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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85400; File No. SR-MSRB-2019-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule A-13 to Temporarily Reduce the Rate of Assessment for the MSRB's Underwriting, Transaction and Technology Fees on Brokers, Dealers and Municipal Securities Dealers

March 22, 2019.

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 14, 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 MSRB Rule A-13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers, to temporarily reduce the rate of assessment for the MSRB's underwriting, transaction and technology fees on brokers, dealers and municipal securities dealers (“dealers”) with respect to assessable activity that occurs from April 1, 2019 through September 30, 2019 (the “proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change”). The MSRB has designated the proposed rule change for immediate effectiveness.

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 temporarily reduce the rate of assessment for the MSRB’s underwriting, transaction and technology fees for dealers under Rule A-13, with respect to assessible activity that occurs from April 1, 2019 through September 30, 2019. The proposed rule change is designed to reduce, in a carefully considered and strategic manner, MSRB reserves in a way that furthers the fair and equitable balance of fees across regulated entities.

Background

The MSRB discharges its statutory mandate under the Exchange Act through the establishment of rules for dealers and municipal advisors (together with dealers, “regulated entities”), the collection and dissemination of market information, market leadership, outreach and education. To fund its responsibilities, the MSRB assesses fees on regulated entities, where the majority of the fees are driven by market activity. Moreover, as a self-regulatory organization, the MSRB must maintain sufficient reserves to discharge its responsibilities and operate without interruption, even in an economic downturn. Reserves are necessary to mitigate fluctuations in the MSRB’s primarily market-driven revenue stream, and provide a backstop for funding services essential to the efficiency of the market. The MSRB manages reserves balances relative to a Board-approved target, and the Board recently revised the target construct which resulted in lowering of the target. As a result, following a prior fee reduction in the first quarter of the MSRB’s Fiscal Year 2019 which occurred before the change in the reserves target (the “first Fiscal Year 2019 temporary fee reduction”),³ the Board determined that, given the impact of the newly lowered target, a second temporary fee reduction was necessary and appropriate to manage reserves balances.

Financial reserves and the Board’s holistic review of MSRB fees

In 2010, after several years of heavy investment in the technological infrastructure needed to launch the MSRB’s Electronic Municipal Market Access (EMMA[®]) website, the MSRB’s financial reserve levels had dropped below the then reserve target that the MSRB had previously established. As a result, replenishing the MSRB’s reserves became a priority. The following year, the MSRB increased the transaction fee under Rule A-13 and began assessing a

³ See Release No. 34-83713 (Jul. 26, 2018), 83 FR 37538 (Aug. 1, 2018) (File No. SR-MSRB-2018-06).

new technology fee for dealers under the same rule.⁴ By 2014, revenue from the technology fee had generated sufficient resources to stabilize the technology reserve and allowed the MSRB to rebate \$3.6 million in technology fees to eligible dealers. Further, in 2014, with the extension of the MSRB's jurisdiction to regulate municipal advisors, this class of regulated entity began contributing to the cost of MSRB regulation.⁵

The Board's technology fee rebate decision and analysis of reserve levels prompted it in 2015 to conduct a holistic review of fees from dealer assessments, municipal advisors and other sources to determine whether further changes to the funding structure were warranted. The Board evaluated the assessment of MSRB fees on regulated entities with the goal of better aligning revenue sources with operating expenses and all capital needs. The Board strives to diversify funding sources among regulated entities and other entities that fund MSRB operations in a manner that ensures long-term sustainability, while continuing to strike an equitable balance in fees among regulated entities and a fair allocation of the cost of operating and administering the MSRB, including regulatory activities, systems development and operational activities. The Board, as it has historically, assesses such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.

The first outcome of the holistic fee review was to substantially reduce (by 8.3%) the fee assessed on municipal securities underwriters. At the same time, the MSRB raised initial registration fees (which had not been adjusted since 1975) and annual fees (which had not been adjusted since 2009)—fees that are paid by all regulated entities—to better align with the cost of

⁴ See Release No. 34-63621 (Dec. 29, 2010), 76 FR 604 (Jan. 5, 2011) (File No. SR-MSRB-2010-10).

