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SECURITIES AND EXCHANGE COMMISSION
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January 3, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee

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 December 19, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA. 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

FINRA is proposing to adopt Section 14 to Schedule A of the FINRA By-Laws to establish an accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (“GASB”).

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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 GASB was established in 1984 by agreement of the Financial Accounting Foundation (“FAF”) and ten national associations of state and local government officials as an independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments.³ The GASB is recognized by governments, the accounting industry, and the capital markets as the source for the development and publication of the generally accepted accounting principles (“GAAP”) for state and local governments.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law by President Obama on July 21, 2010.⁴ As added by Section

³ The GASB is not a government entity. It is an operating component of the FAF, which is a private-sector, not-for-profit entity. Funding for the GASB comes in part from sales of publications and in part from state and local governments and the municipal bond community. Its standards are not federal laws or regulations, and the GASB does not have enforcement authority. See Facts About GASB, <http://gasb.org>.

⁴ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

978 of the Dodd-Frank Act, Section 19(g) of the Securities Act of 1933 (“Securities Act”) gives the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB (“GASB Accounting Support Fee”) and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the association’s members.⁵ On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.⁶

In response to the SEC’s order of May 11, 2011, FINRA is proposing new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) to Schedule A of the FINRA By-Laws to establish the GASB Accounting Support Fee. After considering multiple ways to assess the GASB Accounting Support Fee on its members and issuing Regulatory Notice 11-28 requesting comment on the GASB Accounting

⁵ See 15 U.S.C. 77s(g). For purposes of the GASB Accounting Support Fee, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the FAF. See 15 U.S.C. 77s(g)(2). FINRA anticipates that the GASB’s annual budget will include an administrative fee to FINRA. The administrative fee is intended to cover FINRA’s costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee, and the amount will be negotiated with the FAF each year. For the initial year, the administrative fee will be \$50,000.

⁶ Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011).

Support Fee, the proposed rule change assesses the fee based on members' municipal securities trading volume reported to the Municipal Securities Rulemaking Board ("MSRB"). FINRA believes that basing the GASB Accounting Support Fee on reliable and timely reporting data will ensure the accuracy of the fee and that using transaction data to apportion the fee will result in a fair and equitable assessment across FINRA members. However, because FINRA is statutorily prohibited from collecting amounts in excess of GASB's recoverable annual budgeted expenses and because a transaction-based fee is inherently variable due to the unpredictability of transaction volume, FINRA is proposing a quarterly assessment based on GASB's annual budget.⁷ Under proposed Section 14, the GASB Accounting Support Fee will be allocated among FINRA members on a quarterly basis based on municipal securities transactions reported to the MSRB. Specifically, each calendar quarter, each FINRA member would be required to pay an assessment to FINRA of its portion of one quarter of the annual GASB Accounting Support Fee amount that reflects the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB under MSRB Rule G-14(b)⁸ in the previous calendar quarter. For example, if GASB's recoverable annual budgeted expenses for a given year were \$10 million, FINRA would collect \$2.5 million from its members each quarter. Each member's fee would be based on the member's proportion of municipal securities transactions (based on the par value of reported

⁷ Section 19(g)(4) of the Securities Act, as added by the Dodd-Frank Act, prohibits FINRA from collecting GASB Accounting Support Fees for a fiscal year in excess of GASB's recoverable annual budgeted expenses. See 15 U.S.C. 77s(g)(4).

⁸ MSRB Rule G-14(b) sets out municipal securities transaction reporting requirements.

transactions, not their price) reported by all FINRA members to the MSRB in the previous calendar quarter.⁹ Thus, for example, if a member reported transactions to the MSRB in a given quarter that accounted for 10% of the total par value amount of transactions reported by all FINRA members during the quarter, the member's assessment would be 10% of one quarter of GASB's annual budget (in the above example, the member's quarterly assessment would be \$250,000 (i.e., 10% of \$2.5 million)).

To exclude members with de minimis transactions in municipal securities in a given quarter from being assessed the fee, FINRA is proposing that members with a quarterly assessment of less than \$25 would not be charged the fee for that quarter. Any amounts originally assessed to those members would be reallocated among the members with an assessment that quarter of \$25 or more based on the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB.

