

2015-13

Publication Date

August 10, 2015

Stakeholders

Municipal Securities
Dealers, Municipal
Advisors

Notice Type

Regulatory
Announcement

Category

Administration

Affected Rules

[Rule A-12](#); [Rule A-13](#)

MSRB Adjusts Fees to Align Revenues with Operational and Capital Expenses

Overview

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a change to MSRB Rule A-12, on registration, and MSRB Rule A-13, on underwriting and transaction assessments.¹

The MSRB Board of Directors completed an extensive holistic review of the MSRB's fees to ensure that the MSRB continues to be sufficiently funded to meet its operational and capital expenses in fulfilling its regulatory responsibilities while achieving a fair allocation among regulated entities for the expenses of the regulatory activities, systems development and operational activities undertaken by the MSRB. The changes, a decrease in the underwriting fee under Rule A-13 coupled with the increase to the initial and annual fees under Rule A-12, will effectively maintain the total fee revenue at approximately the current level.

Effective and Implementation Dates

The rule change is effective immediately. The implementation date for the amendments to Rule A-12, on the initial and annual registration fees, is October 1, 2015. The implementation date for the amendments to Rule A-13, on the underwriting fee and transaction fee, is January 1, 2016.

Background

The MSRB assesses a variety of fees on its registrants (brokers, dealers, and municipal securities dealers (collectively "dealers") and municipal advisors) (collectively "regulated entities") to help fund all MSRB operations, including rulemaking, market transparency and educational initiatives that support the MSRB's Congressional mandate to protect investors and municipal entities by promoting the fairness and efficiency of the \$3.7 trillion municipal securities market. These fees are described in the following MSRB

¹ See [File No. SR-MSRB-2015-08](#).



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rules: Rule A-11 (municipal advisor professional fee); Rule A-12 (initial and annual registration fees); Rule A-13 (underwriting, transaction and technology fees); and Rule A-16 (examination fee). The MSRB also charges data subscription and service fees for the direct electronic delivery of municipal trade data and disclosure documents associated with municipal bond issues. This information is available at no charge on the MSRB's Electronic Municipal Market Access (EMMA®)² website.

The catalyst for the Board's holistic fee review, the first such review since 2010 when the MSRB's mandate was expanded by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank),³ was the inverse relationship between a projected growing surplus in the MSRB's technology renewal fund, which is supported by the technology fee, coupled with the potential erosion of operating reserves in the next few years and the need to better align total revenue from such sources with both operational and capital expenses. The Board believes that, while effectively revenue neutral, the fee changes support the continuous and ongoing efforts of the MSRB to reasonably distribute fees among all regulated entities based on the level of involvement by brokers, dealers, municipal securities dealers and municipal advisors in the municipal securities market.

The changes are consistent with Section 15B(b)(2)(J) of the Securities Exchange Act of 1934,⁴ which requires that the MSRB's rules 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 and that such rules shall specify the amount of such fees and charges.

Changes to Fees

Annual and Initial Fees under Rule A-12

The MSRB's current annual registration fee of \$500 is paid by each of the over 2,000 regulated entities registered with the MSRB. While the annual fee amount has not changed since 2009, the share of total MSRB expenses defrayed by the annual fees has decreased from almost 5 percent in 2009 to 3.5 percent in 2014 despite the increase in the number of regulated entities

² EMMA is a registered trademark of the MSRB.

³ Pub. Law No. 111-203, 124 Stat. 1376 (2010).

⁴ 15 U.S.C. 78o-4(b)(2)(J).

associated with the registration of municipal advisors post Dodd-Frank. In addition, approximately 35 percent of the entities registered with the MSRB as dealers do not regularly engage in any trade activity subject to fees under Rule A-13 and, as a result, the annual fee is the primary way these dealers share in the costs and expenses of operating and administering the MSRB.⁵ Thus, an increase in the annual fee from \$500 to \$1,000 provides for all regulated entities to more fairly contribute to defraying the costs and expenses of operating and administering the MSRB.

The MSRB's current fee for initial registration under Rule A-12 is \$100, an amount that has not been changed since its inception in 1975. During its holistic fee review, the Board concluded that an increase in the initial registration fee from \$100 to \$1,000 was reasonable to help defray a significant portion of the administrative and operational costs associated with processing an initial registration.⁶

The implementation date for the annual and initial fee changes under Rule A-12 is October 1, 2015. Together the increase in the annual and initial fees will provide approximately \$1 million in annual revenue which will defray the expenses of MSRB operations and allow the MSRB to lower underwriting fees by an offsetting amount to achieve a more balanced distribution of fees.

Market Activity Fees under Rule A-13

MSRB fees assessed on market activity (*i.e.*, underwriting, transaction and technology) under Rule A-13 represented 85 percent of the MSRB's fiscal year 2014 total revenue. In 2014, of the over 2,000 dealers and municipal advisors registered with the MSRB, roughly 140 dealers were assessed underwriting fees and 840 dealers were assessed transaction and technology fees. The underwriting and transaction fees, which are generally proportionate to a dealer's relative dollar volume of activity within the industry, are based on the par value amount of underwriting and customer and inter-dealer transactions during the year. The technology fee is based on

⁵ For example, dealers who may engage in municipal fund securities business (*i.e.*, 529 college savings plan sales and Local Government Investment Pool sales) or have the occasional municipal bond sale.