⁵ See Release No. 34-72019 (Apr. 25, 2014), 79 FR 24798 (May 1, 2014) (File No. SR-MSRB-2014-03).

administering registrants and ensure that all registrants more fairly contributed to defraying the costs and expenses of operating and administering the MSRB.⁶

Outside of that 2015 holistic fee review and to help ensure that its fee structure remained balanced and fair, in 2016, the MSRB rebated \$5.5 million in the excess reserves to dealers that were assessed underwriting, transaction and technology fees during the first nine months of the fiscal year. Subsequently and to further the objective of appropriately and equitably assessing fees across all regulated activities, in 2018, the MSRB introduced a new fee on underwriters of 529 savings plans, as underwriters to 529 savings plans had not previously paid a fee in this capacity since the MSRB began regulating those underwriters in 1999.⁷

Current fees

The current fees assessed on regulated entities are:

1. Municipal advisor professional fee (Rule A-11)

\$500 for each person associated with the municipal advisor who is qualified as a municipal advisor representative in accordance with Rule G-3 and for whom the municipal advisor has on file with the SEC a Form MA-I as of January 31 of each year;

2. Initial registration fee (Rule A-12)

\$1,000 one-time registration fee to be paid by each dealer to register with the MSRB before engaging in municipal securities activities and by each municipal advisor to register with the MSRB before engaging in municipal advisory activities;

⁶ As part of the 2015 holistic fee review, the Board also determined that the technology fee, originally dedicated solely to funding capitalized hardware and software, would be available for funding all MSRB operations. See Release No. 34-75751 (Aug. 24, 2015), 80 FR 52352 (Aug. 28, 2015) (File No. SR-MSRB-2015-08).

⁷ See Release No. 34-81264 (Jul 31, 2017), 82 FR 36472 (Aug. 4, 2017) (File No. SR-MSRB-2017-05).

3. Annual registration fee (Rule A-12)

\$1,000 annual fee to be paid by each dealer and municipal advisor registered with the MSRB;

4. Late fee (Rule A-11 and Rule A-12)

\$25 monthly late fee and a late fee on the overdue balance (computed according to the prime rate) until paid on balances not paid within 30 days of the invoice date by the dealer or municipal advisor;

5. Underwriting fee (Rule A-13)

\$.0275 per \$1,000 of the par value paid by a dealer, on all municipal securities purchased from an issuer by or through such dealer, whether acting as principal or agent as part of a primary offering; and in the case of an underwriter (as defined in Rule G-45) of a primary offering of certain municipal fund securities, \$.005 per \$1,000 of the total aggregate assets for the reporting period (i.e., the 529 savings plan fee on underwriters);

6. Transaction fee (Rule A-13)

.001% (\$.01 per \$1,000) of the total par value to be paid by a dealer, except in limited circumstances, for inter-dealer sales and customer sales reported to the MSRB pursuant to Rule G-14(b), on transaction reporting requirements;

7. Technology fee (Rule A-13)

\$1.00 paid per transaction by a dealer for each inter-dealer sale and for each sale to customers reported to the MSRB pursuant to Rule G-14(b); and

8. Examination fee (Rule A-16)

\$150 test development fee assessed per candidate for each MSRB examination.⁸

Notably, while all regulated entities contribute to the MSRB's revenue base, the three fees that are the subject of the proposed rule change (underwriting, transaction and technology fees) constitute approximately 79% of the MSRB's Fiscal Year 2019 budgeted revenue. Those three fees are market based, inherently unpredictable, and have historically exceeded the respective conservative amounts that the MSRB has budgeted for them, thereby directly contributing to the excess reserves position. Other fees assessed, described above, contribute to the funding of the MSRB; however, they have not contributed to the excess reserves position. Over time, as the MSRB has considered the reasonable fees and charges necessary or appropriate to defray the costs and expenses of operating and administering the Board, the Board has continually strived to have an equitable balance of fees among regulated entities.⁹ The fees that

⁸ In addition, the MSRB charges data subscription service fees for subscribers, including dealers and municipal advisors, seeking direct electronic delivery of municipal trade data and disclosure documents associated with municipal bond issues. However, this information is available without direct electronic delivery on the MSRB's EMMA website without charge.