As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA will be remitted to the FAF¹⁰ and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.¹¹ In accordance with Section 19(g)(5)(B) of

⁹ If a member does not engage in reportable municipal securities transactions during a particular calendar quarter, the member would not be subject to the GASB Accounting Support Fee for that quarter.

¹⁰ See 15 U.S.C. 77s(g)(1).

¹¹ See 15 U.S.C. 77s(g)(3). Specifically, FINRA anticipates establishing a separate bank account specifically for the GASB Accounting Support Fee and will coordinate with the FAF to establish a process by which FINRA will wire the funds into the FAF account for the GASB Accounting Support Fee. Given the separate bank account, FINRA will provide monthly account reconciliations and accounts receivable aging reports, which will be reviewed by FINRA

the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the SEC or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of GAAP by the GASB.¹²

As FINRA noted in Regulatory Notice 11-28, because some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA proposes to publish a Regulatory Notice each year disclosing the total annual GASB Accounting Support Fee FINRA will collect for that year. In this annual Notice, FINRA also anticipates setting out an estimated fee rate (per \$1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA for that year and historical municipal security trade reporting volumes so that firms will have some basis on which to establish a fee should they choose to do so. The Notice will also remind any firms choosing to pass along the fee of the need for proper disclosure of the GASB Accounting Support Fee, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, any disclosure used by the firm cannot be misleading and must comport with FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

The effective date of the proposed rule change will be the date of SEC approval. The initial fees assessed on members will be based on trading activity reported in the calendar quarter during which the SEC approves the proposed rule change. For example, if the proposed rule change is approved on February 1, 2012, FINRA will bill members

management each month and will be available for review by FAF and GASB management upon request.

¹² See 15 U.S.C. 77s(g)(5)(B).

based on trading activity from January 1, 2012, to March 31, 2012, to cover one quarter of GASB's 2012 budget. As a result, depending on the date of SEC approval, the proposed GASB fee may only cover a portion of the 2012 GASB budget.

2. Statutory Basis

The proposed rule change is being filed in response to the SEC's order of May 11, 2011, which was issued pursuant to Section 19(g) of the Securities Act. Section 19(g) gives the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the association's members. On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹³ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that, given the restrictions in Section 19(g) of the Securities Act regarding the specific amount FINRA must collect, a quarterly transaction-based

¹³ 15 U.S.C. 78o-3(b)(5).

assessment with a limited exception for firms with a de minimis amount of reportable municipal securities transactions is a fair and equitable manner to assess the fee. FINRA also believes that the \$25 per quarter exemption threshold strikes an appropriate balance between exempting those firms with truly de minimis transactions and not imposing an undue burden on other firms to recover the amount that would be assessed on the exempt firms.

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

FINRA does not believe that the proposed rule change will result in 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

The proposed rule change was published for comment in Regulatory Notice 11-28 (June 2011). A copy of the Regulatory Notice is attached as Exhibit 2a to the proposed rule change. The comment period expired on August 1, 2011. FINRA received eleven comment letters in response to the Regulatory Notice.¹⁴ A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b to the proposed

¹⁴ See Letter from Brown & Brown Financial Services, Inc., dated July 5, 2011 ("B&B"); letter from Third Party Marketers Association, dated July 26, 2011 ("3PM"); letter from NPB Financial Group, LLC, dated July 27, 2011 ("NPB"); letter from City of Bay City, Michigan, dated July 28, 2011 ("Bay City"); letter from Bond Dealers of America, dated August 1, 2011 ("BDA"); letter from Government Finance Officers Association, dated August 1, 2011 ("GFOA"); letter from National Association of State Auditors, Comptrollers and Treasurers, dated August 1, 2011 ("NASACT"); letter from Roosevelt & Cross Incorporated, dated August 1, 2011 ("R&C"); letter from Securities Industry and Financial Markets Association, dated August 1, 2011 ("SIFMA"); letter from National Association of Independent Broker/Dealers, dated August 2, 2011 ("NAIBD"); letter from Hartfield Titus & Donnelly, LLC, dated August 11, 2011 ("HT&D").

rule change. Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c to the proposed rule change. Of the eleven comment letters received, five were generally in favor of the proposed rule change and six were generally opposed.