⁶ The Board did not consider an increase to the initial registration fee throughout the post Dodd-Frank initial registration process in an effort to not overburden the municipal advisor community. Post Dodd-Frank, 925 non-dealer municipal advisors registered with the MSRB (exclusive of municipal advisors that are also registered dealers), each of which paid \$100 to register. There are currently approximately 590 non-dealer municipal advisors registered with the MSRB.

a dealer's participation in the market as measured by the total number of inter-dealer and customer sales reported to the MSRB, rather than par value. The technology fee, coupled with the transaction and underwriting fees, contribute to an equitable distribution of the market activity fees for dealers. However, the assessment of these market activity fees is highly concentrated among a small number of dealers; based on fiscal year 2014 fee revenue, less than a dozen dealers paid 52 percent of all such fees. The Board determined that, notwithstanding this concentration, these market activity fees are reasonable in light of the level of participation in the municipal securities market by these dealers.

With organizational reserves (operating reserves and the technology renewal fund) currently above targeted levels and future year financial pro formas indicating declines in aggregate reserve levels (while remaining slightly above targeted levels), coupled with the increase in registration fees, the Board determined to decrease the underwriting fee from .003% (\$.03) to .00275% (\$.0275) per \$1,000 of the par value. This decision was based on a number of reasons. First, the fee is based on the assessment factor (*i.e.*, par value of underwriting) that is the most volatile year over year. Second, as noted above, underwriting fees are paid primarily by a small number of dealers, all of which also pay significant transaction and technology fees, making some relief to such firms equitable. Additionally, for each new underwriting, the sales of the initial offering are subject to all three market activity fees such that a decrease in the underwriting fee on initial bond sales is fair and reasonable.

The Board recognized that without proposing a new fee on regulated entities, the total revenue generated from all sources, excluding the technology fee, would be inadequate to fund projected operational expenses of the organization. The technology fee was implemented in January 2011 to defray the costs of capitalized hardware and software for the MSRB market transparency systems (*i.e.*, EMMA, the Real-time Transaction Reporting System (RTRS), the Short-term Obligation Rate Transparency (SHORT) system). Almost five years after the implementation of the technology fee, the operational expenses of maintaining and servicing the MSRB market transparency systems now exceed capital needs for new hardware and software. In fact, the annual operating costs of the market transparency systems in fiscal year 2014 were approximately \$14 million, which represents an almost doubling of the expenses for the market transparency systems from \$7.2 million in fiscal year 2008 prior to the launch of EMMA, and far exceeds the approximately \$7 million generated annually from the technology fee.

To achieve adequate funding aligned with expense levels, the Board determined it would be reasonable to continue to assess a technology fee (\$1.00 per transaction for each inter-dealer and customer sale reported to the MSRB), but that the revenue from the technology fee would no longer be designated exclusively for capitalized hardware and software expenses and should be aggregated and available for the most appropriate organizational uses.

Changes to the MSRB's market activity fees under Rule A-13 also include a clarification on the exemptions provided in Rule A-13(c)(iii). While the transaction fee has never been applicable to commercial paper, which usually has a final stated maturity of nine months or less, there are occasions when the maturity date of commercial paper is extended past a nine-month maturity date, which raises a question as to whether the transaction fee would then apply. During its holistic fee review, the Board confirmed that, even in cases of the extended maturity date, commercial paper issues should remain exempt from the transaction fee. Accordingly, the proposed rule change adds language to the exemption provisions in Rule A-13(c)(iii) to clarify that the exemption from the transaction fee assessment also applies to securities issued pursuant to a commercial paper program.⁷

August 10, 2015

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Text of Amendments⁸

Rule A-12: Registration

(a) No change.

(b) *Initial Registration Fee.* Each broker, dealer, municipal securities dealer and municipal advisor shall pay to the Board an initial registration fee of \$1,000 ~~\$100~~, which shall be payable in the manner provided by the MSRB Registration Manual. A firm registering as a broker, dealer or municipal securities dealer and as a municipal advisor need only pay one initial registration fee, so long as such firm remains continuously registered with the Board.

⁷ Furthermore, this revision clarifies that the transaction fee exemption is not limited to "commercial paper" as specifically defined in Rule G-32(d)(xiii).

⁸ Underlining indicates new language; strikethrough denotes deletions.

(c) *Annual Registration Fee.* As part of its initial registration and annually thereafter, based on the fiscal year of the Board, each broker, dealer, municipal securities dealer and municipal advisor shall pay to the Board an annual registration fee of ~~\$1,000~~ \$500. The annual registration fee shall be payable in the manner provided by the MSRB Registration Manual. Subsequent to initial registration, the annual registration fee is due by October 31 each year. For any broker, dealer, municipal securities dealer or municipal advisor that registers and pays an annual registration fee during the month of September, the annual registration fee for the following fiscal year beginning in October shall be waived.

(d) – (l) No change.

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Rule A-13: Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers

(a) No change.

(b) *Underwriting Assessments - Amount.* For those primary offerings subject to assessment under section (a) above, the amount of the underwriting fee is ~~.003% (\$-.03~~ .00275% (\$0.0275 per \$1,000) of the par value.

(c) *Transaction and Technology Assessments.*

(i) – (ii) No change.

(iii) *Transactions Not Subject to Transaction Fee.* Transaction fees assessed pursuant to subsection (i) or (ii) of this section (c) are not assessed on transactions in municipal securities that:

(a) have a final stated maturity of nine months or less; or

(b) are issued pursuant to a commercial paper program; or

(c) at the time of trade, may be tendered at the option of the holder to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(iv) No change.

(d) – (f) No change.