

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 72

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2011 - \* 073

Amendment No. (req. for Amendments \*)

Proposed Rule Change by Financial Industry Regulatory Authority  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \* ☒ Amendment \* ☐ Withdrawal ☐

Section 19(b)(2) \* ☒ Section 19(b)(3)(A) \* ☐ Section 19(b)(3)(B) \* ☐

## Rule

Pilot ☐ Extension of Time Period  
 for Commission Action \* ☐ Date Expires \*

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)  
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)  
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

## Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee

## Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Brant Last Name \* Brown  
 Title \* Associate General Counsel  
 E-mail \* brant.brown@finra.org  
 Telephone \* (202) 728-6927 Fax (202) 728-8264

## Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 12/19/2011

By Stephanie Dumont  
 (Name \*)

Senior Vice President and Director of Capital Markets  
 Policy

(Title \*)

NOTE: Clicking the button at right will digitally sign and lock  
 this form. A digital signature is as legally binding as a physical  
 signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt Section 14 to Schedule A of the FINRA By-Laws to establish an accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (“GASB”).

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**SCHEDULE A TO THE BY-LAWS OF THE CORPORATION**

\* \* \* \* \*

**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

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

Accounting Support Fee amount that reflects the member's portion of the total par value of municipal securities transactions 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 assessment 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 transactions reported by members to the Municipal Securities Rulemaking Board under MSRB Rule G-14(b) in the previous calendar quarter.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

At its meeting on April 14, 2011, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

The effective date of the proposed rule change will be the date of SEC approval. The initial fees assessed on members will be based on trading activity reported in the calendar quarter during which the SEC approves the proposed rule change. For example, if the proposed rule change is approved on February 1, 2012, FINRA will bill members based on trading activity from January 1, 2012, to March 31, 2012, to cover one quarter

of GASB's 2012 budget. As a result, depending on the date of SEC approval, the proposed GASB fee may only cover a portion of the 2012 GASB budget.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The GASB was established in 1984 by agreement of the Financial Accounting Foundation ("FAF") 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.<sup>2</sup> 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.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") was signed into law by President Obama on July 21, 2010.<sup>3</sup> 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 ("GASB Accounting Support Fee") and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the association's

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<sup>2</sup> The GASB is not a government entity. It is an operating component of the FAF, which is a private-sector, not-for-profit entity. Funding for the GASB comes in part from sales of 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, <http://gasb.org>.

<sup>3</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

members.<sup>4</sup> On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.<sup>5</sup>

In response to the SEC's order of May 11, 2011, FINRA is proposing new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) to Schedule A of the FINRA By-Laws to establish the GASB Accounting Support Fee. After considering multiple ways to assess the GASB Accounting Support Fee on its members and issuing Regulatory Notice 11-28 requesting comment on the GASB Accounting Support Fee, the proposed rule change assesses the fee based on members' municipal securities trading volume reported to the Municipal Securities Rulemaking Board ("MSRB"). FINRA believes that basing the GASB Accounting Support Fee on reliable and timely reporting data will ensure the accuracy of the fee and that using transaction data to apportion the fee will result in a fair and equitable assessment across FINRA

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<sup>4</sup> See 15 U.S.C. 77s(g). 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 FAF. See 15 U.S.C. 77s(g)(2). FINRA anticipates that the GASB's annual budget will include an administrative fee to FINRA. The administrative fee is intended to cover FINRA's costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee, and the amount will be negotiated with the FAF each year. For the initial year, the administrative fee will be \$50,000.

<sup>5</sup> Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011).

members. However, because FINRA is statutorily prohibited from collecting amounts in excess of GASB's recoverable annual budgeted expenses and because a transaction-based fee is inherently variable due to the unpredictability of transaction volume, FINRA is proposing a quarterly assessment based on GASB's annual budget.<sup>6</sup> Under proposed Section 14, the GASB Accounting Support Fee will be allocated among FINRA members on a quarterly basis based on municipal securities transactions reported to the MSRB. Specifically, each calendar quarter, each FINRA member 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 member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB under MSRB Rule G-14(b)<sup>7</sup> in the previous calendar quarter. For example, if GASB's recoverable annual budgeted expenses for a given year were \$10 million, FINRA would collect \$2.5 million from its members each quarter. Each member's fee would be based on the member's proportion of municipal securities transactions (based on the par value of reported transactions, not their price) reported by all FINRA members to the MSRB in the previous calendar quarter.<sup>8</sup> Thus, for example, if a member reported transactions to the MSRB in a given quarter that accounted for 10% of the total par value amount of transactions reported by all FINRA members during the quarter, the member's

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<sup>6</sup> 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).

<sup>7</sup> MSRB Rule G-14(b) sets out municipal securities transaction reporting requirements.

<sup>8</sup> If a member does not engage in reportable municipal securities transactions during a particular calendar quarter, the member would not be subject to the GASB Accounting Support Fee for that quarter.

assessment would be 10% of one quarter of GASB's annual budget (in the above example, the member's quarterly assessment would be \$250,000 (i.e., 10% of \$2.5 million)).

To exclude members with de minimis transactions in municipal securities in a given quarter from being assessed the fee, FINRA is proposing that members with a quarterly assessment of less than \$25 would not be charged the fee for that quarter. Any amounts originally assessed to those members would be reallocated among the members with an assessment that quarter of \$25 or more based on the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB.

As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA will be remitted to the FAF<sup>9</sup> and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.<sup>10</sup> In accordance with Section 19(g)(5)(B) of the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the SEC or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of GAAP by the GASB.<sup>11</sup>

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<sup>9</sup> See 15 U.S.C. 77s(g)(1).

<sup>10</sup> See 15 U.S.C. 77s(g)(3). Specifically, FINRA anticipates establishing a separate bank account specifically for the GASB Accounting Support Fee and will coordinate with the FAF to establish a process by which FINRA will wire the funds into the FAF account for the GASB Accounting Support Fee. Given the separate bank account, FINRA will provide monthly account reconciliations and accounts receivable aging reports, which will be reviewed by FINRA management each month and will be available for review by FAF and GASB management upon request.

<sup>11</sup> See 15 U.S.C. 77s(g)(5)(B).

As FINRA noted in Regulatory Notice 11-28, because some firms may seek to pass the GASB Accounting Support Fee onto 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 an estimated fee rate (per \$1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA 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. The Notice will also remind any firms choosing to pass along the fee 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.

As noted in Item 2 of this filing, the effective date of the proposed rule change will be the date of SEC approval. The initial fees assessed on members will be based on trading activity reported in the calendar quarter during which the SEC approves the proposed rule change. For example, if the proposed rule change is approved on February 1, 2012, FINRA will bill members based on trading activity from January 1, 2012, to March 31, 2012, to cover one quarter of GASB's 2012 budget. As a result, depending on the date of SEC approval, the proposed GASB fee may only cover a portion of the 2012 GASB budget.

(b) Statutory Basis

The proposed rule change is being filed in response to the SEC's order of May 11, 2011, which was issued pursuant to Section 19(g) of the Securities Act. Section 19(g) 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 association's members. On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>12</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that, given the restrictions in Section 19(g) of the Securities Act regarding the specific amount FINRA must collect, a quarterly transaction-based assessment with a limited exception for firms with a de minimis amount of reportable municipal securities transactions is a fair and equitable manner to assess the fee. FINRA also believes that the \$25 per quarter exemption threshold strikes an appropriate balance

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<sup>12</sup> 15 U.S.C. 78o-3(b)(5).

between exempting those firms with truly de minimis transactions and not imposing an undue burden on other firms to recover the amount that would be assessed on the exempt firms.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The proposed rule change was published for comment in Regulatory Notice 11-28 (June 2011). A copy of the Regulatory Notice is attached as Exhibit 2a. The comment period expired on August 1, 2011. FINRA received eleven comment letters in response to the Regulatory Notice.<sup>13</sup> A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b. Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c. Of the eleven comment letters received, five were generally in favor of the proposed rule change and six were generally opposed.

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<sup>13</sup> See Letter from Brown & Brown Financial Services, Inc., dated July 5, 2011 ("B&B"); letter from Third Party Marketers Association, dated July 26, 2011 ("3PM"); letter from NPB Financial Group, LLC, dated July 27, 2011 ("NPB"); letter from City of Bay City, Michigan, dated July 28, 2011 ("Bay City"); letter from Bond Dealers of America, dated August 1, 2011 ("BDA"); letter from Government Finance Officers Association, dated August 1, 2011 ("GFOA"); letter from National Association of State Auditors, Comptrollers and Treasurers, dated August 1, 2011 ("NASACT"); letter from Roosevelt & Cross Incorporated, dated August 1, 2011 ("R&C"); letter from Securities Industry and Financial Markets Association, dated August 1, 2011 ("SIFMA"); letter from National Association of Independent Broker/Dealers, dated August 2, 2011 ("NAIBD"); letter from Hartfield Titus & Donnelly, LLC, dated August 11, 2011 ("HT&D").

Several commenters expressed the view that broker-dealers, and specifically FINRA members, should not be forced to shoulder the entire burden of funding the GASB because many other market participants, issuers, and other people who benefit from GASB accounting standards are not registered broker-dealers or FINRA members.<sup>14</sup> For example, one commenter stated that “many other end users of GASB’s accounting and financial reporting standards . . . get a ‘free ride’ under FINRA’s proposed methodology.”<sup>15</sup> Another commenter suggested that a proportionate share of the revenue necessary to fund the GASB come from municipal financial advisors, which are registered with the SEC and the MSRB, although not always with FINRA.<sup>16</sup> Another commenter suggested that the MSRB, rather than FINRA, should administer the fee because bank dealers are members of the MSRB but are not members of FINRA.<sup>17</sup>

Although FINRA recognizes the concerns raised by the commenters regarding the specification of FINRA members as the funding source for the GASB, Section 19(g) of the Securities Act, under which the SEC issued its order, substantially limits the parameters of the GASB Accounting Support Fee. Section 19(g)(1)(B) of the Securities Act provides that the SEC may require a registered national securities association<sup>18</sup> to

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<sup>14</sup> See BDA, HT&D, NAIBD, SIFMA, R&C.

<sup>15</sup> See SIFMA. The commenter specifically identified non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, rating agencies, mutual funds, legislative/governmental staff, and taxpayer organizations. See also HT&D.

<sup>16</sup> See NAIBD.

<sup>17</sup> See SIFMA.