Several commenters expressed the view that broker-dealers, and specifically FINRA members, should not be forced to shoulder the entire burden of funding the GASB because many other market participants, issuers, and other people who benefit from GASB accounting standards are not registered broker-dealers or FINRA members.¹⁵ For example, one commenter stated that “many other end users of GASB’s accounting and financial reporting standards . . . get a ‘free ride’ under FINRA’s proposed methodology.”¹⁶ Another commenter suggested that a proportionate share of the revenue necessary to fund the GASB come from municipal financial advisors, which are registered with the SEC and the MSRB, although not always with FINRA.¹⁷ Another commenter suggested that the MSRB, rather than FINRA, should administer the fee because bank dealers are members of the MSRB but are not members of FINRA.¹⁸

Although FINRA recognizes the concerns raised by the commenters regarding the specification of FINRA members as the funding source for the GASB, Section 19(g) of the Securities Act, under which the SEC issued its order, substantially limits the

¹⁵ See BDA, HT&D, NAIBD, SIFMA, R&C.

¹⁶ See SIFMA. The commenter specifically identified non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, rating agencies, mutual funds, legislative/governmental staff, and taxpayer organizations. See also HT&D.

¹⁷ See NAIBD.

¹⁸ See SIFMA.

parameters of the GASB Accounting Support Fee. Section 19(g)(1)(B) of the Securities Act provides that the SEC may require a registered national securities association¹⁹ to assess and collect the accounting support fee “from the members of the association.”²⁰ Consequently, the order issued by the SEC pursuant to Section 19(g) of the Securities Act requires FINRA to collect the GASB Accounting Support Fee from its members, and FINRA has no authority to collect the fee from non-FINRA members.²¹

Three commenters expressed concern that there was no independent oversight of the GASB’s annual budget and asserted that this lack of oversight provides no incentive for transparency or fiscal discipline.²² One commenter noted that the recent Government Accountability Office report on the GASB²³ observed that some stakeholders “were concerned with the level and nature of GASB’s expenditures—such as the amounts spent on staff salaries and office space—as well as a perceived lack of transparency associated with its budget process.”²⁴

The commenters are correct that although FINRA has been ordered to assess and collect the GASB Accounting Support Fee, FINRA has no authority under Section 19(g)

¹⁹ FINRA is the only national securities association registered with the Commission.

²⁰ 15 U.S.C. 77s (g)(1)(B).

²¹ FINRA estimates that over 95 percent of municipal transactions reported to the MSRB are reported by FINRA members.

²² See BDA, HT&D, SIFMA.

²³ See Report of the United States Government Accountability Office, Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in Municipal Securities Markets and its Past Funding (January 18, 2011), available at <http://www.gao.gov/new.items/d11267r.pdf>.

²⁴ See SIFMA.

of the Securities Act to review the GASB’s budget. In fact, Section 19(g)(5)(B)(i) of the Securities Act specifically provides that collection of the GASB Accounting Support Fee does not provide FINRA with any direct or indirect oversight of the budget or technical agenda of the GASB.²⁵

One commenter²⁶ suggested that FINRA has not met the statutory requirement in Section 19(g)(1)(B) of the Securities Act that it consult with certain groups when establishing the rules and procedures regarding the GASB Accounting Support Fee.²⁷ The commenter claims that “FINRA did not consult with any state and local government associations before submitting a notice for public comment regarding the rules and procedures for establishing the GASB fee.” The commenter also asserts that “Section 978 of the [Dodd-Frank Act] expressly requires prior consultation with the ‘principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.’”

Contrary to the commenter’s conclusion that FINRA failed to consult with the specified organizations, FINRA departed from its standard practice and provided nineteen different organizations representing State governors, legislators, local elected officials, and State and local finance officers with a draft of Regulatory Notice 11-28

²⁵ See 15 U.S.C. 77s(g)(5)(B)(i).

²⁶ See GFOA.