⁹ The MSRB stated, in 2017, as part of the increase at that time of the municipal advisor professional fee from \$300 to \$500 that the increase was moving toward a more equitable balance of fees among regulated entities. See MSRB Regulatory Notice 2017-20 (Sept. 29, 2017) in which the MSRB stated:

The increase also moves towards a more equitable balance of fees among regulated entities and, as a result, a fairer allocation of the expenses of the MSRB across regulated entities. The original \$300 per professional fee was established in 2014 as a reasonable initial starting amount for the fee. As part of the MSRB's holistic review of fees a year later, the MSRB reconsidered the amount of this fee, but determined not to increase it at that time in order to allow municipal advisors additional time to adapt to regulation. However, the MSRB noted that it would revisit the amount of the fee in light of the substantial costs associated with developing and maintaining a regulatory regime for municipal advisors, which is what led to the current fee increase filed today. The MSRB will continue to review and evaluate its fees over time to ensure that fees are allocated fairly and equitably across all regulated entities.

contributed to the excess reserve position are the fees that are the subject of the proposed rule change.¹⁰

Recent reserves review by the Board

Following the development of its Fiscal Year 2019 budget, which included the first Fiscal Year 2019 temporary fee reduction covering the underwriting, transaction and technology fees assessed on dealers for assessable activity that occurred from October 1, 2018 through December 31, 2018, the Board, in its normal course of prudent fiscal management, reviewed the MSRB's reserves. That review, which resulted in a reduction in the reserves target, was part of the Board's continued efforts to properly calibrate the reserves relative to the appropriate financial resources needed by the organization to fulfill its statutory mandate, support mission objectives, respond to regulatory requirements, avail itself of strategically important initiatives in furtherance of the mission, enable the organization to be fiscally prepared regardless of economic conditions, provide the MSRB with the requisite level of liquidity to fund operations and ensure the long-term financial sustainability of the organization.

Following the Board's determination to reduce its reserves target and because of a corresponding increase in the excess reserves position, the Board then determined to provide a second temporary fee reduction of its three largest sources of revenue (i.e., underwriting, transaction and technology fees) which, as noted previously, collectively constitute approximately 79% of the MSRB's Fiscal Year 2019 budgeted revenue and directly contributed

See also Release No. 34-81841 (Oct. 10, 2017), 82 FR 48135, 48138 (Oct. 16, 2017) (File No. SR-MSRB-2017-07).

¹⁰ In addition to the fees discussed above, the MSRB also receives other revenue, including fine revenue, that contributes to the excess reserves position. Fine revenue became a new revenue source as first provided in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act. See 15 U.S.C. 78o-4(c)(9).

to the excess reserves position.¹¹ The Board's determination to implement a second fee reduction, which is the subject of this proposed rule change, was a direct result of the change in the reserves target construct and the decrease in the target. The proposed rule change is projected to result in approximately \$5.2 million of foregone revenue and reduce the MSRB's reserves, which the Board determined would be appropriate and consistent with its prudent fiscal management. In total, the MSRB estimates that the combined temporary fee reductions for the MSRB's Fiscal Year 2019 would reduce reserves by \$7.9 million.¹²

Proposed rule change

Pursuant to Rule A-13, each dealer must pay to the Board underwriting, transaction and technology fees based upon the rates specified in that rule. The proposed rule change would amend section (h) which sets forth revised temporary assessment rates for these three types of assessments, generally reducing by one-third the fees for assessable activity that occurs from April 1, 2019 through September 30, 2019. Amended Rule A-13(h)(i) would provide that the underwriting assessment for certain primary offerings for this time period would be .00185% of the par value (\$0.0185 per \$1,000), a reduction from .00275% of the par value (\$.0275 per \$1,000). Amended Rule A-13(h)(ii) would provide that the transaction assessment would be .00067% of the par value (\$0.0067 per \$1,000), a reduction from .001% (\$.01 per \$1,000). Finally, amended Rule A-13(h)(iii) would provide that the technology assessment would be \$0.67 per transaction (a reduction from \$1.00 per transaction). Rates of assessment would revert

¹¹ See discussion under "Current Fees," above.

¹² See MSRB Executive Budget Summary for the Fiscal Year Beginning on October 1, 2018 for a discussion of the MSRB's reserves.

to current levels, effective October 1, 2019, on assessible activity occurring on and after that date.

Importantly, the temporarily reduced rates would be for assessible activity that occurs during this six-month period. Dealers are typically billed for these fees after the relevant month end. Specifically, the underwriting fee is billed immediately after the respective month end, while the transaction and technology fees are billed thirty days in arrears.

The Board seeks to strike the right balance in fee assessments to maintain sufficient reserves to ensure fiscal sustainability, while providing relief to regulated entities that have contributed to the excess reserves position. The temporary six-month fee reduction for the underwriting, transaction and technology fees assessed on dealers would continue these ongoing efforts.

In addition, the proposed rule change would correct an inadvertent typographical error by amending Rule A-13(h)(iii) to appropriately refer to the technology assessment.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act¹³ which states 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 the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.