<sup>18</sup> FINRA is the only national securities association registered with the Commission.

assess and collect the accounting support fee “from the members of the association.”<sup>19</sup>

Consequently, the order issued by the SEC pursuant to Section 19(g) of the Securities Act requires FINRA to collect the GASB Accounting Support Fee from its members, and FINRA has no authority to collect the fee from non-FINRA members.<sup>20</sup>

Three commenters expressed concern that there was no independent oversight of the GASB’s annual budget and asserted that this lack of oversight provides no incentive for transparency or fiscal discipline.<sup>21</sup> One commenter noted that the recent Government Accountability Office report on the GASB<sup>22</sup> observed that some stakeholders “were concerned with the level and nature of GASB’s expenditures—such as the amounts spent on staff salaries and office space—as well as a perceived lack of transparency associated with its budget process.”<sup>23</sup>

The commenters are correct that although FINRA has been ordered to assess and collect the GASB Accounting Support Fee, FINRA has no authority under Section 19(g) of the Securities Act to review the GASB’s budget. In fact, Section 19(g)(5)(B)(i) of the Securities Act specifically provides that collection of the GASB Accounting Support Fee

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<sup>19</sup> 15 U.S.C. 77s (g)(1)(B).

<sup>20</sup> FINRA estimates that over 95 percent of municipal transactions reported to the MSRB are reported by FINRA members.

<sup>21</sup> See BDA, HT&D, SIFMA.

<sup>22</sup> See Report of the United States Government Accountability Office, Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in Municipal Securities Markets and its Past Funding (January 18, 2011), available at <http://www.gao.gov/new.items/d11267r.pdf>.

<sup>23</sup> See SIFMA.

does not provide FINRA with any direct or indirect oversight of the budget or technical agenda of the GASB.<sup>24</sup>

One commenter<sup>25</sup> suggested that FINRA has not met the statutory requirement in Section 19(g)(1)(B) of the Securities Act that it consult with certain groups when establishing the rules and procedures regarding the GASB Accounting Support Fee.<sup>26</sup> The commenter claims that “FINRA did not consult with any state and local government associations before submitting a notice for public comment regarding the rules and procedures for establishing the GASB fee.” The commenter also asserts that “Section 978 of the [Dodd-Frank Act] expressly requires prior consultation with the ‘principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.’”

Contrary to the commenter’s conclusion that FINRA failed to consult with the specified organizations, FINRA departed from its standard practice and provided nineteen different organizations representing State governors, legislators, local elected officials, and State and local finance officers with a draft of Regulatory Notice 11-28 before the Notice was published for public comment.<sup>27</sup> In addition, after receipt of the

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<sup>24</sup> See 15 U.S.C. 77s(g)(5)(B)(i).

<sup>25</sup> See GFOA.

<sup>26</sup> Section 19(g)(1)(B) of the Securities Act states that the Commission may require FINRA to “establish . . . rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the [GASB Accounting Support Fee].” 15 U.S.C. 77s(g)(1)(B).

<sup>27</sup> Specifically, on Thursday, June 9, 2011, FINRA provided a draft of the Regulatory Notice to representatives of the National Governors Association (“NGA”); the Council of State Governments; the National Conference of State

GFOA comment letter, FINRA participated in a conference call with representatives of GFOA, NASACT, NASBO, and the NGA where those groups reiterated the issues set forth in the GFOA and NASACT comment letters. Moreover, FINRA's publication of a Regulatory Notice requesting comment on a proposal before it is filed with the SEC is itself an additional form of consultation. Indeed, two organizations representing state and local finance officers submitted formal comment letters expressing their views on the proposal.<sup>28</sup> To provide a further opportunity for all interested parties (including those organizations specified in Section 19(g) of the Securities Act) to raise any concerns and express their views, FINRA has elected to file the proposed rule change for full notice and comment under Section 19(b) of the Act.<sup>29</sup> Given the multiple forms of consultation that have taken place regarding the proposed rule change, FINRA has met the consultation requirements set forth in Section 19(g) of the Securities Act.

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Legislatures; the National Association of Counties; the U.S. Conference of Mayors; the National League of Cities; the Association of Government Accountants; the Government Finance Officers Association; the International City/County Management Association; the National Association of State Auditors, Comptrollers and Treasurers ("NASACT"); the National Association of State Budget Officers ("NASBO"); the National Association of State Retirement Administrators; the Native American Finance Officers Association; the National Federation of Municipal Analysts; the Association of Local Government Auditors; the National Association of State Treasurers; the National Council of State Housing Agencies; the National Association of Local Housing Financing Agencies; and the Council of Infrastructure Financing Authorities. The Notice was posted publicly on June 16, 2011.

<sup>28</sup> See GFOA, NASACT.

<sup>29</sup> Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder permit FINRA to file a proposed rule change for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge. See 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b-4(f)(2).

One commenter questioned the administrative fee GASB will pay to FINRA for calculating, assessing, and collected the GASB Accounting Support Fee.<sup>30</sup> As FINRA noted in Regulatory Notice 11-28, FINRA has negotiated an administrative fee with the FAF of \$50,000 for the initial year that the GASB Accounting Support Fee is in place that is intended to cover FINRA's estimated costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee. The commenter asserted that the fee was "unwarranted" because "FINRA already has a process for collecting its own Trading Activity Fee from broker dealers, and could easily amend this process to include the GASB Accounting Support Fee."<sup>31</sup> The commenter also suggested that the MSRB could administer the fee for minimal costs if FINRA moves forward with a fee based on underwritings or transactions.

The commenter's statements are misplaced, and FINRA disagrees that the fee is unwarranted. The commenter's analogy to FINRA's Trading Activity Fee ("TAF") is inappropriate for several reasons.

First, FINRA does not believe that the use of a self-reporting model like the TAF is appropriate for the GASB Accounting Support Fee.<sup>32</sup> FINRA believes that the transaction information available through the MSRB serves as a more timely and reliable source of transaction information than self-reported aggregate quarterly data calculated by the various members subject to the fee. Moreover, FINRA believes that requiring

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<sup>30</sup> See SIFMA.

<sup>31</sup> See SIFMA.

<sup>32</sup> The TAF is self-reported to FINRA by members on a monthly basis on the clearing firm level. See Trading Activity Fee FAQ Q100.5, available at <http://www.finra.org/taf/faq>.

self-reporting could increase compliance costs for firms and increase costs to FINRA. As proposed, FINRA will rely on transaction data that is already reported by members to the MSRB (i.e., there will be no increased compliance efforts necessary for members since, as discussed below, FINRA does not believe that the calculations members currently undertake for reporting the TAF would be the same as those for the GASB Accounting Support Fee). For FINRA, a self-reporting model raises two primary complications. First, FINRA would need to audit members to ensure that their self-reporting was accurate and timely, which could increase FINRA's costs in administering the fee. Second, Section 19(g) of the Securities Act requires FINRA to collect exact amounts, thus creating an inability to remedy potential over- or under-payments by members that self-report erroneous data.

Second, FINRA does not believe that the exceptions from the TAF should apply to the assessment of the GASB Accounting Support Fee, and the TAF is currently charged only to the sell side of a transaction. Although municipal securities subject to MSRB reporting requirements are generally subject to the TAF, the TAF rules contain exceptions for certain transactions (e.g., primary market transactions). The goal of the GASB Accounting Support Fee assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is not appropriate to exclude any subset of reportable transactions from factoring into the fee assessment for purposes of allocating the GASB Accounting Support Fee.<sup>33</sup> In addition, and as discussed below, FINRA does not believe it is

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<sup>33</sup> See Schedule A to the FINRA By-Laws § 1(b).

appropriate to charge only one side of a transaction when two members are involved and are required to report the transaction to the MSRB.

For the foregoing reasons, FINRA does not believe that the TAF would serve as an appropriate model in assessing the GASB Accounting Support Fee. In addition, the amount of the administrative fee to FINRA was negotiated with the FAF and based on estimated costs to FINRA, including initial start-up technology costs, administrative costs, and the costs of personnel and other resources needed to process and implement the fee. FINRA anticipates that the amount of the administrative fee will be reviewed and evaluated each year by FINRA and by the FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and in the context of actual costs incurred by FINRA. Following the review, the amount of the administrative fee will be increased or decreased if necessary.

Commenters expressed opposing views on FINRA's proposal to base the GASB Accounting Support Fee on transactions in municipal securities reported to the MSRB. Although several commenters believed the proposed assessment method was reasonable and equitable,<sup>34</sup> other commenters opposed a transaction-based assessment.<sup>35</sup> Among the objections to the proposal, commenters stated that an assessment based on trade reporting volume would disproportionately affect lead underwriters<sup>36</sup> and brokers' brokers<sup>37</sup> and

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<sup>34</sup> See 3PM, NASACT, Bay City.

<sup>35</sup> See HT&D, R&C, SIFMA.

<sup>36</sup> See R&C.

<sup>37</sup> See HT&D, SIFMA.

would result in broker-to-broker transactions being assessed multiple times.<sup>38</sup> In addition, one commenter noted that the proposal “makes no distinction between bonds issued by GASB obligors, bonds issued by FASB obligors and bonds with obligors who follow neither set of standards.”<sup>39</sup>

After considering the objections raised by the commenters, FINRA continues to believe that a proportionate fee based on reported trading volume remains a reasonable and fair method to allocate the GASB Accounting Support Fee. As noted above, FINRA believes that using reported transaction data to calculate the fee ensures that the fee is based on accurate, reliable information. Because the fee is assessed on a proportionate basis, rather than being assessed each time a transaction is reported to the MSRB (e.g., a fixed fee charged on each reported transaction like those charged in connection with reporting trades to a FINRA trade reporting facility<sup>40</sup>), there are not multiple assessments on broker-to-broker transactions. Rather, both brokers reporting the same trade will have the volume of that trade factored into their share of total trade reporting volume for that quarter. The goal of the assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is appropriate that both brokers in a broker-to-broker transaction be considered as participating in that market with respect to such a transaction, rather than only use one side of the trade in calculating the fee (e.g., charging only the broker on the sell side). For similar reasons, FINRA also believes that the proposal does not disproportionately

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<sup>38</sup> See SIFMA. The commenter noted that in broker-to-broker transactions, both brokers report the trade to the MSRB.

<sup>39</sup> SIFMA.

<sup>40</sup> See, e.g., FINRA Rules 7620A, 7710.

affect lead underwriters or brokers' brokers; to the extent such firms have high trading volumes reported to the MSRB under applicable reporting rules, FINRA believes that this accurately reflects those firms' participation in the municipal securities markets, whether those firms act as underwriters, brokers' brokers, or simply as buyers or sellers of municipal securities.<sup>41</sup>

FINRA also declines to distinguish between issues based on whether the obligor has followed FASB standards, GASB standards, or neither. This information is not required to be reported to the MSRB, is not available on an automated basis, and it would be impractical for FINRA to attempt to maintain a comprehensive and accurate listing of those issues where the obligor has followed GASB standards.