²⁷ Section 19(g)(1)(B) of the Securities Act states that the Commission may require FINRA to “establish . . . rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the [GASB Accounting Support Fee].” 15 U.S.C. 77s(g)(1)(B).

before the Notice was published for public comment.²⁸ In addition, after receipt of the GFOA comment letter, FINRA participated in a conference call with representatives of GFOA, NASACT, NASBO, and the NGA where those groups reiterated the issues set forth in the GFOA and NASACT comment letters. Moreover, FINRA's publication of a Regulatory Notice requesting comment on a proposal before it is filed with the SEC is itself an additional form of consultation. Indeed, two organizations representing state and local finance officers submitted formal comment letters expressing their views on the proposal.²⁹ To provide a further opportunity for all interested parties (including those organizations specified in Section 19(g) of the Securities Act) to raise any concerns and express their views, FINRA has elected to file the proposed rule change for full notice and comment under Section 19(b) of the Act.³⁰ Given the multiple forms of consultation

²⁸ Specifically, on Thursday, June 9, 2011, FINRA provided a draft of the Regulatory Notice to representatives of the National Governors Association ("NGA"); the Council of State Governments; the National Conference of State Legislatures; the National Association of Counties; the U.S. Conference of Mayors; the National League of Cities; the Association of Government Accountants; the Government Finance Officers Association; the International City/County Management Association; the National Association of State Auditors, Comptrollers and Treasurers ("NASACT"); the National Association of State Budget Officers ("NASBO"); the National Association of State Retirement Administrators; the Native American Finance Officers Association; the National Federation of Municipal Analysts; the Association of Local Government Auditors; the National Association of State Treasurers; the National Council of State Housing Agencies; the National Association of Local Housing Financing Agencies; and the Council of Infrastructure Financing Authorities. The Notice was posted publicly on June 16, 2011.

²⁹ See GFOA, NASACT.

³⁰ Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder permit FINRA to file a proposed rule change for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge. See 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b-4(f)(2).

that have taken place regarding the proposed rule change, FINRA has met the consultation requirements set forth in Section 19(g) of the Securities Act.

One commenter questioned the administrative fee GASB will pay to FINRA for calculating, assessing, and collected the GASB Accounting Support Fee.³¹ As FINRA noted in Regulatory Notice 11-28, FINRA has negotiated an administrative fee with the FAF of \$50,000 for the initial year that the GASB Accounting Support Fee is in place that is intended to cover FINRA's estimated costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee. The commenter asserted that the fee was "unwarranted" because "FINRA already has a process for collecting its own Trading Activity Fee from broker dealers, and could easily amend this process to include the GASB Accounting Support Fee."³² The commenter also suggested that the MSRB could administer the fee for minimal costs if FINRA moves forward with a fee based on underwritings or transactions.

The commenter's statements are misplaced, and FINRA disagrees that the fee is unwarranted. The commenter's analogy to FINRA's Trading Activity Fee ("TAF") is inappropriate for several reasons.

First, FINRA does not believe that the use of a self-reporting model like the TAF is appropriate for the GASB Accounting Support Fee.³³ FINRA believes that the transaction information available through the MSRB serves as a more timely and reliable

³¹ See SIFMA.

³² See SIFMA.

³³ The TAF is self-reported to FINRA by members on a monthly basis on the clearing firm level. See Trading Activity Fee FAQ Q100.5, available at <http://www.finra.org/taf/faq>.

source of transaction information than self-reported aggregate quarterly data calculated by the various members subject to the fee. Moreover, FINRA believes that requiring self-reporting could increase compliance costs for firms and increase costs to FINRA. As proposed, FINRA will rely on transaction data that is already reported by members to the MSRB (i.e., there will be no increased compliance efforts necessary for members since, as discussed below, FINRA does not believe that the calculations members currently undertake for reporting the TAF would be the same as those for the GASB Accounting Support Fee). For FINRA, a self-reporting model raises two primary complications. First, FINRA would need to audit members to ensure that their self-reporting was accurate and timely, which could increase FINRA's costs in administering the fee. Second, Section 19(g) of the Securities Act requires FINRA to collect exact amounts, thus creating an inability to remedy potential over- or under-payments by members that self-report erroneous data.

Second, FINRA does not believe that the exceptions from the TAF should apply to the assessment of the GASB Accounting Support Fee, and the TAF is currently charged only to the sell side of a transaction. Although municipal securities subject to MSRB reporting requirements are generally subject to the TAF, the TAF rules contain exceptions for certain transactions (e.g., primary market transactions). The goal of the GASB Accounting Support Fee assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is not appropriate to exclude any subset of reportable transactions from factoring into the fee assessment for purposes of allocating the GASB Accounting

Support Fee.³⁴ In addition, and as discussed below, FINRA does not believe it is appropriate to charge only one side of a transaction when two members are involved and are required to report the transaction to the MSRB.

