

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91247; File No. SR-MSRB-2021-02)

March 3, 2021

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reduce the Rates of Assessment for Certain Underwriting, Transaction, and Technology Fees under MSRB Rule A-13

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 1, 2021 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 (collectively, “dealers”), to temporarily reduce the rate of assessment for certain underwriting, transaction, and technology fees (collectively, “market activity fees”) on dealers with respect to assessable activity that occurs on April 1, 2021 through September 30, 2022 (the “proposed rule change”). 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)³ of the Act and Rule 19b-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

4(f)(2)⁴ thereunder, which renders the proposed rule change effective upon filing with the Commission. The implementation date for the proposed rule change's temporary fee reduction is April 1, 2021.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-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 Board's underwriting, transaction, and technology fees under MSRB Rule A-13 with respect to assessable activity that occurs on April 1, 2021 through September 30, 2022.⁵ The proposed rule change is designed to promote the collection of reasonable fees and charges as are necessary or appropriate to defray the costs and expenses of operating and administering the

⁴ 17 CFR 240.19b-4(f)(2).

⁵ For the reasons discussed herein, underwriting assessments charged pursuant to Rule A-13(c)(ii) to certain dealers acting as underwriters of municipal fund securities are not included in the temporary fee reduction.

Board. The Board believes that the proposed rule change achieves such reasonable fees and charges because it will rightsize the Board’s reserves position, in conformance with a prudently established and reasonable target, by forgoing a portion of market activity fees over an eighteenth month period. In effect, the Board intends to utilize its excess reserves to offset the forgone revenue resulting from the temporary fee reduction and, thereby, reasonably reduce the fees of the class of MSRB regulated entities⁶ whose prior fee payments directly contributed to the MSRB being in excess of its reserves target.

Background on MSRB Fee Structure

The Board discharges its statutory mandate under the Exchange Act by establishing rules for dealers and municipal advisors (together with dealers, “regulated entities”), collecting and disseminating market information, coordinating with other regulatory authorities, and conducting outreach to external stakeholders.⁷ The Board assesses fees on regulated entities to generate funds for these activities. The current fees assessed on regulated entities are the:

1. Municipal Advisor Professional Fee (MSRB Rule A-11): A fee of \$1,000 for each person associated with the 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 SEC a Form MA-I as of January 31 of each year;
2. Initial Registration Fee (MSRB Rule A-12): A \$1,000 one-time registration fee to be paid by each dealer to register with the MSRB before engaging in

⁶ The term “regulated entities” is used here as defined below in the first full sentence of the following paragraph (i.e., dealers and municipal advisors).

⁷ See Section 15B(b) of the Exchange Act (15 U.S.C. 78o-4(b)).

- municipal securities activities and by each municipal advisor to register with the MSRB before engaging in municipal advisory activities;
3. Annual Registration Fee (MSRB Rule A-12): A \$1,000 annual fee to be paid by each dealer and municipal advisor registered with the MSRB;
 4. Late Fee (MSRB Rule A-11 and MSRB Rule A-12): A \$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 (MSRB Rule A-13): A fee amount of \$.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;
 6. Municipal Funds Underwriting Fee (MSRB Rule A-13): A fee amount of \$.005 per \$1,000 of the total aggregate assets for the reporting period (*i.e.*, the 529 savings plan fee on underwriters), in the case of an underwriter (as defined in MSRB Rule G-45) of a primary offering of certain municipal fund securities;⁸
 7. Transaction Fee (MSRB Rule A-13): A fee amount of .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 MSRB Rule G-14(b), on transaction reporting requirements;

⁸ See note 5 *supra* (clarifying that such fees are not included in the temporary fee reduction).

8. Technology Fee (MSRB Rule A-13): A fee of \$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 MSRB Rule G-14(b); and
9. Examination Fee (MSRB Rule A-16): A \$150 test development fee assessed per candidate for each MSRB examination.

The Board also receives revenues from certain other sources, such as regulatory fine-sharing⁹ and MSRB data subscription fees.¹⁰ These revenue sources contribute a smaller portion to the overall MSRB funding.¹¹ Historically, the vast majority of the MSRB's revenue has been derived from fees on regulated entities, in particular dealers who pay market activity fees pursuant to MSRB Rule A-13(c)(i) and (d), as discussed in more detail below.¹²

⁹ Fine revenue became a new revenue source as first provided in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). See 15 U.S.C. 78o-4(c)(9).