Several commenters expressed views concerning the application of the GASB Accounting Support Fee to small firms and the exemption proposed in Regulatory Notice 11-28 for firms with a quarterly assessment of less than \$25. Two commenters suggested that FINRA increase the quarterly threshold from \$25 to \$1,000,<sup>42</sup> and one commenter suggested that "smaller firms" be exempt from the fee.<sup>43</sup> In contrast, one FINRA member suggested that any firm with a stake in GASB accounting standards should be

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<sup>41</sup> FINRA notes that basing the GASB Accounting Support Fee on underwriting, rather than transactions, would increase the burden on lead underwriters and would disproportionately affect those market participants engaged in underwriting activities rather than in trading in the secondary market. Moreover, basing the fee on underwriting would wholly exempt secondary market participants from paying the fee and would be assessed only on future municipal issues and would "grandfather" in previous issues. FINRA does not believe this is a more equitable way to assess the fee than a transaction-based approach.

<sup>42</sup> See 3PM, NAIBD.

<sup>43</sup> See BDA. The commenter did not define "smaller firms" and stated that it was not in a position to recommend a figure for the exemption because it did not have trading data available to it.

charged a small assessment, even if the firm had no assessable transactions in a given quarter.<sup>44</sup>

FINRA proposed a quarterly minimum threshold of \$25 in order to exempt from the GASB Accounting Support Fee those firms that do a de minimis amount of trading activity in municipal securities in a given quarter. There are approximately 1,100 FINRA members eligible to conduct business in municipal securities, and FINRA estimates that a de minimis threshold of \$25 per quarter would eliminate approximately 600 firms—approximately 55 percent of firms—per quarter from paying the fee. FINRA estimates that raising the level to \$1,000 per quarter would exempt approximately 90 percent of the firms reporting transactions to the MSRB from the fee each quarter.

As discussed above, FINRA is required to collect a specific amount of money each year to adequately fund the annual budget of the GASB. Because of this unique requirement, unlike other fees assessed by FINRA, any amount that one member is exempt from paying must be assessed on other members so that FINRA can meet its statutory obligation and collect the total amount needed to adequately fund the GASB's annual budget. Consequently, FINRA believes that a de minimis threshold of \$25 per quarter achieves a fair and reasonable balance between exempting those members that do a small amount of trading in municipal securities and ensuring that other members are not shouldering a disproportionate amount of the GASB Accounting Support Fee and being allocated amounts significantly above their proportion of reported trading activity. For the same reasons FINRA is not increasing the quarterly exemption amount, FINRA also declines to adopt an across-the-board "small firm exemption."

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See NPB.

In Regulatory Notice 11-28, FINRA noted that “some firms may seek to pass the GASB Accounting Support Fee on to customers engaged in municipal securities transactions.” This was an acknowledgement that, in many instances, members pass through FINRA fees and assessments to their customers. Some commenters expressed concern that members could pass the fee on to issuers of municipal securities and asked FINRA to clarify or mandate that members could not pass the fee along to issuers.<sup>45</sup> Other commenters suggested that FINRA make it easier for members to pass the fee along to customers, including issuers.<sup>46</sup> One commenter suggested that the GASB Accounting Support Fee should be structured as an underwriting assessment because “[p]rinciples of fundamental fairness would dictate dealers be allowed to pass through any GASB support fee to municipal bond issuers instead of or in addition to investors.”<sup>47</sup>

As discussed above, FINRA continues to believe that an equitable way to structure the fee is through a quarterly assessment based on trading volume with an exception for members whose assessment in a particular quarter would be less than \$25. FINRA has long recognized that members pass fees through to the customers whose transactions generate those fees, and FINRA rules generally do not address the commercial allocation of fees between members and their customers, provided such fees are fair, reasonable, and accurately disclosed. Although FINRA is not encouraging members to pass all or part of the GASB Accounting Support Fee to their customers, that decision is ultimately one for each member, subject to the conditions and requirements

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<sup>45</sup> See Bay City, GFOA, NASACT.

<sup>46</sup> See BDA, SIFMA.

<sup>47</sup> SIFMA.

noted. FINRA also declines to give a blanket exemption for issuers of municipal securities whose transactions may result in an increase to a member's allocation of the GASB Accounting Support Fee. FINRA notes, however, that transactions from a municipal securities issuer to an underwriter are not reported to the MSRB and thus would not generally be counted toward a member's quarterly assessment.<sup>48</sup>

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>49</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 11-28 (June 2011)

Exhibit 2b. List of commenters

Exhibit 2c. Comments received in response to Regulatory Notice 11-28

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<sup>48</sup> To the extent commenters are concerned that FINRA members acting as underwriters for municipal securities may increase their underwriting fees to recoup part of the assessment, FINRA generally considers fee negotiations between an issuer and an underwriter to be within each party's business decision-making process.

<sup>49</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2011-073)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA. 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

FINRA is proposing to adopt Section 14 to Schedule A of the FINRA By-Laws to establish an accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (“GASB”).

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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 GASB was established in 1984 by agreement of the Financial Accounting Foundation ("FAF") 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.<sup>3</sup> 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.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") was signed into law by President Obama on July 21, 2010.<sup>4</sup> As added by Section

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<sup>3</sup> The GASB is not a government entity. It is an operating component of the FAF, which is a private-sector, not-for-profit entity. Funding for the GASB comes in part from sales of 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, <http://gasb.org>.

<sup>4</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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 (“GASB Accounting Support Fee”) and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the association’s members.<sup>5</sup> On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.<sup>6</sup>

In response to the SEC’s order of May 11, 2011, FINRA is proposing new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) to Schedule A of the FINRA By-Laws to establish the GASB Accounting Support Fee. After considering multiple ways to assess the GASB Accounting Support Fee on its members and issuing Regulatory Notice 11-28 requesting comment on the GASB Accounting

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<sup>5</sup> See 15 U.S.C. 77s(g). 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 FAF. See 15 U.S.C. 77s(g)(2). FINRA anticipates that the GASB’s annual budget will include an administrative fee to FINRA. The administrative fee is intended to cover FINRA’s costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee, and the amount will be negotiated with the FAF each year. For the initial year, the administrative fee will be \$50,000.

<sup>6</sup> Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011).

Support Fee, the proposed rule change assesses the fee based on members' municipal securities trading volume reported to the Municipal Securities Rulemaking Board ("MSRB"). FINRA believes that basing the GASB Accounting Support Fee on reliable and timely reporting data will ensure the accuracy of the fee and that using transaction data to apportion the fee will result in a fair and equitable assessment across FINRA members. However, because FINRA is statutorily prohibited from collecting amounts in excess of GASB's recoverable annual budgeted expenses and because a transaction-based fee is inherently variable due to the unpredictability of transaction volume, FINRA is proposing a quarterly assessment based on GASB's annual budget.<sup>7</sup> Under proposed Section 14, the GASB Accounting Support Fee will be allocated among FINRA members on a quarterly basis based on municipal securities transactions reported to the MSRB. Specifically, each calendar quarter, each FINRA member 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 member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB under MSRB Rule G-14(b)<sup>8</sup> in the previous calendar quarter. For example, if GASB's recoverable annual budgeted expenses for a given year were \$10 million, FINRA would collect \$2.5 million from its members each quarter. Each member's fee would be based on the member's proportion of municipal securities transactions (based on the par value of reported

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<sup>7</sup> 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).

<sup>8</sup> MSRB Rule G-14(b) sets out municipal securities transaction reporting requirements.

transactions, not their price) reported by all FINRA members to the MSRB in the previous calendar quarter.<sup>9</sup> Thus, for example, if a member reported transactions to the MSRB in a given quarter that accounted for 10% of the total par value amount of transactions reported by all FINRA members during the quarter, the member's assessment would be 10% of one quarter of GASB's annual budget (in the above example, the member's quarterly assessment would be \$250,000 (i.e., 10% of \$2.5 million)).

To exclude members with de minimis transactions in municipal securities in a given quarter from being assessed the fee, FINRA is proposing that members with a quarterly assessment of less than \$25 would not be charged the fee for that quarter. Any amounts originally assessed to those members would be reallocated among the members with an assessment that quarter of \$25 or more based on the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB.

As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA will be remitted to the FAF<sup>10</sup> and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.<sup>11</sup> In accordance with Section 19(g)(5)(B) of

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<sup>9</sup> If a member does not engage in reportable municipal securities transactions during a particular calendar quarter, the member would not be subject to the GASB Accounting Support Fee for that quarter.

<sup>10</sup> See 15 U.S.C. 77s(g)(1).

<sup>11</sup> See 15 U.S.C. 77s(g)(3). Specifically, FINRA anticipates establishing a separate bank account specifically for the GASB Accounting Support Fee and will coordinate with the FAF to establish a process by which FINRA will wire the funds into the FAF account for the GASB Accounting Support Fee. Given the separate bank account, FINRA will provide monthly account reconciliations and accounts receivable aging reports, which will be reviewed by FINRA

the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the SEC or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of GAAP by the GASB.<sup>12</sup>

As FINRA noted in Regulatory Notice 11-28, because some firms may seek to pass the GASB Accounting Support Fee onto 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 an estimated fee rate (per \$1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA 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. The Notice will also remind any firms choosing to pass along the fee 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.

The effective date of the proposed rule change will be the date of SEC approval. The initial fees assessed on members will be based on trading activity reported in the calendar quarter during which the SEC approves the proposed rule change. For example, if the proposed rule change is approved on February 1, 2012, FINRA will bill members

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management each month and will be available for review by FAF and GASB management upon request.

<sup>12</sup> See 15 U.S.C. 77s(g)(5)(B).

based on trading activity from January 1, 2012, to March 31, 2012, to cover one quarter of GASB's 2012 budget. As a result, depending on the date of SEC approval, the proposed GASB fee may only cover a portion of the 2012 GASB budget.

## 2. Statutory Basis

The proposed rule change is being filed in response to the SEC's order of May 11, 2011, which was issued pursuant to Section 19(g) of the Securities Act. Section 19(g) 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 association's members. On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>13</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that, given the restrictions in Section 19(g) of the Securities Act regarding the specific amount FINRA must collect, a quarterly transaction-based

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<sup>13</sup> 15 U.S.C. 78o-3(b)(5).

assessment with a limited exception for firms with a de minimis amount of reportable municipal securities transactions is a fair and equitable manner to assess the fee. FINRA also believes that the \$25 per quarter exemption threshold strikes an appropriate balance between exempting those firms with truly de minimis transactions and not imposing an undue burden on other firms to recover the amount that would be assessed on the exempt firms.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The proposed rule change was published for comment in Regulatory Notice 11-28 (June 2011). A copy of the Regulatory Notice is attached as Exhibit 2a. The comment period expired on August 1, 2011. FINRA received eleven comment letters in response to the Regulatory Notice.<sup>14</sup> A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b. Copies of the comment letters received in

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<sup>14</sup> See Letter from Brown & Brown Financial Services, Inc., dated July 5, 2011 ("B&B"); letter from Third Party Marketers Association, dated July 26, 2011 ("3PM"); letter from NPB Financial Group, LLC, dated July 27, 2011 ("NPB"); letter from City of Bay City, Michigan, dated July 28, 2011 ("Bay City"); letter from Bond Dealers of America, dated August 1, 2011 ("BDA"); letter from Government Finance Officers Association, dated August 1, 2011 ("GFOA"); letter from National Association of State Auditors, Comptrollers and Treasurers, dated August 1, 2011 ("NASACT"); letter from Roosevelt & Cross Incorporated, dated August 1, 2011 ("R&C"); letter from Securities Industry and Financial Markets Association, dated August 1, 2011 ("SIFMA"); letter from National Association of Independent Broker/Dealers, dated August 2, 2011 ("NAIBD"); letter from Hartfield Titus & Donnelly, LLC, dated August 11, 2011 ("HT&D").

response to the Regulatory Notice are attached as Exhibit 2c. Of the eleven comment letters received, five were generally in favor of the proposed rule change and six were generally opposed.

