

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99834; File No. SR-MSRB-2024-02)

March 22, 2024

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Calculation of the Annual Fee on Municipal Advisors under MSRB Rule A-11

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 March 21, 2024, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) 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 Supplementary Material .01 to MSRB Rule A-11, on assessments for municipal advisor professionals (“Rule A-11”), to clarify that the calculation of the annual fee on municipal advisors for covered professionals³ under Rule A-11(b) (the “Municipal Advisor Professional Fee”) is based on the number of covered professionals as of January 31, 2024, rather than January 31, 2023, for the fees to be assessed in 2024, and as of January 31 of each subsequent year thereafter (the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in Rule A-11(a), the term “covered professional” shall mean a person associated with a municipal advisor who is qualified as a municipal advisor representative in accordance with MSRB Rule G-3 and for whom the municipal advisor has on file with the Commission an active Form MA-I as of January 31 of each year.

“proposed rule change”). The MSRB has designated the proposed rule change for immediate effectiveness.⁴

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2024-SEC-Filings>, 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 amend Supplementary Material .01, on Annual Rate Card Fee, to Rule A-11 to clarify that the calculation of the Municipal Advisor Professional Fee for 2024 would be based on the number of covered professionals as of January 31, 2024, rather than January 31, 2023, and as of January 31 of each subsequent year thereafter. This amendment makes the calculation of the Municipal Advisor Professional Fee for municipal

⁴ The MSRB has designated the proposed rule change as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)(ii)) and Rule 19b-4(f)(2) (17 CFR 240.19b-4(f)(2)) thereunder. While the proposed rule change does not change the rate of the Municipal Advisor Professional Fee, the number of covered professionals is a necessary element of the calculation of the amount of Municipal Advisor Professional Fees assessed.

advisors based on the number of covered professionals for whom the municipal advisor has on file with the Commission an active Form MA-I as of January 31 of each applicable year, consistent with the intent of Rule A-11(a), rather than as of January 31, 2023 without regard to the year for which the fees are to be assessed. Without this amendment, municipal advisors may pay an inaccurately high or low fee for municipal professionals whose status as covered professionals has changed since January 31, 2023.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Exchange Act,⁵ which states that the MSRB's rules shall provide that each municipal advisor shall pay to the MSRB such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB. Such rules, among other things, must specify the amount of such fees and charges.⁶ The proposed rule change provides clarity regarding the specific amount of such fees and charges to be paid by municipal advisors based on the number of covered professionals in each applicable year. In addition, the MSRB believes that it is more reasonable for each year's fee to be calculated based on the number of covered professionals in that same year, rather than based on the number from a prior year. As a result, the MSRB believes that the proposed rule change satisfies the applicable requirements of Section 15B(b)(2)(J) of the Exchange Act.⁷

⁵ 15 U.S.C. 78o-4(b)(2)(J).

⁶ Id.

⁷ Id.

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

Section 15B(b)(2)(C) of the Exchange Act⁸ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change.⁹ The MSRB does not believe the proposed rule change imposes any burden on competition, as it applies equitably and non-discriminatorily across all municipal advisors and ensures that municipal advisors pay the correct Municipal Advisor Professional Fee based on an accurate count of covered professionals as of each respective year for which such fees shall be paid, consistent with Rule A-11(a). Additionally, the proposed rule change does not unduly burden any municipal advisor, and in fact it would, in some cases, relieve the burden of overpaying for individuals whose status as a covered professional may have changed since January 31, 2023. Finally, the MSRB believes that the proposed rule change would not impose any burden on

⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁹ See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>. In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities.

competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 15B(b)(2)(L)(iv) of the Exchange Act¹⁰ requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. The MSRB believes that the proposed rule change would not impose an unnecessary or inappropriate regulatory burden on small municipal advisors, as the fees assessed would be proportionate to the actual number of municipal advisors within each firm. The proposed rule change clarifies that the Municipal Advisor Professional Fee, payable by each municipal advisory firm under Rule A-11(b), is based on the number of covered professionals with Forms MA-I filed by a firm on January 31 of each applicable year, rather than January 31, 2023, as currently stated in Supplementary Material .01 to Rule A-11. By providing that the Municipal Advisor Professional Fee each year be based on an accurate covered professional count for the applicable year, the proposed rule change removes regulatory burdens stemming from payment of an inaccurate fee.

For the reasons noted above, the MSRB believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹¹

¹⁰ 15 U.S.C. 78o-4(b)(2)(L)(iv).

¹¹ 15 U.S.C. 78o-4(b)(2)(C).

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. The MSRB previously included the amendment reflected in this proposed rule change in its withdrawn proposal to amend MSRB Rules A-11 and A-13 to establish the 2024 rate card fees for dealers and municipal advisors. See Exchange Act Release No. 99096 (Dec. 6, 2023), 88 FR 86188 (Dec. 12, 2023), File No. SR-MSRB-2023-06 (the “2024 Rate Card Filing”).¹² Although the Commission received comment letters from four commenters on other aspects of the 2024 Rate Card Filing, none addressed the amendment reflected in this proposed rule change.¹³

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 Act¹⁴ and paragraph (f) of Rule 19b-4 thereunder.¹⁵ 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.

¹² On January 29, 2024, the Commission suspended the 2024 Rate Card Filing, which had gone into effect on January 1, 2024. See Exchange Act Release No. 99444 (Jan. 29, 2024), 89 FR 7424 (Feb. 2, 2024) (File No. SR-MSRB-2023-06). On February 16, 2024, the MSRB withdrew the 2024 Rate Card Filing. See Exchange Act Release No. 99577 (Feb. 21, 2024), 89 FR 14552 (Feb. 27, 2024) (File No. SR-MSRB-2023-06).

¹³ The comment letters are available at <https://www.sec.gov/comments/sr-msrb-2023-06/srmsrb202306.htm>.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

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-2024-02 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-2024-02. This file number should be 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. Do not include personal identifiable information in submissions; you should submit only

information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2024-02 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).