¹⁰ The MSRB charges data subscription service fees for subscribers, including dealers, municipal advisors, and non-regulated entities, seeking direct electronic delivery of municipal trade data and disclosure documents associated with municipal bond issues. Notably, however, this information is available without direct electronic delivery on the EMMA website without charge.

¹¹ For example, fine-sharing revenue amounted to approximately 3.3 percent of the MSRB's overall revenue in Fiscal Year 2020 (~\$1.5 million) and 0.4 percent in Fiscal Year 2019 (~\$150,000). See MSRB 2020 Annual Report, available at <http://msrb.org/~media/Files/Resources/MSRB-2020-Annual-Report.ashx?la=en>.

¹² With the extension of the MSRB's jurisdiction to regulate municipal advisors in the Dodd-Frank Act, this class of regulated entity began contributing to the cost of MSRB regulation in 2014. See Release No. 34-72019 (Apr. 25, 2014), 79 FR 24798 (May 1, 2014) (File No. SR-MSRB-2014-03). See also Release No. 34-81841 (Oct. 10, 2017), 82 FR 48135, 48138 (Oct. 16, 2017) (File No. SR-MSRB-2017-07) (increasing the municipal advisor professional fee from \$300 to \$500) and Release No. 34-87075 (Sept. 24, 2019), 82 FR 51698 (Sept. 30, 2019) (File No. SR-MSRB-2019-11) (increasing the municipal advisor professional fee from \$500 to \$1,000 over the course of two years).

Overview of MSRB Budget and Reserves

As a self-funded regulatory organization, MSRB revenue comes primarily from its regulated entities, and the MSRB does not receive any taxpayer dollars. The Board is responsible for independently managing and monitoring the MSRB's financial position on an ongoing basis and ensuring that the MSRB has sufficient reserves to maintain the MSRB's operations without interruption, even in economic downturns and other unforeseen disruptions.¹³

Establishing the Reserves Target. The Board establishes a reserves target to ensure that the organization maintains a prudent level of liquid funds to fund operations and ensure the long-term financial sustainability of the organization, taking into consideration a range of reasonably foreseeable market conditions and expected expenditures over a three-year time horizon. The reserves target is determined after conducting a detailed and comprehensive analysis of the liquidity needs in four categories: (1) working capital, (2) risk reserves, (3) strategic investment reserves, and (4) regulatory reserves.¹⁴ The Board refines the reserves target on an annual basis, being vigilant of the dynamic impact of market activity on the MSRB's financial position and cognizant of the variability of such future market activity.¹⁵

¹³ See MSRB Funding Policy, available at <http://msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Funding%20Policy.aspx>. The MSRB publishes its annual audited financial statements, annual fiscal year budgets, and key financial policies on its website. The Board believes that this transparency provides municipal market participants and other stakeholders insight into, and a clearer understanding of, how the Board utilizes its resources in fulfillment of the MSRB's statutory mandate.

¹⁴ Id (these four categories are identified in the discussion under "Reserves Considerations").

¹⁵ See MSRB Fiscal Year 2021 Budget for a further discussion of the MSRB's budget and reserves, available at <http://msrb.org/~media/Files/Resources/MSRB-FY-2021-Budget-Summary.ashx?la=en>.

Monitoring and Management of Reserves. The Board monitors the actual reserves balance on an ongoing basis, and MSRB staff actively manages the financial position of the organization in accordance with the Board-approved target. As necessary or appropriate, the Board is prepared to approve the use of reserves to mitigate unforeseen revenue fluctuations and otherwise maintain funding for services essential to the efficiency of the municipal market.¹⁶ Conversely, when actual revenue exceeds expenses, the MSRB generates additional reserves. In the circumstances of such an operating surplus, the Board balances the need to maintain sufficient reserves in relation to ongoing funding demands, while also examining the fair and equitable balance of its fee structure and opportunities for strategic organizational investments in furtherance of the MSRB's statutory mandate.¹⁷

¹⁶ For example, 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 reserves levels had dropped below the then reserves 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 new technology fee for dealers under the same rule. See Release No. 34-63621 (Dec. 29, 2010), 76 FR 604 (Jan. 5, 2011) (File No. SR-MSRB-2010-10).