Several commenters expressed the view that broker-dealers, and specifically FINRA members, should not be forced to shoulder the entire burden of funding the GASB because many other market participants, issuers, and other people who benefit from GASB accounting standards are not registered broker-dealers or FINRA members.<sup>15</sup> For example, one commenter stated that “many other end users of GASB’s accounting and financial reporting standards . . . get a ‘free ride’ under FINRA’s proposed methodology.”<sup>16</sup> Another commenter suggested that a proportionate share of the revenue necessary to fund the GASB come from municipal financial advisors, which are registered with the SEC and the MSRB, although not always with FINRA.<sup>17</sup> Another commenter suggested that the MSRB, rather than FINRA, should administer the fee because bank dealers are members of the MSRB but are not members of FINRA.<sup>18</sup>

Although FINRA recognizes the concerns raised by the commenters regarding the specification of FINRA members as the funding source for the GASB, Section 19(g) of the Securities Act, under which the SEC issued its order, substantially limits the parameters of the GASB Accounting Support Fee. Section 19(g)(1)(B) of the Securities

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<sup>15</sup> See BDA, HT&D, NAIBD, SIFMA, R&C.

<sup>16</sup> See SIFMA. The commenter specifically identified non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, rating agencies, mutual funds, legislative/governmental staff, and taxpayer organizations. See also HT&D.

<sup>17</sup> See NAIBD.

<sup>18</sup> See SIFMA.

Act provides that the SEC may require a registered national securities association<sup>19</sup> to assess and collect the accounting support fee “from the members of the association.”<sup>20</sup> Consequently, the order issued by the SEC pursuant to Section 19(g) of the Securities Act requires FINRA to collect the GASB Accounting Support Fee from its members, and FINRA has no authority to collect the fee from non-FINRA members.<sup>21</sup>

Three commenters expressed concern that there was no independent oversight of the GASB’s annual budget and asserted that this lack of oversight provides no incentive for transparency or fiscal discipline.<sup>22</sup> One commenter noted that the recent Government Accountability Office report on the GASB<sup>23</sup> observed that some stakeholders “were concerned with the level and nature of GASB’s expenditures—such as the amounts spent on staff salaries and office space—as well as a perceived lack of transparency associated with its budget process.”<sup>24</sup>

The commenters are correct that although FINRA has been ordered to assess and collect the GASB Accounting Support Fee, FINRA has no authority under Section 19(g) of the Securities Act to review the GASB’s budget. In fact, Section 19(g)(5)(B)(i) of the

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<sup>19</sup> FINRA is the only national securities association registered with the Commission.

<sup>20</sup> 15 U.S.C. 77s (g)(1)(B).

<sup>21</sup> FINRA estimates that over 95 percent of municipal transactions reported to the MSRB are reported by FINRA members.

<sup>22</sup> See BDA, HT&D, SIFMA.

<sup>23</sup> See Report of the United States Government Accountability Office, Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in Municipal Securities Markets and its Past Funding (January 18, 2011), available at <http://www.gao.gov/new.items/d11267r.pdf>.

<sup>24</sup> See SIFMA.

Securities Act specifically provides that collection of the GASB Accounting Support Fee does not provide FINRA with any direct or indirect oversight of the budget or technical agenda of the GASB.<sup>25</sup>

One commenter<sup>26</sup> suggested that FINRA has not met the statutory requirement in Section 19(g)(1)(B) of the Securities Act that it consult with certain groups when establishing the rules and procedures regarding the GASB Accounting Support Fee.<sup>27</sup>

The commenter claims that “FINRA did not consult with any state and local government associations before submitting a notice for public comment regarding the rules and procedures for establishing the GASB fee.” The commenter also asserts that “Section 978 of the [Dodd-Frank Act] expressly requires prior consultation with the ‘principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.’”

Contrary to the commenter’s conclusion that FINRA failed to consult with the specified organizations, FINRA departed from its standard practice and provided nineteen different organizations representing State governors, legislators, local elected officials, and State and local finance officers with a draft of Regulatory Notice 11-28

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<sup>25</sup> See 15 U.S.C. 77s(g)(5)(B)(i).

<sup>26</sup> See GFOA.

<sup>27</sup> Section 19(g)(1)(B) of the Securities Act states that the Commission may require FINRA to “establish . . . rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the [GASB Accounting Support Fee].” 15 U.S.C. 77s(g)(1)(B).

before the Notice was published for public comment.<sup>28</sup> In addition, after receipt of the GFOA comment letter, FINRA participated in a conference call with representatives of GFOA, NASACT, NASBO, and the NGA where those groups reiterated the issues set forth in the GFOA and NASACT comment letters. Moreover, FINRA's publication of a Regulatory Notice requesting comment on a proposal before it is filed with the SEC is itself an additional form of consultation. Indeed, two organizations representing state and local finance officers submitted formal comment letters expressing their views on the proposal.<sup>29</sup> To provide a further opportunity for all interested parties (including those organizations specified in Section 19(g) of the Securities Act) to raise any concerns and express their views, FINRA has elected to file the proposed rule change for full notice and comment under Section 19(b) of the Act.<sup>30</sup> Given the multiple forms of consultation

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<sup>28</sup> Specifically, on Thursday, June 9, 2011, FINRA provided a draft of the Regulatory Notice to representatives of the National Governors Association ("NGA"); the Council of State Governments; the National Conference of State Legislatures; the National Association of Counties; the U.S. Conference of Mayors; the National League of Cities; the Association of Government Accountants; the Government Finance Officers Association; the International City/County Management Association; the National Association of State Auditors, Comptrollers and Treasurers ("NASACT"); the National Association of State Budget Officers ("NASBO"); the National Association of State Retirement Administrators; the Native American Finance Officers Association; the National Federation of Municipal Analysts; the Association of Local Government Auditors; the National Association of State Treasurers; the National Council of State Housing Agencies; the National Association of Local Housing Financing Agencies; and the Council of Infrastructure Financing Authorities. The Notice was posted publicly on June 16, 2011.

<sup>29</sup> See GFOA, NASACT.

<sup>30</sup> Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder permit FINRA to file a proposed rule change for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge. See 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b-4(f)(2).

that have taken place regarding the proposed rule change, FINRA has met the consultation requirements set forth in Section 19(g) of the Securities Act.

One commenter questioned the administrative fee GASB will pay to FINRA for calculating, assessing, and collected the GASB Accounting Support Fee.<sup>31</sup> As FINRA noted in Regulatory Notice 11-28, FINRA has negotiated an administrative fee with the FAF of \$50,000 for the initial year that the GASB Accounting Support Fee is in place that is intended to cover FINRA's estimated costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee. The commenter asserted that the fee was "unwarranted" because "FINRA already has a process for collecting its own Trading Activity Fee from broker dealers, and could easily amend this process to include the GASB Accounting Support Fee."<sup>32</sup> The commenter also suggested that the MSRB could administer the fee for minimal costs if FINRA moves forward with a fee based on underwritings or transactions.

The commenter's statements are misplaced, and FINRA disagrees that the fee is unwarranted. The commenter's analogy to FINRA's Trading Activity Fee ("TAF") is inappropriate for several reasons.

First, FINRA does not believe that the use of a self-reporting model like the TAF is appropriate for the GASB Accounting Support Fee.<sup>33</sup> FINRA believes that the transaction information available through the MSRB serves as a more timely and reliable

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<sup>31</sup> See SIFMA.

<sup>32</sup> See SIFMA.

<sup>33</sup> The TAF is self-reported to FINRA by members on a monthly basis on the clearing firm level. See Trading Activity Fee FAQ Q100.5, available at <http://www.finra.org/taf/faq>.

source of transaction information than self-reported aggregate quarterly data calculated by the various members subject to the fee. Moreover, FINRA believes that requiring self-reporting could increase compliance costs for firms and increase costs to FINRA. As proposed, FINRA will rely on transaction data that is already reported by members to the MSRB (i.e., there will be no increased compliance efforts necessary for members since, as discussed below, FINRA does not believe that the calculations members currently undertake for reporting the TAF would be the same as those for the GASB Accounting Support Fee). For FINRA, a self-reporting model raises two primary complications. First, FINRA would need to audit members to ensure that their self-reporting was accurate and timely, which could increase FINRA's costs in administering the fee. Second, Section 19(g) of the Securities Act requires FINRA to collect exact amounts, thus creating an inability to remedy potential over- or under-payments by members that self-report erroneous data.

Second, FINRA does not believe that the exceptions from the TAF should apply to the assessment of the GASB Accounting Support Fee, and the TAF is currently charged only to the sell side of a transaction. Although municipal securities subject to MSRB reporting requirements are generally subject to the TAF, the TAF rules contain exceptions for certain transactions (e.g., primary market transactions). The goal of the GASB Accounting Support Fee assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is not appropriate to exclude any subset of reportable transactions from factoring into the fee assessment for purposes of allocating the GASB Accounting

Support Fee.<sup>34</sup> In addition, and as discussed below, FINRA does not believe it is appropriate to charge only one side of a transaction when two members are involved and are required to report the transaction to the MSRB.

For the foregoing reasons, FINRA does not believe that the TAF would serve as an appropriate model in assessing the GASB Accounting Support Fee. In addition, the amount of the administrative fee to FINRA was negotiated with the FAF and based on estimated costs to FINRA, including initial start-up technology costs, administrative costs, and the costs of personnel and other resources needed to process and implement the fee. FINRA anticipates that the amount of the administrative fee will be reviewed and evaluated each year by FINRA and by the FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and in the context of actual costs incurred by FINRA. Following the review, the amount of the administrative fee will be increased or decreased if necessary.

Commenters expressed opposing views on FINRA's proposal to base the GASB Accounting Support Fee on transactions in municipal securities reported to the MSRB. Although several commenters believed the proposed assessment method was reasonable and equitable,<sup>35</sup> other commenters opposed a transaction-based assessment.<sup>36</sup> Among the objections to the proposal, commenters stated that an assessment based on trade reporting

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<sup>34</sup> See Schedule A to the FINRA By-Laws § 1(b).

