



Municipal Securities Rulemaking Board

September 19, 2022

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Response to Comments on SR-MSRB-2022-06**

Dear Ms. Countryman:

On July 29, 2022, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend certain rates of assessment for Rate Card Fees<sup>1</sup> under MSRB Rules A-11, A-12, and A-13, institute an Annual Rate Card Process for future rate amendments, and provide for certain technical amendments to MSRB Rules A-11, A-12, and A-13 (“the proposed rule change”).<sup>2</sup> The proposed rule change was published for comment in the Federal Register on August 9, 2022.<sup>3</sup>

The MSRB appreciates the participation of each commenter in the rulemaking process. Three written comment letters were filed with the Commission in response.<sup>4</sup> As more fully

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<sup>1</sup> Consistent with proposed rule change, the term “Rate Card Fees” refers to both the Municipal Advisor Professional Fee, as well as to “Market Activity Fees” including, collectively, underwriting, transaction, and trade count fees.

<sup>2</sup> The proposed rule change is available at <https://www.msrb.org/-/media/Files/SEC-Filings/2022/MSRB-2022-06.ashx>. Except as expressly defined herein, the defined terms used in this letter shall have the meanings as defined in the proposed rule change.

<sup>3</sup> See Exchange Act Release No. 34095417 (Aug. 3, 2022), 87 FR 48530 (Aug. 9, 2022) (SR-MSRB-2022-06) (“Notice of Proposed Rule Change”).

<sup>4</sup> See letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America (“BDA”) (Aug. 30, 2022) (the “BDA Letter”); letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”) (Aug. 30, 2022) (the “NAMA Letter”); and letter from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (Sep. 2, 2022) (the “SIFMA Letter”).

discussed below, each of the three commenters expressed support for most aspects of the proposed rule change.<sup>5</sup>

The MSRB believes that many of the comments on the proposed rule change were generally addressed by the MSRB in its filing, which is incorporated herein by reference. After carefully considering the comments, the MSRB continues to believe that the proposed rule change is reasonable and that the proposed rule change is necessary and appropriate to better defray the costs and expenses of operating and administering the MSRB. The following is MSRB's response to the material aspects of the comments received regarding the proposed rule change.<sup>6</sup>

### **Commenter Support for the Proposed Rule Change**

All commenters stated some degree of support for the proposed rule change related to the Annual Rate Card Process and Rate Card Amendments. Notably, commenters unanimously supported the intended goal of the MSRB's Annual Rate Card Process as a mechanism to account for market volatility more quickly and avoid the year-over-year retention of financial reserves beyond target.<sup>7</sup>

One commenter, NAMA, supported the adoption of the proposed rule change, stating "NAMA supports this Filing and asks that it move forward and take effect on October 1, 2022."<sup>8</sup> Two commenters supported aspects of the proposed Annual Rate Card Process and Rate Card Amendments but encouraged the Commission to reject the proposed rule change. For example, the BDA Letter noted that, "[BDA] generally agree[s] with the Annual Rate Card approach to

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<sup>5</sup> See discussion infra entitled "Commenters Support of the Proposed Rule Change."

<sup>6</sup> See Carlson v. Postal Regul. Comm'n, 938 F.3d 337, 344 (D.C. Cir. 2019) (quoting MCI WorldCom, Inc. v. FCC, 209 F.3d 760, 765 (D.C. Cir. 2000)); see also City of Waukesha v. EPA, 320 F.3d 228, 257 (D.C. Cir. 2003) ("The agency need not address every comment, but it must respond in a reasoned manner to those that raise significant problems.") (internal quotation marks and citation omitted). Indeed, "[t]he requirement that agency action not be arbitrary or capricious includes a requirement that the agency adequately explain its result and respond to relevant and significant public comments." Pub. Citizen, Inc. v. FAA, 988 F.2d 186, 197 (D.C. Cir. 1993) (internal quotation marks and citations omitted). In sum, "[a]n agency's response to public comments . . . must be sufficient to enable the courts 'to see what major issues of policy were ventilated . . . and why the agency reacted to them as it did.'" Carlson, 938 F.3d at 344 (quoting Del. Dep't of Nat. Res. & Env'tl Control v. EPA, 785 F.3d 1,17 (D.C. Cir. 2015)).

<sup>7</sup> See discussion infra entitled "Commenters Support of the Proposed Rule Change."