¹⁷ For example, the Board has designated excess reserves for one-time investments to fund major technological initiatives to benefit the market, including migrating all MSRB market transparency systems to the cloud, which was completed in Fiscal Year 2020. Also, in Fiscal Year 2020, the Board designated \$10 million of reserves for a multi-year strategic investment to modernize its market transparency systems to leverage the power of the cloud. See, e.g., MSRB Holds Final Quarterly Board Meeting of FY 2019 (July 29, 2019), available at <http://msrb.org/News-and-Events/Press-Releases/2019/MSRB-Holds-Final-Quarterly-Board-Meeting-of-FY-2019.aspx>; and see also MSRB FY 2021 Budget Reflects Priorities of Modernizing EMMA® and Reducing Compliance Burdens (Oct. 1, 2020), available at <http://msrb.org/News-and-Events/Press-Releases/2020/MSRB%20FY%202021%20Budget%20Priorities.aspx>.

Market Activity in Fiscal Year 2020 and Effects on Reserves

The MSRB began Fiscal Year 2020 with reserves above target.¹⁸ The Board anticipated funding a budgeted operating deficit for Fiscal Year 2020, an investment to migrate MSRB market transparency systems to the cloud, and projected deficits in out-year pro forma budgets using these excess reserves. However, the market activity occurring during MSRB Fiscal Year 2020 exceeded the budget established by the Board, due in large part to the COVID-19 pandemic driving increased market volatility and high levels of primary market issuance. While the Board intended its Fiscal Year 2020 budget to result in a deficit and thereby spend excess reserves, the market activity resulting from the pandemic drove unexpected revenues in the collection of market activity fees. All in all, market activity fees paid by dealers exceeded the MSRB's budget by \$4.9 million in Fiscal Year 2020. Over the same period, the MSRB's financial results also benefited from expense savings, including savings associated with operating remotely during the pandemic, and, consequently, the MSRB's excess reserves continued to grow beyond their target instead of being reduced as planned.

Board Determination on the Need to Rightsize Reserves

The additional market activity fee revenue generated in Fiscal Year 2020 built upon the Board's existing excess reserves position.¹⁹ As a result, the Board prioritized the evaluation of organizational reserves levels at the beginning of Fiscal Year 2021. Based on this evaluation, the Board has determined that it is necessary and appropriate to temporarily reduce certain fees with

¹⁸ See MSRB 2020 Annual Report (link at note 11 *supra*). See also discussion of the MSRB's "Sources and Uses of Funding," available at <http://msrb.org/About-MSRB/Financial-and-Other-Information/Sources-and-Uses-of-Funding.aspx> (outlining organizational reserves as compared to the Board-approved target over multiple years).

¹⁹ Id.

the objective of rightsizing its reserves to the target level over an eighteen-month period. The MSRB projects that the proposed rule change will result in approximately \$18.8 million of forgone revenue and serve to reduce the MSRB's reserves to the target level over the eighteen-month period of the temporary fee reduction, which the Board has determined is appropriate and consistent with prudent fiscal management.²⁰

The Board desires to address its excess reserves by providing a temporary fee reduction to the class of regulated entities that directly contributed to the excess reserves position. During the eighteen-month temporary fee reduction period, the Board will evaluate the organization's fee structure with a view towards the MSRB's long-term financial positioning in relation to its fee structure.²¹ For this reason, the Board believes it is reasonable and appropriate to utilize the temporary fee reduction mechanism already established and effectively used in Fiscal Year 2019 while it proceeds with a broader review of its fee structure.²²

Board Determination to Temporarily Reduce Market Activity Fees

²⁰ See MSRB Fiscal Year 2021 Budget for a further discussion of the MSRB's reserves (link at note 15 supra).

²¹ While it is premature to presume any particular outcome of the Board's review, the Board's objectives will include maintaining a fair and equitable balance of fees among regulated entities, evaluating whether the impact of market-based fees, and their inherent volatility, as a contributor to the growth of excess reserves can be mitigated, and ensuring funding is sufficient to address expected structural operating deficits projected in future years under the current fee structure. The Board is cognizant of the temporary fee reductions it has adopted as a mechanism to address excess reserves in recent years and has developed these objectives for its review considering the factors that led to the use of such temporary fee reductions.