<sup>35</sup> See 3PM, NASACT, Bay City.

<sup>36</sup> See HT&D, R&C, SIFMA.

volume would disproportionately affect lead underwriters<sup>37</sup> and brokers' brokers<sup>38</sup> and would result in broker-to-broker transactions being assessed multiple times.<sup>39</sup> In addition, one commenter noted that the proposal "makes no distinction between bonds issued by GASB obligors, bonds issued by FASB obligors and bonds with obligors who follow neither set of standards."<sup>40</sup>

After considering the objections raised by the commenters, FINRA continues to believe that a proportionate fee based on reported trading volume remains a reasonable and fair method to allocate the GASB Accounting Support Fee. As noted above, FINRA believes that using reported transaction data to calculate the fee ensures that the fee is based on accurate, reliable information. Because the fee is assessed on a proportionate basis, rather than being assessed each time a transaction is reported to the MSRB (e.g., a fixed fee charged on each reported transaction like those charged in connection with reporting trades to a FINRA trade reporting facility<sup>41</sup>), there are not multiple assessments on broker-to-broker transactions. Rather, both brokers reporting the same trade will have the volume of that trade factored into their share of total trade reporting volume for that quarter. The goal of the assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is appropriate that both brokers in a broker-to-broker transaction be considered as

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<sup>37</sup> See R&C.

<sup>38</sup> See HT&D, SIFMA.

<sup>39</sup> See SIFMA. The commenter noted that in broker-to-broker transactions, both brokers report the trade to the MSRB.

<sup>40</sup> SIFMA.

<sup>41</sup> See, e.g., FINRA Rules 7620A, 7710.

participating in that market with respect to such a transaction, rather than only use one side of the trade in calculating the fee (e.g., charging only the broker on the sell side). For similar reasons, FINRA also believes that the proposal does not disproportionately affect lead underwriters or brokers' brokers; to the extent such firms have high trading volumes reported to the MSRB under applicable reporting rules, FINRA believes that this accurately reflects those firms' participation in the municipal securities markets, whether those firms act as underwriters, brokers' brokers, or simply as buyers or sellers of municipal securities.<sup>42</sup>

FINRA also declines to distinguish between issues based on whether the obligor has followed FASB standards, GASB standards, or neither. This information is not required to be reported to the MSRB, is not available on an automated basis, and it would be impractical for FINRA to attempt to maintain a comprehensive and accurate listing of those issues where the obligor has followed GASB standards.

Several commenters expressed views concerning the application of the GASB Accounting Support Fee to small firms and the exemption proposed in Regulatory Notice 11-28 for firms with a quarterly assessment of less than \$25. Two commenters suggested that FINRA increase the quarterly threshold from \$25 to \$1,000,<sup>43</sup> and one commenter

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<sup>42</sup> FINRA notes that basing the GASB Accounting Support Fee on underwriting, rather than transactions, would increase the burden on lead underwriters and would disproportionately affect those market participants engaged in underwriting activities rather than in trading in the secondary market. Moreover, basing the fee on underwriting would wholly exempt secondary market participants from paying the fee and would be assessed only on future municipal issues and would "grandfather" in previous issues. FINRA does not believe this is a more equitable way to assess the fee than a transaction-based approach.

<sup>43</sup> See 3PM, NAIBD.

suggested that “smaller firms” be exempt from the fee.<sup>44</sup> In contrast, one FINRA member suggested that any firm with a stake in GASB accounting standards should be charged a small assessment, even if the firm had no assessable transactions in a given quarter.<sup>45</sup>

FINRA proposed a quarterly minimum threshold of \$25 in order to exempt from the GASB Accounting Support Fee those firms that do a de minimis amount of trading activity in municipal securities in a given quarter. There are approximately 1,100 FINRA members eligible to conduct business in municipal securities, and FINRA estimates that a de minimis threshold of \$25 per quarter would eliminate approximately 600 firms—approximately 55 percent of firms—per quarter from paying the fee. FINRA estimates that raising the level to \$1,000 per quarter would exempt approximately 90 percent of the firms reporting transactions to the MSRB from the fee each quarter.

As discussed above, FINRA is required to collect a specific amount of money each year to adequately fund the annual budget of the GASB. Because of this unique requirement, unlike other fees assessed by FINRA, any amount that one member is exempt from paying must be assessed on other members so that FINRA can meet its statutory obligation and collect the total amount needed to adequately fund the GASB’s annual budget. Consequently, FINRA believes that a de minimis threshold of \$25 per quarter achieves a fair and reasonable balance between exempting those members that do a small amount of trading in municipal securities and ensuring that other members are not

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<sup>44</sup> See BDA. The commenter did not define “smaller firms” and stated that it was not in a position to recommend a figure for the exemption because it did not have trading data available to it.

<sup>45</sup> See NPB.

shouldering a disproportionate amount of the GASB Accounting Support Fee and being allocated amounts significantly above their proportion of reported trading activity. For the same reasons FINRA is not increasing the quarterly exemption amount, FINRA also declines to adopt an across-the-board “small firm exemption.”

In Regulatory Notice 11-28, FINRA noted that “some firms may seek to pass the GASB Accounting Support Fee on to customers engaged in municipal securities transactions.” This was an acknowledgement that, in many instances, members pass through FINRA fees and assessments to their customers. Some commenters expressed concern that members could pass the fee on to issuers of municipal securities and asked FINRA to clarify or mandate that members could not pass the fee along to issuers.<sup>46</sup> Other commenters suggested that FINRA make it easier for members to pass the fee along to customers, including issuers.<sup>47</sup> One commenter suggested that the GASB Accounting Support Fee should be structured as an underwriting assessment because “[p]rinciples of fundamental fairness would dictate dealers be allowed to pass through any GASB support fee to municipal bond issuers instead of or in addition to investors.”<sup>48</sup>

As discussed above, FINRA continues to believe that an equitable way to structure the fee is through a quarterly assessment based on trading volume with an exception for members whose assessment in a particular quarter would be less than \$25. FINRA has long recognized that members pass fees through to the customers whose transactions generate those fees, and FINRA rules generally do not address the

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<sup>46</sup> See Bay City, GFOA, NASACT.

<sup>47</sup> See BDA, SIFMA.

<sup>48</sup> SIFMA.

commercial allocation of fees between members and their customers, provided such fees are fair, reasonable, and accurately disclosed. Although FINRA is not encouraging members to pass all or part of the GASB Accounting Support Fee to their customers, that decision is ultimately one for each member, subject to the conditions and requirements noted. FINRA also declines to give a blanket exemption for issuers of municipal securities whose transactions may result in an increase to a member's allocation of the GASB Accounting Support Fee. FINRA notes, however, that transactions from a municipal securities issuer to an underwriter are not reported to the MSRB and thus would not generally be counted toward a member's quarterly assessment.<sup>49</sup>

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>49</sup> To the extent commenters are concerned that FINRA members acting as underwriters for municipal securities may increase their underwriting fees to recoup part of the assessment, FINRA generally considers fee negotiations between an issuer and an underwriter to be within each party's business decision-making process.

#### 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-FINRA-2011-073 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-FINRA-2011-073. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2011-073 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>50</sup>

Elizabeth M. Murphy  
Secretary

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<sup>50</sup> 17 CFR 200.30-3(a)(12).

# Regulatory Notice

11-28

## 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)



Financial Industry Regulatory Authority

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

- ▶ Emailing comments to [pubcom@finra.org](mailto: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.<sup>1</sup>

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).<sup>2</sup>

## 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.<sup>3</sup>

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) became effective on July 21, 2010.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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)<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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 Foundation<sup>10</sup> and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.<sup>11</sup> 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.<sup>12</sup>

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).

## 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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**Exhibit 2b**

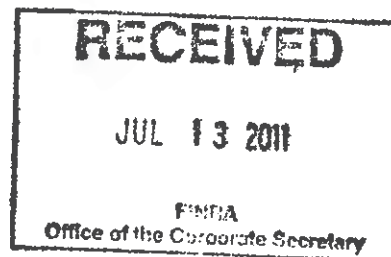
**Alphabetical List of Written Comments**

1. Colon Brown, Brown & Brown Financial Services, Inc. (July 5, 2011)
2. David L. Cohen, Securities Industry and Financial Markets Association (August 1, 2011)
3. Jeffrey L. Esser, Government Finance Officers Association (August 1, 2011)
4. Nancy K. Kopp, National Association of State Auditors, Comptrollers and Treasurers (August 1, 2011)
5. John J. Lynch, Jr., Hartfield Titus & Donnelly, LLC (August 11, 2011)
6. Neal E. Nakagiri, NPB Financial Group, LLC (July 27, 2011)
7. Michael Nicholas, Bond Dealers of America (August 1, 2011)
8. William R. O'Connell, Roosevelt & Cross Incorporated (August 1, 2011)
9. Michael J. Regulski, City of Bay City, Michigan (July 28, 2011)
10. Lisa Roth, National Association of Independent Broker/Dealers (August 2, 2011)
11. Lisa Roth, Third Party Marketers Association (July 26, 2011)

**BROWN & BROWN**  
FINANCIAL SERVICES, INC.

July 5, 2011

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



Re: Comment re Accounting Support Fee

Dear Ms. Asquith:

Respectfully, our Firm objects to the imposition of an annual accounting support fee.

Any fees which have no possibility of generating income to offset the fees have the effect of:

- Reducing Firm profits if the fee is absorbed by the Firm.
- Increasing costs to Firm customers if the fee is passed up to customers.
- Reducing investment returns to the investing public, if the fees are passed up to the customers.

The above consequences are contrary to the interests of firms, customers and investors, especially, small firms which serve the needs of individual investors.

Small firms and individual investors do not need discouragements in the form of additional fees in the face of a weak economy, historically low interest rates, and dysfunctional governments.

If such a fee is to be imposed, we request that small firms and individual investors be exempted.

Sincerely,

A handwritten signature in dark ink, appearing to read "Colon Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Colon Brown  
CB:jc

cc: Frank Dealy



August 1, 2011

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

**Re: Regulatory Notice 11-28: Comments on Proposal to Amend  
Schedule A of the FINRA By-Laws to establish an accounting  
support fee to adequately fund the annual budget of the  
Governmental Accounting Standards Board**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") proposed new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) (the "GASB Accounting Support Fee") under Schedule A to the FINRA By-Laws. FINRA's proposal is a result of Section 978 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requiring a funding mechanism for GASB.

While SIFMA supports the mission of the Governmental Accounting Standards Board ("GASB")<sup>2</sup> "to establish and improve standards of state and local governmental accounting and financial reporting that will...result in useful

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> The GASB is an independent body created in 1984 pursuant to agreement among the Financial Accounting Foundation ("Foundation"); the American Institute of Certified Public Accountants (AICPA); the Council of State Governments; the Government Finance Officers Association; the International City/County Management Association; the National Association of Counties; the National Association of State Auditors, Comptrollers and Treasurers; the National Conference of State Legislatures; the National League of Cities; the National Governors' Association; and the U.S. Conference of Mayors.