<sup>8</sup> NAMA Letter.

setting fees for regulated entities,” as the Annual Rate Card approach “. . . is an improvement over the current system of rebates, temporary fee reductions and the like.”<sup>9</sup> Yet, the BDA Letter also stated that the proposed rule change, “. . . failed to address the longstanding and gross mismatch between the financial contributions of [dealers] and [municipal advisors]. For this reason, [BDA] cannot support the [proposed rule change] and we urge the Commission to reject it.”<sup>10</sup> Similarly, the SIFMA Letter offered qualified support for the Annual Rate Card Process, concluding “Overall, SIFMA appreciates the MSRB’s review of its fee structure and the Annual Rate Card Process, however we continue to have serious concerns about the imbalance of the burden on the dealer community versus municipal advisors, rates of current and future assessment increases, and transparency with respect to projects and expenses.”<sup>11</sup>

### **Comments Regarding Apportionment of Fees between Dealers and Municipal Advisors.**

The two commenters who withheld full support for the proposed rule change did so based on the proposed rates of assessment and the anticipated distribution of the fee burden between dealers versus municipal advisors under the Rate Card Amendments. For example, the BDA Letter stated that, “. . . the mix of fees the MSRB imposes on regulated entities places an undue burden on [dealers] relative to non-dealer [municipal advisors].”<sup>12</sup> The BDA letter further stated, “. . . the current mix of fees between [dealers] and [municipal advisors] is not fair and equitable currently and would remain unfair and inequitable under the [proposed rule change].”<sup>13</sup> Similarly, the SIFMA Letter stated, “the current apportionment of fees misses [the] mark”<sup>14</sup> in terms of fairness and that the industry association has “serious concerns about the imbalance of the burden on the dealer community versus municipal advisors[.]”<sup>15</sup>

BDA and SIFMA both encouraged the MSRB to address the current apportionment of fees. The SIFMA Letter stated, “SIFMA reiterates its ask that the MSRB require regulated municipal advisors to disclose revenues associated with their municipal advisory business to the MSRB, so the MSRB can review and justify the MSRB’s fee apportionment between municipal

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<sup>9</sup> See BDA Letter, at p. 7.

<sup>10</sup> Id.

<sup>11</sup> SIFMA Letter, at p. 2.

<sup>12</sup> BDA Letter, at p. 2.

<sup>13</sup> BDA Letter, at p. 5.

<sup>14</sup> SIFMA Letter, p. 2.

<sup>15</sup> SIFMA Letter, p. 2.

advisors and dealers accordingly.”<sup>16</sup> Similarly, the BDA Letter stated, “The MSRB should impose a fee on MAs that relates to the new-issue transaction volume which each firm advised on in addition to MAs’ headcount fee.”<sup>17</sup>

The MSRB appreciates SIFMA and BDA’s views on the fair distribution of the fee burden and the equitable proportionality of the aggregate fees paid by regulated entities.<sup>18</sup> Indeed, the Board Fee Review incorporated considerations regarding proportionality, fairness, and equity.<sup>19</sup> More specific to the Rate Card Amendments and the Annual Rate Card Process, the filing discusses the efforts the Board undertook to substantiate its determinations regarding such concepts of proportionality, fairness, and equity in support of the overall reasonableness the amendments.<sup>20</sup> Furthermore, the filing provides transparency regarding the underlying data and

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<sup>16</sup> SIFMA Letter, at pp. 2-3.

<sup>17</sup> BDA Letter, at p. 5.

<sup>18</sup> See, e.g., BDA Letter, at p. 2 (“Good governance dictates, however, that the mix of funding sources bears some relation to the activities of the organization. As it is now, either the Board is spending a disproportionate amount of resources related to [dealer-related] activity, or the [dealer versus municipal advisor] funding bears no relation whatsoever to the MSRB’s activities.”)

<sup>19</sup> See, e.g., discussion under the “Board Review of the Current Fee Structure” section of File No. SR-MSRB-2022-06 (“Through its Fee Review, the Board sought to identify potential improvements to the MSRB’s current fee structure that would: (i) maintain a fair and equitable balance of reasonable fees and charges among regulated entities; (ii) mitigate the impact of market volatility on the amount of fee revenue actually paid each year and, correspondingly, facilitate the Board’s ability to manage the amount held by the MSRB in organizational reserves year-to-year; and (iii) prudently fund the MSRB’s anticipated near-term operating expenses.” (internal citations omitted)). See also, e.g., the MSRB’s current funding policy and the MSRB’s revised funding policy effective as of October, 1, 2022, respectively available at <https://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Funding-Policy> and <https://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Future-Funding-Policy>.

<sup>20</sup> See, e.g., discussion under the “Board Review of the Current Fee Structure – Maintaining a Fair and Equitable Balance of Fees” section of File No. SR-MSRB-2022-06 (“The Board also found that the recurring variances between budgeted amounts and actual amounts of the Market Activity Fees collected, resulting from the inherent imprecision associated with budgeting future market volumes related to underwriting and trading activity that exists within the overall dynamic of the municipal securities market, directly contributed to the periodic buildup of excess reserves and, consequently, precipitated the

other analyses the Board used in support of its conclusions to propose the Annual Rate Card Process and the Rate Card Amendments.<sup>21</sup> While there is no singular view on what is fair and reasonable, the Board's efforts were undertaken to support the ultimate conclusion that the amended fees are "reasonable" and otherwise consistent with Section 15B of the Exchange Act.<sup>22</sup> The Board has considered proportionality of fees in its process of arriving at the final amended fee rates as discussed in the proposed rule change and the comment letters do not alter the determinations and conclusions as to the reasonableness of the Annual Rate Card Process and Rate Card Amendments.

