

appropriate, as it excludes from the OATS recording and reporting requirements those members who conduct a floor business through NYSE and NYSE Amex and who are currently not subject to OTS, but to the requirements of NYSE Rule 123 and NYSE Amex Equities Rule 123 (Record of Orders).<sup>17</sup> By exempting these members from the OATS requirements, FINRA is not altering their current audit trail obligations.<sup>18</sup> The Commission believes that FINRA's proposed amendment to Rule 7410 is appropriate as these members would continue to be required to record and report information under NYSE Rule 123 and NYSE Amex Equities Rule 123, and would continue to be subject to FINRA regulation.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-FINRA-2010-044), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63313; File No. SR-MSRB-2010-14]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendments to Rule A-12, on Initial Fee, and Rule A-14, on Annual Fee

November 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>17</sup> NYSE Rule 123 and NYSE Amex Equities Rule 123 pertain to orders or commitments or obligations to trade originated on or transmitted to the floor of each exchange.

<sup>18</sup> These members would be subject to FINRA's oversight, as FINRA assumed the market surveillance and enforcement functions of NYSE Regulation, Inc. in June 2010, pursuant to a multi-party regulatory services agreement with NYSE Regulation, Inc., NYSE, NYSE Amex, and NYSE Arca. See "FINRA and NYSE Euronext Complete Agreement for FINRA to Perform NYSE Regulation's Market Oversight Functions," FINRA News Release (June 14, 2010), available at <http://www.finra.org/Newsroom/NewsReleases/2010/P121622>.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

notice is hereby given that on November 9, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as changing a fee applicable to municipal advisors pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 is filing a proposed rule change consisting of amendments to Rule A-12, on initial fee, and Rule A-14, on annual fee, to provide for the payment to the Board by municipal advisors of initial and annual fees. The proposed rule change is effective immediately upon filing.

The proposed rule change would apply to municipal advisors immediately; however, it will have a deferred compliance date of December 31, 2010. The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-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 provide for the assessment of reasonable fees to defray a portion of

the increased costs and expenses associated with the operation and administration of the Board attributable to the Board's regulation of municipal advisors, including an initial fee of \$100 and an annual fee of \$500. Except as described below, the proposed rule change applies the provisions of Rules A-12 and A-14 to municipal advisor firms in the same manner that they currently apply to brokers, dealers, and municipal securities dealers ("dealers"). Individuals will not be required to pay these fees unless they are sole proprietorships. Although the initial fee under Rule A-12 normally would be payable to the Board prior to a municipal advisor engaging in any municipal advisory activities, the proposed rule change would permit a municipal advisor firm to engage in such activities prior to January 1, 2011 so long as the initial fee is paid by January 1, 2011. Similarly, although the annual fee under Rule A-14 normally would be payable by October 31 of each fiscal year (or, for municipal advisor firms becoming subject to MSRB rules in the current fiscal year, simultaneously with the initial fee under Rule A-12), the proposed rule change would permit a municipal advisor firm to engage in such activities prior to January 1, 2011 so long as the annual fee for the current fiscal year of the Board is paid by January 1, 2011. Each firm subject to the rules of the Board shall be required to pay the initial fee only once, and the annual fee only once each fiscal year, even if a firm is both a dealer and a municipal advisor.

###### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act, which provides that the Board'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.

The \$100 initial fee imposed on municipal advisors by amended Rule A-12 and the \$500 annual fee imposed on municipal advisors by amended Rule A-14 are reasonable. In its filing, the MSRB noted that the annual fee is comparable to the fees that municipal advisors must pay to State regulators if they must register as investment advisers. The initial fee is less than most States impose for the initial registration of investment advisers. The revenue resulting from these fees will defray only a small portion of the cost of MSRB regulation of municipal advisors.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

Section 15B(2)(L) of the Act requires that rules adopted by the Board

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 proposed rule change does not impose a regulatory burden on small advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons and for the robust protection of investors against fraud. The MSRB stated that it considers the \$100 initial fee and \$500 annual fee to be *de minimis*. The annual fee is comparable to the fees that municipal advisors must pay to State regulators if they must register as investment advisers. The initial fee is less than most States impose for the initial registration of investment advisers. The MSRB stated that, while the proposed rule change, at best, imposes only a *de minimis* burden on municipal advisors, the proposed rule change is necessary to help defray the costs of the MSRB's registration of municipal advisors, which in turn permits the MSRB to have a record of the municipal advisors it regulates, so that it may keep them abreast of regulatory developments, better target its rulemaking and professional qualifications examinations to different types of municipal advisors, and identify to the Commission those municipal advisors who have reportedly violated MSRB rules.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all municipal advisors.

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

Written comments were neither solicited nor received on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder, in that it establishes

fees applicable to municipal advisors. 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.<sup>7</sup>

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2010-14 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-MSRB-2010-14. 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 Web site (<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 Web site 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 the MSRB. 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-MSRB-2010-14 and should be submitted on or before December 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63310; File No. SR-MSRB-2010-12]**

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Revisions to the Study Outline and Selection Specifications for the Municipal Securities Representative Qualification Examination (Series 52) Program**

November 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 10, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR-MSRB-2010-12) ("the proposed rule change") as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i)<sup>3</sup> of the Act and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The MSRB proposes to implement the revised Series 52 examination program on January 3, 2011. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).