



December 28, 2010

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Supplemental Response to Comments on File No. SR-MSRB-2010-10 Relating to Proposed Amendments to MSRB Rule A-13, on Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers

Dear Ms. Murphy:

On October 13, 2010, the Securities and Exchange Commission (the “SEC” or “Commission”) published notice of the above-referenced rule filing.<sup>1</sup> In response to publication of the filing, the Commission received several industry comment letters, which were responded to by the Municipal Securities Rulemaking Board (“MSRB” or “Board”) on November 19, 2010 (the “MSRB Reply”). Subsequently, the Commission received five additional comment letters.<sup>2</sup> In order to provide additional information to commenters and market participants, this letter supplements the MSRB Reply.

In the rule filing, the MSRB explained that needed revenue would be generated in two ways. First, the MSRB proposed increasing the transaction fee from \$.005 per \$1,000 par value

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<sup>1</sup> Exchange Act Release No. 34-63095 (October 13, 2010); 75 FR 64372 (October 19, 2010).

<sup>2</sup> Letters from Bond Dealers of America (Dec. 14, 2010); Edward Jones (Dec. 14, 2010); Securities Industry and Financial Markets Association (Dec. 2, 2010); Jefferies & Company, Inc. (Nov. 29, 2010); and BMO Capital Markets GKST Inc. (Nov. 9, 2010).

to \$.01 per \$1,000 par value of inter-dealer and customer sale transactions in order to generate an estimated \$7 million in revenue annually. This revenue would be used predominantly for operating expenses of the organization, which are expected to grow significantly due to the cost of operating the MSRB's market information systems and accomplishing the MSRB's expanded mission as a result of the Dodd-Frank Act.

As indicated in MSRB's 2010 audited financial statements, the MSRB experienced a net loss for the second consecutive year (a loss of approximately \$1.65 million in FY 2009 and a loss of approximately \$.45 million in FY 2010). Moreover, total expenses have increased approximately 25% over the last two years,<sup>3</sup> and expenses for market information transparency programs (EMMA, as well as SHORT and RTRS) and operations increased approximately 57% (from \$7.2 million to \$11.3 million) over the last two years. The MSRB forecasts total operating expenses to increase to approximately \$29.2 million in fiscal year 2011, which would be a 26% increase in expenses over 2010, and approximately \$31.8 million in fiscal year 2012, which would be a 38% increase in expenses over fiscal year 2010.

During fiscal year 2010, the MSRB generated gross revenue of approximately \$22.7 million. Approximately 30% (\$7 million) of total revenue was generated through transaction assessments. The MSRB estimates that revenue from transaction assessments will double to approximately \$14 million if the proposed rule change is approved. The transaction fee increase would, therefore, add revenue, on an annualized basis, equal to approximately 30% of current total revenue to cover additional anticipated operating expenses described in the MSRB Reply. In light of the increases in operating expenses described above, the MSRB request for an increase of 30% in revenue through a transaction fee increase is not only reasonable, it is necessary and prudent.

MSRB underwriting fees for 2010 generated revenue of approximately \$14 million. Since the proposed transaction fee increase would generate total transaction fee revenue of approximately \$14 million, it is anticipated that transaction fees and underwriting fees will bring in approximately the same percentage of revenue for the MSRB, assuming current activity levels. As discussed in the MSRB Reply, the shift of revenue from underwriters to dealers engaged in sales and trading of municipal securities is appropriate and will achieve a balance in revenue by broadening the base of dealers that fund the activities of the MSRB.

With respect to MSRB's current and projected cash and liquid reserves, some commentators suggested that non-profit organizations only need 25% or three months of reserve to cover expenses. The MSRB noted in its reply that it believes a higher level of cash and liquid

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<sup>3</sup> Although the 2010 audit had not yet been completed at the time the MSRB Reply was submitted to the Commission, the MSRB estimated that total expenses for fiscal year 2010 would be approximately \$23.1 million. The audit has now confirmed this figure.

reserves is prudent for a regulatory organization that maintains market information systems and provides other services that are relied upon by a major securities market.<sup>4</sup>

The MSRB also proposed a new technology fee of \$1.00 per transaction for inter-dealer and customer sales transactions reported to the Board. The proposed technology fee would be used to establish a new technology renewal fund, which would be segregated for accounting purposes. The technology renewal fund would fund replacement of aging and outdated technology systems and new technology initiatives. To date, the MSRB has not set aside separate reserves for major technology systems that will need replacement or significant upgrades in the near future. The funds accumulated in the technology renewal fund would be solely dedicated to funding technology-related capital expenses. In other words, the technology renewal fund would be used for a dedicated purpose - to pay for the development of new, or replacement of existing, information technology hardware and software.

While the MSRB explained in the rule filing and MSRB Reply that the technology fee would be transitional in nature and would be reviewed by the Board periodically to determine whether it should continue to be assessed, some commenters expressed concern that the MSRB did not identify a sunset date for the fee. Since the cost of information technology systems are ever changing and not easily estimated, and since fees are variable based on market activity, the MSRB elected not to identify a specific date to sunset the fee. Rather, the Board would review the technology fee annually, as part of its budgeting process, in order to determine whether the technology renewal fund is sufficient to satisfy the technology needs of the organization and whether the fees are appropriately assessed.

Some commenters were concerned about ongoing review of MSRB fees and expenditures. The MSRB notes that, in the past, where appropriate, it has examined its expenditures and fee structure and reduced assessments on dealers, in recognition of the changing financial needs of the organization, and in an effort to strike an appropriate balance between the various fees assessed by the MSRB on regulated parties. The MSRB is committed to review its budget annually in order to determine whether its assessments are fair and bear a reasonable relationship to its operating expenses.

Regarding the transparency of the MSRB's financial condition, market participants and the public may review the MSRB's Financial Statements and Auditors' Reports and Annual Reviews for detail regarding the organization's financial condition online, since every audited

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<sup>4</sup> A more appropriate comparison would be the National Futures Association ("NFA"), another self-regulatory organization similar in size and structure to the MSRB. In 2009, the NFA reported cash and short term investments of approximately \$41 million and total expenses of approximately \$40 million. It, therefore, maintains cash and liquid reserves equivalent to approximately one year's expenses, which is consistent with the policy of the MSRB.

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financial statement from 2002 to the present is available for review on the MSRB's website under "publications."

The MSRB has requested that the Commission approve an effective date for the rule change of January 1, 2011, in order to match the expected increase in expenses described above with projected revenue from the fee increase, and in order to start accruing funds in the technology renewal fund for replacement of aging technology systems and in order to fund new technology initiatives.

For these additional reasons, the MSRB believes that the Commission should approve the proposed rule change as filed by the MSRB. If you have any questions, please do not hesitate to contact me.

Sincerely,

**/s/ Lawrence P. Sandor**

Lawrence P. Sandor  
Senior Associate General Counsel