Specific to commenter's concerns about the collection of financial information and the imposition of a new market activity fee on municipal advisory firms, the Board considered this type of alternative fee assessment in the course of its Fee Review, and the filing discusses the conclusions reached in this regard.<sup>23</sup> In particular, the filing describes how, as part of its analysis,

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need for the MSRB to use rebates or temporary fee reductions as a mechanism to rightsize organizational reserve positions back to the Board's target.") Notably, Section 15B(b)(2)(J) of the Exchange Act does not have any express requirements regarding such concepts of proportionality, fairness, and equity, but rather relies on the overarching standard of adopting "reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board."

<sup>21</sup> See, e.g., discussion under the "Self-Regulatory Organization's Statement on Burden on Competition" of File No. SR-MSRB-2022-06. ("Among other factors considered during the Fee Review, the Board: (i) analyzed publicly available data on the revenue models of dealers and municipal advisors across geographic areas; (ii) examined MSRB expense allocations to inform its understanding of how much of the MSRB's expense budget relates to various activities; (iii) evaluated historical budgeted revenue versus actual revenues generated for the existing fee categories; (iv) gauged the MSRB's fee distribution across varying business models of dealer and municipal advisory firms; and (v) deliberated upon feedback from stakeholder discussions and prior written comments on the topic of the MSRB's fees and expenses. Based on these factors considered, the Board found that the current fee structure – including the basis on which fees are assessed and the relative contribution of revenue from each of the current fees assessed on regulated entities – overall remains reasonable, fair, and equitable." (internal citations omitted)). For similar reasons, the MSRB disagrees with commenters assertion that the proposed rule change violates the MSRB's Funding Policy in that the proposed rates of assessment are not fair and equitable. See, e.g., discussion under the "Board Review of the Current Fee Structure – Maintaining a Fair and Equitable Balance of Fees" section of File No. SR-MSRB-2022-06.

<sup>22</sup> See 15B(b)(2)(J).

the MSRB gathered publicly available revenue data of municipal advisory firms engaged in primary offering advisory services.<sup>24</sup> In the end, the Board determined that there are burdens associated with instituting the collection of this sort of information that must be balanced for fairness, equity, and other costs-and-benefits;<sup>25</sup> the diversity of business models among

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<sup>23</sup> See discussion under the “Self-Regulatory Organization’s Statement on Burden on Competition – Baseline and Reasonable Alternative Approaches” of File No. SR-MSRB-2022-06.

<sup>24</sup> See discussion under the “Board Review of the Current Fee Structure -- Maintaining a Fair and Equitable Balance of Fees” of File No. SR-MSRB-2022-06 (noting that one of the components of the Fee Review included analyzing “publicly available data on the revenue models of dealers and municipal advisors across geographic areas,” including, for example, the publicly available data related to the revenue generated by municipal advisory firms when providing advice in a primary offering). As noted in footnote 31 of the filing, the Board considered market data from various external and internal sources, such as the Texas Bond Review Board State and Local Annual Reports (<http://www.brb.state.tx.us/publications.aspx>), the California State Treasurer’s Office – California Debt and Investment Advisory Commission (CDIAC) (<https://data.debtwatch.treasurer.ca.gov/Government/CDA-All-Data/yng6-vaxy>), primary market data included in official statements and other offering documents, and trading and other secondary market data. See also, e.g., the MSRB’s published Fact Books, which provide various historical data sets related to market activities, such as the distribution of municipal trades by dealers, available at <https://www.msrb.org/MarketTransparency/Market-Data-Publications/MSRB-Fact-Book.aspx>.