²² The Board filed a proposed rule change amending Rule A-13 to temporarily reduce market activity fees for Fiscal Year 2019. See Release No. 34-83713 (July 26, 2018), 83 FR 37538 (Aug. 1, 2018) (File No. SR-MSRB-2018-06); see also Release No. 34-85400 (Mar. 22, 2019), 84 FR 11841 (Mar. 28, 2019) (File No. SR-MSRB-2019-06) (providing for an additional temporary fee reduction in Fiscal Year 2019).

While all regulated entities contribute to the MSRB's revenue base, market activity fees constitute the vast majority of budgeted revenue, a total of approximately 77 percent in Fiscal Year 2021.²³ Market activity fees are driven by market dynamics and are inherently unpredictable. Because of this unpredictability, the amount of market activity fees collected by the MSRB historically has exceeded the amount budgeted.²⁴ Therefore, the Board has determined that market activity fees paid by dealers have uniquely and directly contributed to the MSRB's excess reserves position while other fees collected from regulated entities have not. Specifically, the other fees collected by the MSRB have provided a relatively smaller portion of the MSRB's actual revenue, in comparison to market activity fees, and, at the same time, the other fees have not exceeded their respective budgeted amounts as consistently and to the same degree as market activity fees, if at all.²⁵ Thus, unlike market activity fees, the Board has determined that these other fees on regulated entities have not contributed to the MSRB's excess reserves position.²⁶

²³ See MSRB Fiscal Year 2021 Budget (link at note 15 supra). Notably, this amount is generally consistent with recent prior fiscal years.

²⁴ Although the organization's revenue sources have become modestly more diversified since the initial enactment of the Dodd-Frank Act – when market activity fees accounted for 90 percent or more of the Board's annual revenue in certain fiscal years – market activity fees paid by dealers still accounted for approximately 80 percent of actual revenue in Fiscal Year 2018 (~\$33.5 million), 72 percent in Fiscal Year 2019 (~\$24.4 million), and 77 percent in Fiscal Year 2020 (~\$36.6 million). The MSRB's Financial Statements for these years are available at <http://msrb.org/About-MSRB/Financial-and-Other-Information/Annual-Reports.aspx>

²⁵ Id.

²⁶ Id.

As the Board has considered and revisited the reasonable fees and charges necessary or appropriate to defray the costs and expenses of operating and administering the MSRB, the Board has continually strived to have a fair and equitable balance of fees among regulated entities.²⁷ Accordingly, the Board has determined that the market activity fees that directly contributed to the excess reserves position should be the fees that are targeted for a temporary reduction, and so market activity fees paid by dealers are the subject of the proposed rule change.

The Board continually 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 eighteen-month fee reduction for certain market activity fees assessed on dealers would continue these ongoing efforts, allowing the Board to take timely action to provide relief and reduce reserves to target levels while undertaking a longer-term effort to assess and potentially develop a revised fee structure to be implemented at the conclusion of the temporary fee reduction period.²⁸

Proposed Rule Change

The proposed rule change would enact a temporary fee reduction on market activity fees by amending section MSRB Rule A-13(h) to reduce by 40 percent the fees for assessable activity that occurs on April 1, 2021 through September 30, 2022.²⁹

²⁷ See, e.g., MSRB Regulatory Notice 2017-20 (Sept. 29, 2017) (“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.”)

²⁸ As noted, and for the reasons otherwise discussed herein, underwriting assessments charged pursuant to Rule A-13(c)(ii) to dealers acting as underwriters of municipal fund securities are not included in the temporary fee reduction.