For the foregoing reasons, FINRA does not believe that the TAF would serve as an appropriate model in assessing the GASB Accounting Support Fee. In addition, the amount of the administrative fee to FINRA was negotiated with the FAF and based on estimated costs to FINRA, including initial start-up technology costs, administrative costs, and the costs of personnel and other resources needed to process and implement the fee. FINRA anticipates that the amount of the administrative fee will be reviewed and evaluated each year by FINRA and by the FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and in the context of actual costs incurred by FINRA. Following the review, the amount of the administrative fee will be increased or decreased if necessary.

Commenters expressed opposing views on FINRA's proposal to base the GASB Accounting Support Fee on transactions in municipal securities reported to the MSRB. Although several commenters believed the proposed assessment method was reasonable and equitable,³⁵ other commenters opposed a transaction-based assessment.³⁶ Among the objections to the proposal, commenters stated that an assessment based on trade reporting

³⁴ See Schedule A to the FINRA By-Laws § 1(b).

³⁵ See 3PM, NASACT, Bay City.

³⁶ See HT&D, R&C, SIFMA.

volume would disproportionately affect lead underwriters³⁷ and brokers' brokers³⁸ and would result in broker-to-broker transactions being assessed multiple times.³⁹ In addition, one commenter noted that the proposal "makes no distinction between bonds issued by GASB obligors, bonds issued by FASB obligors and bonds with obligors who follow neither set of standards."⁴⁰

After considering the objections raised by the commenters, FINRA continues to believe that a proportionate fee based on reported trading volume remains a reasonable and fair method to allocate the GASB Accounting Support Fee. As noted above, FINRA believes that using reported transaction data to calculate the fee ensures that the fee is based on accurate, reliable information. Because the fee is assessed on a proportionate basis, rather than being assessed each time a transaction is reported to the MSRB (e.g., a fixed fee charged on each reported transaction like those charged in connection with reporting trades to a FINRA trade reporting facility⁴¹), there are not multiple assessments on broker-to-broker transactions. Rather, both brokers reporting the same trade will have the volume of that trade factored into their share of total trade reporting volume for that quarter. The goal of the assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is appropriate that both brokers in a broker-to-broker transaction be considered as

³⁷ See R&C.

³⁸ See HT&D, SIFMA.

³⁹ See SIFMA. The commenter noted that in broker-to-broker transactions, both brokers report the trade to the MSRB.

⁴⁰ SIFMA.

⁴¹ See, e.g., FINRA Rules 7620A, 7710.

participating in that market with respect to such a transaction, rather than only use one side of the trade in calculating the fee (e.g., charging only the broker on the sell side). For similar reasons, FINRA also believes that the proposal does not disproportionately affect lead underwriters or brokers' brokers; to the extent such firms have high trading volumes reported to the MSRB under applicable reporting rules, FINRA believes that this accurately reflects those firms' participation in the municipal securities markets, whether those firms act as underwriters, brokers' brokers, or simply as buyers or sellers of municipal securities.⁴²

FINRA also declines to distinguish between issues based on whether the obligor has followed FASB standards, GASB standards, or neither. This information is not required to be reported to the MSRB, is not available on an automated basis, and it would be impractical for FINRA to attempt to maintain a comprehensive and accurate listing of those issues where the obligor has followed GASB standards.

Several commenters expressed views concerning the application of the GASB Accounting Support Fee to small firms and the exemption proposed in Regulatory Notice 11-28 for firms with a quarterly assessment of less than \$25. Two commenters suggested that FINRA increase the quarterly threshold from \$25 to \$1,000,⁴³ and one commenter

⁴² FINRA notes that basing the GASB Accounting Support Fee on underwriting, rather than transactions, would increase the burden on lead underwriters and would disproportionately affect those market participants engaged in underwriting activities rather than in trading in the secondary market. Moreover, basing the fee on underwriting would wholly exempt secondary market participants from paying the fee and would be assessed only on future municipal issues and would "grandfather" in previous issues. FINRA does not believe this is a more equitable way to assess the fee than a transaction-based approach.