<sup>25</sup> See discussion under the “Self-Regulatory Organization’s Statement on Burden on Competition – Baseline and Reasonable Alternative Approaches” of File No. SR-MSRB-2022-06 (“A fee assessment method based on a percentage of each municipal advisory firm’s revenue, for example, would not be feasible at this time as it could require establishing a significantly more burdensome recordkeeping and reporting requirement. The MSRB does not currently require municipal advisory firms to report such information under existing rules; and, more importantly, many municipal advisory firms would likely have business activities not solely related to municipal advisory services. In addition, it would increase the burden on municipal advisory firms as municipal advisory firms would have the responsibility to collect the relevant information to be used for MSRB’s fee assessment and also would then be required to report it. The MSRB believes at this time that the costs and burdens associated with collecting and reporting such information are not justified, and the Municipal Advisor Annual Professional Fee for each person associated with the firm who is qualified is a reasonable proxy for the size of relevant business activities conducted by each municipal advisory firm.”)

municipal advisory firms can present challenges to appropriately tailoring the burden associated with this type of fee, which can also impact concerns regarding fairness and equity;<sup>26</sup> and the MSRB believes that the Municipal Advisor Professional Fee, although not perfect, can serve as a reasonable proxy for fees based on this sort of market activity at this time.<sup>27</sup>

Accordingly, the MSRB continues to believe that the proposed distribution of fee contributions among regulated entities anticipated to result from the Rate Card Amendments and the Annual Rate Card Process is reasonable and necessary and appropriate to defray the costs and expenses of operating and administering the Board and, as a result, is consistent with the Exchange Act.<sup>28</sup>

### **Comments Requesting Additional Transparency and Input Regarding the MSRB’s Budget.**

The MSRB appreciates commenters’ concerns regarding increased transparency and stakeholder input into the MSRB’s budget-setting processes, projects, and expenses. The MSRB recognizes that its role as the principal regulator of the municipal securities market rests on a foundation of public trust, and that transparency and accountability regarding the MSRB’s budgeting and expenses is critical to fostering that trust. In part for these reasons, the MSRB has published its budget for public scrutiny at the start of each fiscal year since fiscal year 2018.<sup>29</sup> This allows public stakeholders to understand and scrutinize the MSRB’s management and stewardship of its financial assets. To further support transparency, the MSRB also makes its most recent annual report and audited financial statements available on its website.<sup>30</sup> In terms of more forward-looking stakeholder input, the MSRB also solicited public comment on the

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<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> See Section 15B(b)(2)(J) of the Act (stating that the MSRB’s rules shall provide that “each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.”). See also discussion under the “Statutory Basis” section of File No. SR-MSRB-2022-06.

<sup>29</sup> See, e.g., MSRB Fiscal Year 2022 Budget, available at [MSRB-FY-2022-Budget-Summary.ashx](#)

<sup>30</sup> See, e.g., MSRB Annual Report 2021, available at <https://msrb.org/About-MSRB/Financial-and-Other-Information/Annual-Reports/Annual-Report-2021>.

MSRB's long-term goals and priorities in advance of developing its strategic plan.<sup>31</sup> These comments were considered and incorporated into the development of the MSRB's Strategic Plan for Fiscal Year 2022-2025.<sup>32</sup> As noted in the filing, the MSRB determined that the MSRB's Strategic Plan should serve as the main budgetary guidepost for how the MSRB allocates its limited resources and resolves competing fiscal priorities, particularly because various stakeholders provided significant written input regarding the Strategic Plan.<sup>33</sup>

The MSRB believes its budget-setting process is both robust and adequately transparent. While transparency is critical in the execution of its statutory mission, the MSRB's budget-setting process ultimately must remain with the Board, independent, free from undue outside influence, and left to the expertise and considered judgment of the Board. On this point, the MSRB believes that the diverse composition of its Board, which includes members from regulated dealers and municipal advisors, helps ensure that a baseline of stakeholder perspectives from across the municipal securities market are considered when the Board develops its budget and the fee structure to fund the operations and administration of the MSRB.

### **Conclusion**

The foregoing discussion addresses comments within the scope of the proposed rule change; any other comments that did not challenge a fundamental premise of the proposed Annual Rate Card Process and the Rate Card Amendments may be considered with respect to future MSRB rulemaking initiatives. The MSRB continues to believe that the proposed rule change is consistent with the Exchange Act and, as such, should be permitted to remain effective and become operative as of October 1, 2022.

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<sup>31</sup> See MSRB Notice 2020-19: "MSRB Requests Input on Strategic Goals and Priorities" (Dec. 7, 2020), available at <https://msrb.org/-/media/Files/Regulatory-Notices/RFCs/2020-19.ashx??n=1>.

<sup>32</sup> The MSRB's Strategic Plan – Fiscal Years 2022-25 is available at <https://msrb.org/-/media/Files/Resources/MSRB-Strategic-Plan-2022-2025.ashx>.

<sup>33</sup> See discussion under the "Board Review of the Current Fee Structure – Funding the MSRB's Anticipated Near-Term Operating Expenses" section of File No. SR-MSRB-2022-06.



If you have any questions, please do not hesitate to contact me or David Hodapp,  
Director, Market Regulation, at [REDACTED].

Sincerely,

A handwritten signature in blue ink that reads "Gail Marshall". The signature is written in a cursive style with a large initial "G" and "M".

Gail Marshall  
Chief Regulatory Officer