Marcia E. Asquith  
FINRA  
Page 2 of 7

information for users of financial reports..."<sup>3</sup> and appreciates the role that GASB plays developing separate uniform accounting and reporting standards for governments<sup>4</sup>, SIFMA objects to the proposed methodology for assessing the GASB Accounting Support Fee as discussed in Regulatory Notice 11-28<sup>5</sup>.

SIFMA objects to FINRA's proposed methodology for assessing the proposed GASB Accounting Support Fee for the following reasons:

- The proposal is an unfair tax on broker dealers and municipal bond investors who should not be mandated to subsidize the entire expense of financially supporting GASB.
- There are many other end users of GASB's accounting and financial reporting standards, such as non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, rating agencies, mutual funds, legislative/governmental staff, and taxpayer organizations that get a "free ride" under FINRA's proposed methodology.
- The current proposal provides a blank check for GASB. There is no direct or indirect independent budget oversight and no incentive for transparency or fiscal discipline.
- Many municipal bond obligors are not GASB reporting entities. Many municipal bond obligors are private non-profit corporations, and thus are subject to the rules of The Financial Accounting Standards Board ("FASB")<sup>6</sup>, not GASB. This proposal makes no distinction between bonds issued by GASB obligors, bonds issued by FASB obligors and bonds with obligors who follow neither set of standards. It would be

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<sup>3</sup> See GASB Mission Statement available at <http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1175804850352>.

<sup>4</sup> See GASB White Paper dated March 16, 2006, "Why Governmental Accounting and Financial Reporting is – and should be – Different", available at [http://www.gasb.org/cs/ContentServer?c=GASBContent\\_C&pagename=GASB%2FGASBContent\\_C%2FGASBNewsPage&cid=1176156736250](http://www.gasb.org/cs/ContentServer?c=GASBContent_C&pagename=GASB%2FGASBContent_C%2FGASBNewsPage&cid=1176156736250)

<sup>5</sup> Pursuant to Regulatory Notice 11-28, "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) in the previous calendar quarter." [internal citation to MSRB Rule G-14(b) deleted]

<sup>6</sup> FASB was established in 1973 by the Foundation to establish and improve standards of financial accounting and reporting for nongovernmental entities. FASB does have its own revenue stream legislatively mandated by Section 109 of the Sarbanes-Oxley Act of 2002 through fees collected assessed against and collected from issuers of securities, as those issuers are defined in the Act.

Marcia E. Asquith  
FINRA  
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inappropriate to tax transactions in bonds issued by obligors that do not utilize GASB standards.

- Any accounting support fee should be business model/operationally neutral, and FINRA's proposal is not. Not all trades reportable to the Municipal Securities Rulemaking Board's (MSRB) Real-Time Transaction Reporting System involve customers. Additionally, as currently proposed by FINRA, under certain circumstances multiple assessments will be due from a single purchase and sale. Supply chains that involve multiple dealer trades will also be more heavily impacted. Finally, bank dealers' municipal securities transactions are not covered by FINRA's proposal, as they are not FINRA members.
- Although broker dealers have a convenient established collection mechanism, such convenience does not outweigh the inequities listed above.

While we recognize that FINRA is bound by the statutory provisions governing the GASB support fee, we feel FINRA can make significant changes to the proposed fee and still be in compliance with the statute. SIFMA proposes that any GASB support fee should mirror the way FASB is funded and should be structured such that all dealers could pass through any GASB support fee to parties that use or benefit from GASB's rules to a greater degree, including municipal bond investors or issuers. If FINRA moves forward with an assessment based upon an underwriting assessment or trades submitted to the MSRB, SIFMA proposes that the MSRB, not FINRA, administer such a support fee as the MSRB regulates both bank dealers' and broker dealers' municipal securities activities; FINRA only regulates broker dealer activities.

#### **I. Unfair Tax on Dealers and Investors**

The proposal is an unfair tax on broker dealers who should not be mandated to subsidize the entire expense of financially supporting GASB. The true beneficiaries of GASB's work are the myriad of state and local governments that follow its accounting and reporting standards, investors who benefit from sound, GASB-based financial reporting, rating agencies who are consumers of municipal financial statements, and auditors whose work revolves around GASB's generally accepted accounting principles. It is these entities that should directly fund GASB's operations. Because the statute specifies dealers as the collection mechanism, FINRA should structure the fee so that it is ultimately borne by those who more directly use or benefit from GASB's rules.

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FINRA  
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**II. GASB Reporting is used for many purposes, not to solely to access capital markets**

There are many end users of GASB's accounting and financial reporting standards other than issuers of municipal securities, such as non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, mutual funds, legislative/governmental staff, and taxpayer organizations. It is important to note that some state and local governments rarely or never issue debt. These diverse entities that use GASB generally accepted accounting principles for a variety of purposes get a "free ride" without paying the fare to financially support GASB under the proposed methodology. Financial support of GASB should come from the entire universe of users, not just broker dealers.

**III. Many municipal bond issuers do not follow GASB; some follow FASB**

There are numerous states and local governments that do not follow GASB<sup>7</sup>. Two notable examples are governments in New Jersey and Texas, where the states produce their own accounting standards. Additionally, municipal bond obligors that are private, nonprofit corporations such as hospitals, universities, and cultural institutions also do not follow GASB, but instead follow the accounting and financial reporting standards of FASB. There is no reasonable basis, nexus, or justification for the bondholders of these entities (or even the entities themselves) to financially support the activities of GASB.

**IV. No Independent Budget Oversight**

Currently, the GASB Chairman is responsible for preparing GASB's annual budget, with the advice of the members of GASB, for approval by the Financial Accounting Foundation's Board of Trustees – a reasonable process when GASB was responsible for funding its own budget. Neither FINRA's GASB Accounting Support Fee proposal or the Securities and Exchange Commission's (SEC) order<sup>8</sup> directing funding for GASB contain a provision for independent direct or indirect oversight of GASB's budget going forward. This is inconsistent

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<sup>7</sup> See report of the United States Government Accountability Office (GAO), January 18, 2011, *Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in Municipal Securities Markets and its Past Funding*, available at <http://www.gao.gov/new.items/d11267r.pdf> ("GAO Report"). See also W.R. Baber and A.K. Gore, *Consequences of GAAP Disclosure Regulation: Evidence from Municipal Debt Issuances*, (October 2007).

<sup>8</sup> Securities Act of 1933, Release No. 9206/May 11 2001 and Securities and Exchange Act of 1934 Release No. 64462/May 11, 2011 available at <http://www.sec.gov/rules/other/2011/33-9206.pdf>

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FINRA  
Page 5 of 7

with the SEC's oversight and review of the annual budget of FASB, GASB's sister organization. As noted by the GAO Report issued in the course of reviewing the role of GASB in the municipal securities market and its past funding:

- Several stakeholders were concerned with the level and nature of GASB's expenditures—such as the amounts spent on staff salaries and office space—as well as a perceived lack of transparency associated with its budget process.
- Stakeholders expressed mixed views on whether certain GASB projects and initiatives were redundant with FASB projects or fell outside of what they considered the scope of GASB's mission of promulgating governmental accounting principles. For example, several stakeholders expressed concern regarding GASB's work on accounting for certain retirement benefits, referred to as Other Post-Employment Benefits, while others voiced support for it.<sup>9</sup>

Accordingly, at a minimum, some independent oversight of GASB's budget should be implemented to encourage transparency and fiscal discipline.

#### **V. Disparate Impact on Certain Dealers**

Regulatory Notice 11-28 anticipates that some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions and provides some guidance on proper disclosure. However, many transactions reported to the MSRB pursuant to Rule G-14(b), such as dealer to dealer trades and trades involving broker's brokers do not involve customers. This would result in some dealers being able to pass through the fee to customers and others not. Additionally, for these types of reportable trades, including supply chains that involve multiple broker dealer trader trades, each counterparty reports the trade under MSRB G-14(b) – resulting in a multiple assessment for a single purchase and sale. Finally, bank dealers' municipal securities transactions are not covered by FINRA's proposal because they are not subject to regulation, examination, or enforcement by FINRA and do not pay any FINRA fees.

#### **VI. FINRA Administrative Fee is Unwarranted**

The proposed \$50,000 fee that has been budgeted to pay FINRA<sup>10</sup> to administer the GASB Accounting Support Fee is unwarranted. First of all, FINRA already has a process for collecting its own Trading Activity Fee from broker dealers, and could easily amend this process to include the GASB

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<sup>9</sup> See GAO Report, *supra* note 7, at 33.

<sup>10</sup> See Regulatory Notice 11-28 at Endnote 5.

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Accounting Support Fee<sup>11</sup>. Alternatively, in the event that FINRA moves forward with this assessment based upon an underwriting assessment or trades submitted to the MSRB, the MSRB could also administer the fee for minimal costs as it already has the staffing and information to calculate, assess, and collect underwriting assessments as well as transaction and technology assessments pursuant to MSRB Rule A-13.

## **ALTERNATIVE FEE PROPOSAL**

### **VII. Mirror FASB Funding Model: Pass Through of Support Fee on Underwriting Assessments**

Regulatory Notice 11-28 anticipates that some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions and provides some guidance on proper disclosure. Principles of fundamental fairness would dictate dealers be allowed to pass through any GASB support fee to municipal bond issuers instead of or in addition to investors. This would more closely follow how FASB is funded, which is primarily through an accounting support fee pursuant to the Sarbanes-Oxley Act of 2002. This FASB fee is allocated among securities issuers based on each issuer's proportional market capitalization. The easiest way to implement this would be to structure a GASB support fee as an underwriting assessment on all municipal securities (or potentially just on bonds with GASB reporting obligors) purchased by a dealer from an issuer as part of a primary offering. We understand that FINRA is bound to not collect any more or less in any period than the amount GASB states it needs to fund its budget. However, we feel confident that if this methodology is chosen, then the self-regulatory organization that collects the fee can essentially escrow any overages and revise the fee in future period to adjust for the variability in new issue volume.

### **VIII. Conclusion**

SIFMA sincerely appreciates the opportunity to comment on the Proposal. While SIFMA supports the mission of GASB, we object to FINRA's proposed methodology for assessing the proposed GASB Accounting Support Fee for the reasons set forth above. SIFMA proposes that the GASB support fee be mirrored

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<sup>11</sup> <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p123850.pdf>

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FINRA  
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on FASB's funding model, allowing dealers to pass through any GASB support fee to those parties who use or benefit from GASB's work to a greater extent than dealers, such as municipal bond investors, issuers, rating agencies, auditors, and others. If FINRA moves forward with an assessment based upon an underwriting assessment or trades submitted to the MSRB, SIFMA proposes that the MSRB administer such support fee as the MSRB governs all transaction in municipal securities.