²⁹ The 40 percent is relative to the existing market activity fees respectively specified in MSRB Rule A-13(c)(i) and MSRB Rule A-13(d). Note, however, that the proposed rule

- Amended MSRB Rule A-13(h)(i) would provide that the underwriting assessment for certain primary offerings during this period would be .00165% of the par value (\$0.0165 per \$1,000), a reduction of 40 percent from .00275% of the par value (\$.0275 per \$1,000) assessed under MSRB Rule A-13(c)(i).
- Amended MSRB Rule A-13(h)(ii) would provide that the transaction assessment during this period would be .0006% of the par value (\$0.006 per \$1,000), a reduction of 40 percent from .001% (\$.01 per \$1,000) assessed under MSRB Rule A-13(d)(i) and MSRB Rule A-13(d)(ii).
- Amended MSRB Rule A-13(h)(iii) would provide that the technology assessment during this period would be \$0.60 per transaction, a reduction of 40 percent from \$1.00 per transaction assessed under MSRB Rule A-13(d)(iv).

The temporarily reduced rates would be for assessable activity that occurs during this eighteen-month period, inclusive of activity occurring on the beginning date of April 1, 2021 and the end date of September 30, 2022.³⁰ Effective October 1, 2022, the rates of assessment for these market activity fees would revert to current levels on assessable activity occurring on and after that date.

change would amend the temporary fee reduction language of MSRB Rule A-13(h) and would not change the text of MSRB Rule A-13(c)(i) or MSRB Rule A-13(d).

³⁰ 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.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,³¹ 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.

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),³² achieving a more reasonable fee structure, a more equitable balance of fees among regulated entities, and a fairer allocation of the expenses of the MSRB.

As described above, the MSRB's reserves position currently exceeds its target. This surplus has continued despite prior efforts undertaken by the Board to address the MSRB's financial position, such as budgeting operating deficits, providing for prior fee reductions,³³ and making strategically significant investments in market transparency systems.³⁴ Accordingly, the Board has determined to seek this additional temporary fee reduction for market activity fees

³¹ 15 U.S.C. 78o-4(b)(2)(J).

³² Id.

³³ See note 22 supra and related discussion regarding prior temporary fee reductions in Fiscal Year 2019. See also Release No. 34-75751 (Aug. 24, 2015), 80 FR 52352 (Aug. 28, 2015) (File No. SR-MSRB-2015-08) (amending the underwriting fee, among other amendments).

³⁴ See note 17 supra and related discussion (identifying examples of such investments).

after considerable analysis and deliberation, particularly regarding the advantages, disadvantages, and outcomes of its prior activities. Both in light of the impact of the COVID-19 pandemic on the MSRB's Fiscal Year 2020 financial results and also when considered in conjunction with its planned broader examination of the MSRB's fee structure, the Board believes that the proposed rule change resulting in the temporary fee reductions is preferable at this time to address the excess reserves position instead of, for example, funding anticipated future operating deficits over a number of years until excess reserves are depleted.

In this way, the Board's determination to seek the proposed rule change's temporary fee reduction is informed by the MSRB's prior experience in attempting to address its excess reserves position. For example, the Board continues to believe that a temporary reduction of market activity fees is a reasonable and appropriate mechanism for reducing its excess reserves position because, as a matter of fairness and equity among regulated entities who pay MSRB fees, it would temporarily decrease fees for those regulated entities that financially contributed to the excess reserves position.

At the same time, the Board believes that the temporary fee reduction – which would be assessed over a relatively extended period of eighteenth months – is more prudent and equitable than other alternatives. Specifically, the Board believes that one of the advantages of extending the temporary fee reduction over the course of eighteen months, as opposed to a shorter period, is that the proposed rule change will capture a larger, and likely more representative, segment of market activity than if the fee reduction was for a shorter duration.³⁵

³⁵ As a general illustration of this point, the MSRB believes that a dealer firm that only occasionally engages in underwriting business is more likely to receive a benefit from a fee reduction occurring over an eighteenth-month period than, for example, a fee reduction occurring over a six-month period.

Additionally, stretching the duration of the fee reduction to eighteen months will allow the MSRB to progress toward its reserves target at a more measured pace of net-deficit spending than if, for example, the total percentage amount of the fee reduction was more aggressive. In addition, and as previously noted above, the Board believes that the eighteen-month duration of the temporary fee reduction is reasonable and appropriate because it will provide the Board requisite time to evaluate the organization's fee structure thoughtfully and thoroughly and arrive at longer term conclusions about the MSRB's financial positioning.³⁶

Lastly, the Board believes that the mechanism of a temporary fee reduction is preferable to a rebate or similar return mechanisms that would more directly reimburse the regulated entities who paid the market activity fees that contributed to the excess reserves position. The MSRB understands that such direct fee rebates based on past fee payments may pose operational challenges to dealer firms.³⁷ In contrast, the proposed rule change's temporary fee reduction has the advantage of granting firms notice and time to operationalize the reduced fees into their business processes.

