilities. Accordingly, the MSRB believes that the proposed waiver of certain assessments on a temporary basis is reasonable and appropriate.

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

Section 15B(b)(2)(C) of the Act¹⁶ requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The goal of the proposed rule change is to provide relief during the exigent circumstances of the COVID-19 pandemic. The relief will apply equally to all dealers and extend for the duration of the MLF.¹⁷ Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

¹⁵ See Fed Term Sheet.

¹⁶ 15 U.S.C. 78o-4(b)(2)(C).

¹⁷ Currently, the MLF is planning to only purchase Eligible Notes until December 31, 2020. See Fed Term Sheet.

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) of the Act¹⁸ and paragraph (f) of Rule 19b-4 thereunder.¹⁹ 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.

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 email to rule-comments@sec.gov. Please include File Number SR-MSRB-2020-03 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-2020-03. This file number should be

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

included on the subject line if email 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-2020-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).