⁴³ See 3PM, NAIBD.

suggested that “smaller firms” be exempt from the fee.⁴⁴ In contrast, one FINRA member suggested that any firm with a stake in GASB accounting standards should be charged a small assessment, even if the firm had no assessable transactions in a given quarter.⁴⁵

FINRA proposed a quarterly minimum threshold of \$25 in order to exempt from the GASB Accounting Support Fee those firms that do a de minimis amount of trading activity in municipal securities in a given quarter. There are approximately 1,100 FINRA members eligible to conduct business in municipal securities, and FINRA estimates that a de minimis threshold of \$25 per quarter would eliminate approximately 600 firms—approximately 55 percent of firms—per quarter from paying the fee. FINRA estimates that raising the level to \$1,000 per quarter would exempt approximately 90 percent of the firms reporting transactions to the MSRB from the fee each quarter.

As discussed above, FINRA is required to collect a specific amount of money each year to adequately fund the annual budget of the GASB. Because of this unique requirement, unlike other fees assessed by FINRA, any amount that one member is exempt from paying must be assessed on other members so that FINRA can meet its statutory obligation and collect the total amount needed to adequately fund the GASB’s annual budget. Consequently, FINRA believes that a de minimis threshold of \$25 per quarter achieves a fair and reasonable balance between exempting those members that do a small amount of trading in municipal securities and ensuring that other members are not

⁴⁴ See BDA. The commenter did not define “smaller firms” and stated that it was not in a position to recommend a figure for the exemption because it did not have trading data available to it.

⁴⁵ See NPB.

shouldering a disproportionate amount of the GASB Accounting Support Fee and being allocated amounts significantly above their proportion of reported trading activity. For the same reasons FINRA is not increasing the quarterly exemption amount, FINRA also declines to adopt an across-the-board “small firm exemption.”

In Regulatory Notice 11-28, FINRA noted that “some firms may seek to pass the GASB Accounting Support Fee on to customers engaged in municipal securities transactions.” This was an acknowledgement that, in many instances, members pass through FINRA fees and assessments to their customers. Some commenters expressed concern that members could pass the fee on to issuers of municipal securities and asked FINRA to clarify or mandate that members could not pass the fee along to issuers.⁴⁶ Other commenters suggested that FINRA make it easier for members to pass the fee along to customers, including issuers.⁴⁷ One commenter suggested that the GASB Accounting Support Fee should be structured as an underwriting assessment because “[p]rinciples of fundamental fairness would dictate dealers be allowed to pass through any GASB support fee to municipal bond issuers instead of or in addition to investors.”⁴⁸

As discussed above, FINRA continues to believe that an equitable way to structure the fee is through a quarterly assessment based on trading volume with an exception for members whose assessment in a particular quarter would be less than \$25. FINRA has long recognized that members pass fees through to the customers whose transactions generate those fees, and FINRA rules generally do not address the

⁴⁶ See Bay City, GFOA, NASACT.

⁴⁷ See BDA, SIFMA.

⁴⁸ SIFMA.

commercial allocation of fees between members and their customers, provided such fees are fair, reasonable, and accurately disclosed. Although FINRA is not encouraging members to pass all or part of the GASB Accounting Support Fee to their customers, that decision is ultimately one for each member, subject to the conditions and requirements noted. FINRA also declines to give a blanket exemption for issuers of municipal securities whose transactions may result in an increase to a member's allocation of the GASB Accounting Support Fee. FINRA notes, however, that transactions from a municipal securities issuer to an underwriter are not reported to the MSRB and thus would not generally be counted toward a member's quarterly assessment.⁴⁹

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.

⁴⁹ To the extent commenters are concerned that FINRA members acting as underwriters for municipal securities may increase their underwriting fees to recoup part of the assessment, FINRA generally considers fee negotiations between an issuer and an underwriter to be within each party's business decision-making process.

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-FINRA-2011-073 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-FINRA-2011-073. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2011-073 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.⁵⁰

Elizabeth M. Murphy
Secretary

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⁵⁰ 17 CFR 200.30-3(a)(12).