Please do not hesitate to call me with any questions at 212-313-1265.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. L. Cohen". The signature is fluid and cursive, with the first name "David" and last name "Cohen" clearly legible.

David L. Cohen  
Managing Director  
Associate General Counsel

CC:

***Securities and Exchange Commission***  
Mary Simpkins, Office of Municipal Securities

***Municipal Securities Rulemaking Board***  
Lynnette Kelly Hotchkiss, Executive Director  
Ernesto Lanza, Deputy Executive Director and General Counsel



**Government Finance Officers Association**  
203 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601-1210  
312.977.9700 fax: 312.977.4806

August 1, 2011

Ms. Marcia E. Esquith  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority  
1735 K Street, NW  
Washington, D.C. 20006-1506  
c/o [pubcom@finra.org](mailto:pubcom@finra.org)

**RE: GASB Accounting Support Fee, Notice 11-28**

Dear FINRA Board Members:

On behalf of the Government Finance Officers Association of the United States and Canada (GFOA), I appreciate the opportunity to comment on FINRA Notice 11-28. The GFOA is the professional association of state and local finance officers and has served the public finance profession since 1906. The GFOA provides leadership to government finance professionals through research, education and the identification and promotion of best practices. Our 17,500 members are dedicated to the sound management of government financial resources.

Our members are instrumental in ensuring that governmental accounting standards are implemented. They also strive to ensure that the needs of the general public, and the elected officials who represent them and act on their behalf, are considered throughout the process used to develop new accounting standards. It is important to bear in mind that the states alone possess the legal right to set accounting standards for themselves and their local governments, and that they *delegated* the accounting standard-setting function to the Governmental Accounting Standards Board (GASB) by means of an agreement reached by the GFOA and other national state and local government organizations that led to the board's establishment.

We are concerned about FINRA's proposal to amend its by-laws to establish a fee on its members<sup>1</sup> to provide adequate funding for the GASB's budget for two reasons: 1) the proposal lacks the clarity needed to ensure that the fee will not be passed along to municipal securities issuers, and 2) the proposal was made without first consulting state and local governments, as required by law.

The FINRA by-laws, the Notice and any subsequent Regulatory Notices need to state clearly that any GASB fee will be assessed solely on FINRA members, who may pass it on only to their *customers*, defined as *investors* in municipal securities, but not *issuers* of those securities. Furthermore, the by-laws need to expressly indicate that FINRA members may *not* develop new fees or charges to their issuer clients that would in any way constitute a reimbursement to the firms for the GASB fee expenditure.

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<sup>1</sup> Proposed amendment, Schedule A of the By-laws of the Corporation, Section 14 – Accounting Support Fee for Governmental Accounting Standards Board, (b)

Of even greater concern to us is the fact that FINRA did not consult with any state and local government associations before submitting a notice for public comment regarding the rules and procedures for establishing the GASB fee. Section 978 of the Dodd Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203)<sup>2</sup> expressly requires prior consultation with the “principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.” Therefore, we urge FINRA to desist from any further action on this Notice until such consultation can take place, fully and freely, as required by law.

I look forward to hearing from you at your earliest convenience to discuss the appropriate process to be followed for ensuring full consultation with the state and local government community.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey L. Esser". The signature is fluid and cursive, with the first name "Jeffrey" being more prominent.

Jeffrey L. Esser

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<sup>2</sup> Section 978 of the Dodd Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), amends Section 19 of the Securities Act of 1933, Section 912(g)(1)(B).



## National Association of State Auditors, Comptrollers and Treasurers

August 1, 2011

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Auditor General  
Illinois

### EXECUTIVE DIRECTOR

R. KINNEY POYNTER  
Lexington, Kentucky

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[www.nasact.org](http://www.nasact.org)

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

Dear Ms. Asquith:

On behalf of the National Association of State Auditors, Comptrollers and Treasurers, we appreciate the opportunity to respond to the Financial Industry Regulatory Authority's proposed amendments to Section 14 under Schedule A of FINRA's bylaws. These proposed amendments, issued in June 2011, are intended to meet the requirements of an order issued by the U.S. Securities and Exchange Commission to establish a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board pursuant to Section 19(g) of the Securities Act of 1933.

We have long supported the existence of GASB as an independent standard-setting body for state and local governments. We recognize that if GASB is to continue to operate successfully, it must have a stable and sustainable funding mechanism. Yet we realize that no matter how GASB is funded, not everyone will be pleased.

FINRA is proposing that the GASB support fee would be allocated among its members based on municipal securities transactions reported to the Municipal Securities Rulemaking Board. Overall, we support FINRA's proposal. Allocating the support fee among FINRA member firms based on municipal securities transactions appears to be a reasonable way to provide GASB with a steady source of independent funding. The methodology seems fair and equitable.

However, we recommend that FINRA clarify the term "customer" on page 3, paragraph 2. This paragraph states, "Because some firms may seek to pass the GASB Accounting Support Fee on to **customers** engaged in municipal securities transactions..." (emphasis added). We understand from FINRA staff that "customers" in this context are the purchasers of the municipal securities and not the issuers. We concur with this interpretation, and it is consistent with Section 978 of the Dodd-Frank Act. This clarification should be very clear in the final guidance that FINRA sends to its members.

We appreciate the opportunity to provide our comments. Should you have any questions or need additional information regarding our response, please contact R. Kinney Poynter at (859) 276-1147 or me at (410) 260-7160.

Sincerely,

*Nancy K. Kopp*

Nancy K. Kopp  
NASACT President  
State Treasurer of Maryland

Hartfield Titus & Donnelly, LLC.

Municipal Securities Brokers

www.HTDonline.com

HTD

August 11, 2011

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

**Re: Regulatory Notice 11-28: Comments on Proposal to Amend  
Schedule A of the FINRA By-Laws to establish an accounting  
support fee to adequately fund the annual budget of the  
Governmental Accounting Standards Board**

Dear Ms. Asquith:

Hartfield, Titus & Donnelly, LLC ("Hartfield") appreciates this opportunity to submit comments to the Financial Industry Regulatory Authority's ("FINRA") on the proposed new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) under Schedule A to the FINRA By-Laws.

Hartfield supports SIFMA's comment letter. In addition, we do not believe that the proposed GASB Accounting Support Fee should be assessed on transaction volume. We urge FINRA to reconsider the manner of assessment. We suggest that the assessment be based on revenues rather than transactions because a revenue based assessment is more equitable. In addition, we believe FINRA should adopt a two tiered fee structure, one based on revenues the other based on who more directly uses or benefits from the GASB's rules. The current proposal is unfair to Hartfield who is registered as a municipal securities broker's broker. We have high a high volume of trades with low revenues and do not use or benefit from the GASB's accounting and financial reporting standards.

**Rational for Revenue Assessment**

Broker's brokers trade for significantly smaller commissions than do broker/dealers, so the assessment will have a disproportionate impact on municipal securities broker's brokers. For example, an analysis of our trading with dealers has demonstrated that on average, dealers earn roughly five times what we do, on a customer – secondary market-customer transaction basis (i.e., when securities are bought by a dealer from a customer, sold through a broker's broker to another dealer, that sells them to a customer). Thus, dealers make five times our revenue on a trade and we will be assessed the same GASB fee.

**Page 2**

**Ms. Marcia E. Asquith**

**August 11, 2011**

As with all regulatory fees, the GASB fee should be assessed on each dealer in a manner that reflects the extent of its municipal securities activities. As described above, the imposition of a transaction based GASB fee does not reflect Hartfield's revenue participation in municipal securities activities relative to dealers. This also applies to the difference in charges that a regional dealer will be subject to when they purchase a large block of bonds in one trade (one fee paid by the selling dealer) and sell many, many small sizes to their customers (many fees paid by the regional dealer). Having all dealers pay the GASB fee based on revenue will even out this potential uneven allocation of fees.

We believe that, in order to allocate its fees in a manner consistent with FINRA's stated goal, it should transition away from fees on specific market activities to a fee model based on the revenue that any firm derives from its municipal securities activities. Such a model would allow every FINRA member to know that the current and any proposed fee increase in the future would not carry with it a disparate impact.

We believe that such a fee structure also would be organizationally efficient for FINRA to administer. Schedule I of each broker-dealer's fiscal year end FOCUS Report requires reporting annual municipal income, and this should be used as the basis for determining fees due to FINRA. The information in Schedule I of the FOCUS Report is audited as part of each firm's SEC Rule 17a-5 annual report, and therefore is sufficiently reliable to use for assessing fees on members.

**Rational for Use-Benefit Assessment**

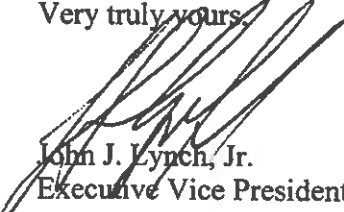
We also support SIFMA's comment that there are many other end users of the GASB's accounting and financial reporting standards that get a "free ride" under FINRA's proposed methodology and there needs to be a re-evaluation on the fee structure so that the users/beneficiaries of GASB fund its budget and that it does not become a obligation on firms who do not utilize or benefit from GASB.

**Taxation without Representation**

Our final concern is the lack of oversight provided in the assessment plan. There should be some review and oversight of the budgeting and revenue needs of GASB by those who are required to fund their operation.

We thank you for the opportunity to comment on the proposed fee.

Very truly yours,



John J. Lynch, Jr.  
Executive Vice President

It would appear that some minimum fee should be assessed to any Finra/MSRB member BD, even if no assessable transactions are conducted by that particular BD. As I understand it, one of the goals was to implement a more reliable source of funding for the GASB, from year to year. Since Finra already knows that trading activity is variable by nature, it would seem that those of us who have a stake in GASB standards should all contribute some minimum amount to that goal—perhaps in the range of \$100 to \$200. Perhaps that would even allow the “trading activity assessment” to be lower as a result.

Neal E. Nakagiri  
President, CEO, CCO  
NPB Financial Group, LLC  
3500 W. Olive Avenue, Suite 300  
Burbank, California 91505  
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August 1, 2011

VIA ELECTRONIC MAIL (send to: [pubcom@finra.org](mailto:pubcom@finra.org))

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

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

Dear Ms. Asquith:

The Bond Dealers of America (BDA) is pleased to submit this letter in response to the Financial Industry Regulatory Authority's (FINRA) request for comments on Amendments to Schedule A of the FINRA By-Laws to implement an accounting support fee to fund the Governmental Accounting Standards Board (the "FINRA proposal"). The BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets and we welcome this opportunity to state our position.