For all the reasons discussed herein, the MSRB believes that the proposed rule change satisfies the applicable requirements of the Act and the Board has developed a reasonable and appropriate mechanism for addressing the excess reserves position generated by the MSRB's current fee structure.

³⁶ See note 21 *supra*.

³⁷ The MSRB also understands that dealer firms receiving "rebates" and similar after-the-fact reimbursements for prior payments and historical activity may have difficulty in accurately calculating and appropriately redistributing money through or across organizations, particularly for underwriting syndicate participants.

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

Section 15B(b)(2)(C) of the Act³⁸ 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 MSRB believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act because the proposed rule change proportionately applies to each dealer firm that may pay market activity fees and, thereby, equitably benefits this class of regulated entity. Consequently, the MSRB believes that the proposed rule change will not impact competition in this regard.

The Board's policy on the use of economic analysis is not applicable to those rules for which the Board seeks immediate effectiveness.³⁹ However, an internal analysis may still be 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 achieve the goal of reducing the MSRB's reserves. Because the market activity fees that are the subject of the proposed rule change comprised a majority of

³⁸ 15 U.S.C. 78o-4(b)(2)(C).

³⁹ 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.

MSRB's revenue and contributed to the excess reserves, the Board believes that it is reasonable and appropriate to temporarily reduce these fees for the designated period to achieve this objective. Additionally, the MSRB believes that the duration of the proposed rule change's temporary fee reduction is reasonable and appropriate in light of the MSRB's excess reserves position and the Board's ongoing review of the MSRB's overall fee structure and goal of arriving at longer-term conclusions about the MSRB's financial positioning.

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 market activity fees by the same percentage for all dealers subject to these fees. Consequently, the equal application of the fee reduction will not result in an impact on market competition. The proposed fee reduction utilizes the temporary fee reduction mechanism already established and effectively used in Fiscal Year 2019 while the MSRB proceeds with a broader review of its fee structure. Notably, this time the length of the reduction time period is eighteen months versus nine months in Fiscal Year 2019 and the rate of reduction is now 40 percent versus 33 percent in Fiscal Year 2019. Based on the current level of MSRB's reserves and the Board's target level, the Fiscal Year 2021 budget and pro forma for Fiscal Year 2022 (projected budget numbers between April 2021 and September 2022), a 40 percent reduction of the fees assessed under Rule A-13(c)(i) and (d) would forgo revenue of, and thus reduce reserves by, an estimated \$18.8 million.⁴⁰

The MSRB believes that the proposed rule change would not impose an unnecessary or inappropriate regulatory burden on dealers, as dealers with different levels of underwriting and

⁴⁰ In round numbers, the proposed fee reduction would reduce an estimated \$6 million fee for underwriting, \$9 million fee for transaction, and \$4 million fee for technology.

trading activities would all benefit from the temporary fee reduction proportionately during the relevant period. For dealers engaging in primary market activity, a temporary 40 percent reduction in the underwriting assessment of the par value will benefit all dealers and the reduction amount will be proportionate to each dealer's total underwriting par amount. Additionally, all dealers engaging in secondary market activity will be impacted by a 40 percent reduction of the transaction assessment on the par value traded by each dealer and a 40 percent reduction in the technology fee based on the number of trades conducted by each dealer. In summary, no firm would be unduly burdened as compared to another firm. Nor would a firm engaging in both underwriting *and* trading activities be unduly burdened as compared to singularly focused firms, as the proposed rule change would provide for a 40 percent reduction to each of the market activity fees.

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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁴¹ and paragraph (f) of Rule 19b-4⁴² 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.

⁴¹ 15 U.S.C. 78s(b)(3)(A).

⁴² 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 e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2021-02 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2021-02. 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 10:00 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-2021-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.⁴³

J. Matthew DeLesDernier
Assistant Secretary

⁴³ 17 CFR 200.30-3(a)(12).