

GASB Accounting Support Fee

FINRA Requests Comment on Amendments to Schedule A of the FINRA By-Laws to Implement an Accounting Support Fee to Fund the Governmental Accounting Standards Board

Comment Period Expires: August 1, 2011

Executive Summary

The Securities and Exchange Commission (SEC) has issued an order requiring FINRA to establish a reasonable annual accounting support fee (GASB Accounting Support Fee) to adequately fund the annual budget of the Governmental Accounting Standards Board (GASB), pursuant to Section 19(g) of the Securities Act of 1933. FINRA requests comment on the proposed amendments to Schedule A of the FINRA By-Laws that would establish this fee, which would be allocated among FINRA member firms based on municipal securities transactions reported to the Municipal Securities Rulemaking Board.

The text of the proposed amendments is in Attachment A to this *Notice*.

Questions concerning this *Notice* should be directed to Brant K. Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by August 1, 2011.

June 2011

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Government Securities
- ▶ Institutional
- ▶ Legal
- ▶ Municipal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Financial Accounting Foundation
- ▶ GASB Accounting Support Fee
- ▶ Governmental Accounting Standards Board
- ▶ Municipal Securities Transactions

Referenced Rules & Notices

- ▶ FINRA By-Laws, Schedule A
- ▶ MSRB Rule G-14(b)
- ▶ Dodd-Frank Act Section 978
- ▶ Securities Act Section 19(g)

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments on its site one week after the end of the comment period.¹

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).²

Background and Discussion

The GASB was established in 1984 by agreement of the Financial Accounting Foundation and ten national associations of state and local government officials as an independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. The GASB is recognized by governments, the accounting industry and the capital markets as the source for the development and publication of the generally accepted accounting principles (GAAP) for state and local governments.³

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) became effective on July 21, 2010.⁴ As added by Section 978 of the Dodd-Frank Act, Section 19(g) of the Securities Act of 1933 (Securities Act) gives the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the member firms.⁵ On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish such a fee to provide for an independent and more reliable funding mechanism for the GASB.⁶

FINRA is requesting comment on proposed new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) under Schedule A to the FINRA By-Laws to

implement the GASB Accounting Support Fee. FINRA believes that assessing the GASB Accounting Support Fee on a transaction-based basis would be the most equitable and efficient method to assess the fee. Consequently, under proposed Section 14, the GASB Accounting Support Fee would be allocated among FINRA member firms based on municipal securities transactions reported to the Municipal Securities Rulemaking Board (MSRB). Specifically, each calendar quarter, each member firm would be required to pay an assessment to FINRA of its portion of one quarter of the annual GASB Accounting Support Fee amount that reflects the firm's portion of the total par value of municipal securities sales reported by FINRA members to the MSRB under MSRB Rule G-14(b)⁷ in the previous calendar quarter. Thus, for example, if GASB's recoverable annual budgeted expenses for a given year were \$10 million, FINRA would collect \$2.5 million from its member firms each quarter.⁸ Each firm's fee would be based on the firm's portion of municipal securities transactions (based on the par value of reported transactions, not their price) reported by FINRA members to the MSRB in the previous calendar quarter.⁹ Firms with a quarterly assessment of less than \$25 would not be charged the fee for that quarter, and any amounts originally assessed to those firms would be reallocated among the firms with an assessment that quarter of \$25 or more.

As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA would be remitted to the Financial Accounting Foundation¹⁰ and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.¹¹ Collection of the GASB Accounting Support Fee would not allow the SEC or FINRA to have any direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of GAAP by the GASB.¹²

Because some firms may seek to pass the GASB Accounting Support Fee on to customers engaged in municipal securities transactions, FINRA proposes to publish a *Regulatory Notice* each year disclosing the total annual GASB Accounting Support Fee FINRA will collect for that year. In this annual *Notice*, FINRA also anticipates setting out the estimated fee rate based on the GASB's recoverable annual budgeted expenses for that year and historical municipal security trade reporting volumes so that firms will have some basis on which to establish a fee, should they choose to do so. Any firms choosing to pass along the fee, however, would be reminded of the need for proper disclosure of the GASB Accounting Support Fee, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, any disclosure used by the firm cannot be misleading and must comport with FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

Request for Comment

FINRA is requesting comment on proposed new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) under Schedule A to the FINRA By-Laws. FINRA welcomes comments on its proposed methodology for assessing the GASB Accounting Supporting Fee as discussed in this *Notice*. The comment period expires on August 1, 2011.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See [NTM 03-73](#) (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
3. The GASB is not a government entity. It is an operating component of the Financial Accounting Foundation, which is a private-sector, not-for-profit entity. Funding for the GASB comes in part from sales of its own publications and in part from state and local governments and the municipal bond community. Its standards are not federal laws or regulations, and the GASB does not have enforcement authority. See [Facts About GASB](#).
4. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
5. See 15 U.S.C. 77s. For purposes of the GASB Accounting Support Fee, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation. See 15 U.S.C. 77s(g)(2). FINRA anticipates that the GASB's annual budget will include an administrative fee to FINRA of \$50,000. The administrative fee is intended to cover FINRA's costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee and was negotiated with the Financial Accounting Foundation.
6. See Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011).
7. MSRB Rule G-14(b) sets out municipal securities transaction reporting requirements.
8. Section 19(g)(4) of the Securities Act, as added by the Dodd-Frank Act, prohibits FINRA from collecting GASB Accounting Support Fees for a fiscal year in excess of GASB's recoverable annual budgeted expenses. See 15 U.S.C. 77s(g)(4). Because a transaction-based fee is inherently unpredictable and variable, and because FINRA would be statutorily prohibited from collecting amounts in excess of GASB's recoverable annual budgeted expenses, FINRA is proposing a quarterly assessment based on GASB's budget.
9. Thus, if a member firm does not engage in reportable municipal securities transactions, it would not be subject to the GASB Accounting Support Fee.
10. See 15 U.S.C. 77s(g)(1).
11. See 15 U.S.C. 77s(g)(3).
12. See 15 U.S.C. 77s(g)(5).

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ATTACHMENT A

The following is the text of the proposed amendments to Schedule A to the FINRA By-Laws. New text is underlined.

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SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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Section 14—Accounting Support Fee for Governmental Accounting Standards Board

(a) FINRA shall, in accordance with this Section, allocate, assess, and collect a GASB Accounting Support Fee to fund the annual budget of the Governmental Accounting Standards Board. The GASB Accounting Support Fee is based on the recoverable annual budgeted expenses provided to FINRA by the Governmental Accounting Standards Board, and amounts collected under this Section shall be remitted to the Financial Accounting Foundation.

(b) Except as provided in paragraph (c), each calendar quarter, each member shall pay an assessment to FINRA of its portion of one quarter of the annual GASB Accounting Support Fee amount that reflects the member's portion of the total par value of municipal securities sales reported by members to the Municipal Securities Rulemaking Board under MSRB Rule G-14(b) in the previous calendar quarter.

(c) If, in a given calendar quarter, a member's GASB Accounting Support Fee amount is less than \$25, the member will not be assessed a GASB Accounting Support Fee for that quarter. The amount not assessed to the member will be reallocated among the other members assessed a GASB Accounting Support Fee for that quarter based on each member's portion of the total par value of municipal securities sales reported by members to the Municipal Securities Rulemaking Board under MSRB Rule G-14(b) in the previous calendar quarter.

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