¹³ 15 U.S.C. 78o-4(b)(2)(J).

In general, the MSRB believes that its rules provide for reasonable dues, fees, and other charges among regulated entities. The MSRB believes that the proposed rule change is necessary and appropriate to fund the operation and administration of the Board and satisfies the requirements of Section 15B(b)(2)(J),¹⁴ achieving a more equitable balance of fees among regulated entities and a fairer allocation of the expenses of the regulatory activities, system development and operational activities undertaken by the MSRB because the proposed rule change would temporarily decrease fees for the regulated entities that financially contributed to the excess reserves position.

The MSRB manages reserves balances relative to a Board-approved target, and the Board recently revised the target construct which resulted in lowering of the target. As a result, following the first Fiscal Year 2019 temporary fee reduction,¹⁵ the Board determined that, given the impact of the newly lowered target, a second temporary fee reduction was necessary and appropriate to manage reserves balances. However, looking forward to future years (and after the six-month temporary fee reduction), the MSRB's pro formas project reserves to fall below the targeted level.¹⁶ As a result, the MSRB believes that the temporary fee reduction is preferable to an alternative approach, such as a permanent fee reduction, as increased fees will likely be required in the future to fund the MSRB's resource needs and achieve a balanced budget. Therefore, it did not seem reasonable to propose a permanent fee reduction, and then likely require an increase in fees thereafter to generate sufficient revenue to fund MSRB operations.

¹⁴ Id.

¹⁵ See Release No. 34-83713 (Jul. 26, 2018), 83 FR 37538 (Aug. 1, 2018) (File No. SR-MSRB-2018-06).

¹⁶ See supra note 12.

While the MSRB has progressively budgeted for municipal advisor fees to defray a greater portion of the cost of the MSRB's municipal advisor-related activity, the MSRB continues to review and evaluate fees over time to ensure that fees are allocated fairly among regulated entities.¹⁷ As described under "Purpose" above, the MSRB has determined to reduce fees on dealers whose fees have contributed to the preponderance of the MSRB's revenues and current reserves position. The MSRB's first Fiscal Year 2019 temporary fee reduction was based on the same rationale.¹⁸

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

Section 15B(b)(2)(C) of the Act¹⁹ 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.

The Board's policy on the use of economic analysis limits its application regarding those rules for which the Board seeks immediate effectiveness.²⁰ However, an internal analysis is still

¹⁷ See supra note 9.

¹⁸ See supra note 3.

¹⁹ 15 U.S.C. 78o-4(b)(2)(C).

²⁰ The scope of the Board's policy on the use of economic analysis in rulemaking provides that:

[t]his Policy addresses rulemaking activities of the MSRB that culminate, or are expected to culminate, in a filing of a proposed rule change with the SEC under Section 19(b) of the Exchange Act, other than a proposed rule change that the MSRB reasonably believes would qualify for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act if filed as such or as otherwise provided under the exception process of this Policy.

Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. For those rule changes which the MSRB seeks immediate effectiveness, the MSRB usually focuses exclusively its examination on the burden of competition on regulated entities.

conducted to gauge the economic impact, with an emphasis on the burden on competition involving regulated entities.

In this regard, the Board believes the proposed rule change is necessary and appropriate to promote fairness in funding the operation and administration of the Board and would achieve a more equitable balance among regulated entities and a more balanced allocation of the expenses of the regulatory activities, systems development, and operational activities undertaken by the MSRB. Because the three fees that are the subject of the proposed rule change (underwriting, transaction and technology fees) are the primary drivers for the MSRB's reserves, the Board believes that it is appropriate to temporarily reduce these fees for the designated period.

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 Act, as it would temporarily decrease the underwriting, transaction and technology fees by the same percentage for all dealers subject to these fees.

The MSRB believes that the proposed rule change would not impose an unnecessary or inappropriate regulatory burden on small regulated entities, as smaller dealers would benefit from the temporary fee reduction in the same proportion as larger dealers in relation to the assessable activity during the relevant period.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board did not solicit comment on the proposed rule change. Therefore, there are no comments on the proposed rule change received from members, participants or others.

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 Act²¹ and Rule 19b-4(f)(2)²² 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.

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-2019-06 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-2019-06. 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

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(2).

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-2019-06 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, pursuant to delegated authority.²³

Eduardo A. Aleman,

Deputy Secretary.

²³ 17 CFR 200.30-3(a)(12).