The fees proposed here are only the latest in a series of fees and burdens imposed on broker-dealers. The BDA strongly objects to continuing the practice of saddling broker-dealers with costs that should be imposed more broadly, or in some cases, not imposed at all. Some of this admittedly has occurred at agencies other than FINRA, but FINRA has also taken actions, like this one, that increase the burdens on broker-dealers.

BDA is particularly concerned about the effect of these burdens on middle-market broker-dealers. Virtually every one of these burdens disproportionately affects middle-market broker-dealers. Given the supposed interest in ending "too big to fail", the BDA finds this outcome especially objectionable. Nearly all of the regulatory actions that have flowed out of the Dodd-Frank legislation, and many other recent initiatives, have strengthened the largest institutions relative to the middle-market broker-dealers and run contrary to the idea of ending "too big to fail."

We believe that if FINRA and other regulatory agencies continue along the path they have begun, the result will be greater concentration of power among the largest financial firms along with increased risk to the financial system and greater cost, less liquidity and fewer choices for investors.

The instant proposal involves assessing broker-dealers with a fee to support the efforts of the Governmental Accounting Standards Board (GASB). The Dodd-Frank Wall Street Reform and

Consumer Protection Act provided for a national securities association to collect fees from its members in order to support GASB. This provision is somewhat analogous to the provision in Sarbanes-Oxley that provides for the SEC to collect fees to support the Financial Accounting Standards Board (FASB). The Sarbanes-Oxley provision, however, requires the issuers of securities to pay the fee. Moreover, only issuers above a certain size are required to pay the FASB fee. Smaller issuers are exempt from the FASB fee. The SEC has the right and responsibility to review the FASB budget.

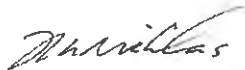
The FINRA proposal would require all broker-dealers, regardless of size, to pay the fees to support GASB. The fee would be assessed based on the firm's share of the par value of municipal trades made in the previous quarter. A firm would not be prohibited from passing the fee through to its customers. In contrast to the FASB fee, which exempts smaller issuers, there would be no exception for smaller firms under the FINRA GASB proposal.

One of the especially objectionable elements of this proposal is that the GASB fees would, as a practical matter, be set by GASB itself and its parent organization, the Financial Accounting Foundation, which are private entities. FINRA would simply collect whatever amount GASB wishes. There would be no public oversight of the amount of the fees to be collected for GASB by FINRA. Neither FINRA nor the SEC has any authority to oversee the amount of the fees or the uses to which they are put. These fees would be collected under governmental compulsion and there will be no public accountability. Separating the authority to spend money from the responsibility for collecting it – and accountability to those who pay it – it is extremely bad public policy.

Under the FINRA proposal a firm would not know its liability until after the close of the quarter and therefore it could not determine the amount allocable to a given trade at the time of the trade, but only some time later. Any attempt to pass the fee to an investor would necessarily be an estimate, and one which would surely be either too much or too little. Setting up a system to track these charges would disproportionately burden smaller firms, as would the alternative of the broker-dealer accepting the entire burden of the GASB fee.

The BDA opposes the imposition of these fees on broker-dealers. If FINRA imposes these fees on broker-dealers, the BDA urges FINRA to exempt smaller firms from the fees, as is done under the FASB fee. This will greatly reduce the burden of the regulation. Because the BDA does not have the data on trading by firm, we are not in a position to recommend figure for the exemption, but that information is available to FINRA.

Sincerely,



Michael Nicholas  
Chief Executive Officer

**ROOSEVELT & CROSS**  
**INCORPORATED**

ONE EXCHANGE PLAZA, 55 BROADWAY  
NEW YORK, N.Y. 10006  
212-344-2500

August 1, 2011

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 11-28: Proposal to Amend Schedule A of the FINRA By-Laws to establish an accounting support fee to fund the Governmental Accounting Standards Board**

Dear Ms. Asquith:

Roosevelt & Cross Inc. ("R&C") appreciates the opportunity to comment on the proposed new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board or "GASB") under Schedule A to the FINRA By-Laws.

The GASB was created in 1984 pursuant to an agreement among the Financial Accounting Foundation, the American Institute of Certified Public Accountants, the Council of State Governments, the Government Finance Officers Association, the International City/County Management Association, the National Association of Counties, the National Association of State Auditors, Comptrollers and Treasurers, the National Conference of State Legislatures, the National League of Cities, the National Governors' Association and the U.S. Conference of Mayors. Neither FINRA (NASD at the time) nor MSRB registered firms were involved in the creation of GASB.

The Dodd – Frank Act authorized the SEC 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 assess the fee's financing on its member firms. The Act essentially authorized the SEC to establish a fee and the SEC designated FINRA to determine who is to be subject to the fee and how much is to be collected. R&C disagrees with the concept of assessing the entire cost of GASB on the broker-dealer community, and the assessment process based on the par value of bonds reported under MSRB rule G-14 by MSRB members in particular.

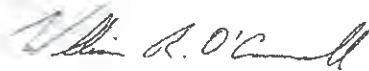
Ms. Marcia E. Asquith  
August 1, 2011  
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This proposal was ostensibly issued without analysis of its financial impact on those member firms that it affects, and its potential effect on the liquidity of the market.

R&C is a regional municipal dealer that is extensively involved in underwriting municipal securities in the northeast United States. In that capacity, we are frequently the lead underwriter for the securities issued by municipalities, industrial development agencies and others. As lead underwriter, R&C may only have a financial commitment for a fraction of the bonds being issued, with co-managers and syndicate members financially responsible for the remaining bonds. To distribute the bonds to the other members of the syndicate, trades are entered into and reported pursuant to MSRB Rule G-14. Under the proposed fee assessment, R&C would be disproportionately responsible for being the lead underwriter. While financially responsible for only a portion of the distribution, we would be assessed based on our distribution of the entire issue.

While we disagree with the concept of having only one small sector of the end-users of GASB paying the entire cost of their operations, the proposed assessment is even less fair to underwriters of municipal securities.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. R. O'Connell", with a stylized flourish at the end.

William R. O'Connell  
Director of Compliance

Dear Financial Regulatory Authority,

I am writing to comment on the proposed new Section 14 – Accounting Support Fee for the Governmental Accounting Standards Board under Schedule A to the Financial Regulatory Authority (FINRA) By-Laws to implement the GASB Accounting Support Fee.

Given my career in governmental finance and accounting which spans 32 years, 30 of which was as an Accountant and Finance Officer with Bay County, Michigan and currently as the Interim Fiscal Services Director for the City of Bay City, Michigan, I truly understand the importance and necessity to have an independent organization, such as the Governmental Accounting Standards Board (GASB), to develop, improve and promulgate standards of accounting and financial reporting for state and local governments in the United States.

I also recognize that, in order for the GASB to effectively perform the above functions, they need ample funds to support their activities. There is a need for the GASB to have an independent funding source to ensure that they receive sufficient funds by which to operate. By assessing and allocating an Accounting Support Fee among FINRA members on a transaction based basis, more specifically on municipal securities transactions that are reported to the Municipal Securities Rulemaking Board (MSRB), appears to be a reasonable, equitable, and an efficient fee assessment method which will provide adequate funding to the GASB through an independent source.

However, as noted in your Regulatory Notice 11-28, dated June 2011, some FINRA member firms may seek to pass the GASB Accounting Support Fee on to customers engaged in municipal transactions. It concerns me and the City of Bay City that member firms may try to pass these fees through to issuers of municipal securities, to which I and the City of Bay City are opposed. Therefore, I am requesting clarification to ensure that the fee assessed on FINRA members cannot be passed through to municipal bond issuers.

Thanking you in advance for your time and consideration in this matter.

Sincerely,

Michael J. Regulski CGFM  
Interim Fiscal Services Director  
City of Bay City, Michigan  
[mregulski@baycitymi.org](mailto:mregulski@baycitymi.org)  
989.894.8219



August 2, 2011

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

Re: Regulatory Notice 11-28: Proposed Amendments to Schedule A of the FINRA By-Laws to Implement an Accounting Support Fee to Fund the Government Accounting Standards Board ("GASB")

Dear Ms. Asquith,

I am writing to you today on behalf of the National Association of Independent Broker/Dealers (NAIBD) to express the opinion of members of our association regarding the proposal FINRA has published in its Regulatory Notice 11-28.

We understand and concur with FINRA's rationale for a fee based on the GASB budget, rather than a transaction based fee. Notwithstanding this, we strongly encourage FINRA to consider an exemption threshold higher than \$25 per quarter for reasons of efficiency, and to reduce the burden on small firms. We suspect that the amount of time and effort necessary to process a fee of any less than \$1,000 per quarter would outweigh the benefit of the revenue. Therefore, we propose that FINRA implement its accounting support fee with a quarterly threshold of \$1,000, under which, firms would be exempt.

Further, we believe that a proportionate share of the revenue necessary to fund the GASB should be generated from the municipal financial advisors whose role in municipal offerings is material. Therefore, with similar regard to the burden on small firms, we suggest that FINRA assess the proportion of revenue that might be derived from municipal advisers, which are now registered with the SEC and MSRB.

We believe our suggestions mirror the thoughtful rationale recently employed by PCAOB, which implemented similar revenue recovery fees related its expanded authorities and obligations under Dodd-Frank.

Thank you for your consideration of our recommendation.

Best regards,

Lisa Roth  
Chair, NAIBD Member Advocacy Committee



**3PM**

THIRD PARTY MARKETERS ASSOCIATION

July 26, 2011

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

*Re: Regulatory Notice 11-28: Proposed Amendments to Schedule A of the FINRA By-Laws to Implement an Accounting Support Fee to Fund the Government Accounting Standards Board ("GASB")*

Dear Ms. Asquith,

I am writing to you today on behalf of the Third Party Marketers Association ("3PM") to express the opinion of members of our association regarding the proposal FINRA has published in its Regulatory Notice 11-28.

We understand and concur with FINRA's rationale for a fee based on the GASB budget, rather than a transaction based fee. Notwithstanding this, we strongly encourage FINRA to consider an exemption threshold higher than \$25 per quarter for reasons of efficiency, and to reduce the burden on small firms. We suspect that the amount time and effort necessary to process a fee of any less than \$1,000 per quarter would outweigh the benefit of the revenue. Therefore, we propose that FINRA implement its accounting support fee with a quarterly threshold of \$1,000, under which, firms would be exempt.

We believe this suggestion mirrors the thoughtful rationale recently employed by PCAOB, which implemented similar revenue recovery fees related its expanded authorities and obligations under Dodd Frank.<sup>1</sup>

Thank you for your consideration of our recommendation.

Best regards,  
//Lisa Roth//  
Lisa Roth, Director

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<sup>1</sup> See PCAOB Release No. 2011-002 June 14, 2011: Revisions to the PCAOB Rules in Section 7 assessing an allocation of an appropriate portion of its accounting support fee among firms with an average quarterly tentative net capital greater than \$5,000,000.