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January 2, 2024
Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549

Transmitted electronically

Comments on File No. SR-MSRB-2023-06

Dear Madam Secretary,

The Bond Dealers of America ("BDA") is pleased to provide comments on SEC File No. SR-MSRB-2023-06, the Municipal Securities Rulemaking Board's "Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13" (the "Proposal"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Proposal sets rates for 2024 for certain fees charged by the MSRB to municipal securities dealers and municipal advisors. While we do not disagree with the rate card system in general, we believe the MSRB's overall approach to fees and revenue is flawed. The Board's budget process is opaque, there is little to no oversight of the MSRB's spending, the rate of recent budget increases is unreasonable and unsustainable, the fee structure places too much burden on dealers and not enough on non-dealer municipal advisors, and fees under the Rate Card system, while intended to be stable, have turned out to be volatile. We are not asking for any changes to the 2024 fees embodied in the Proposal. However, we urge the MSRB to provide more transparency into its budgeting process as 2025 approaches and to revisit the mix of fees paid by regulated entities which make up a large majority of the Board's revenue. We also ask the SEC to take an active role in encouraging the Board to adopt these improvements in practice.

Background

Section 15B(b)(2)(J) of the Securities Exchange Act of 1934 specifies that the MSRB may charge "reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board." The MSRB imposes four fees on regulated entities, a fee on underwriting volume which is paid by the underwriting syndicate (the Underwriting Fee), fees based on trading volume (the Transaction Fee) and trade count (the Trade Count Fee) paid by dealers active in the secondary municipal market, and a headcount fee (the Municipal Advisor Professional Fee) paid by municipal advisors, including dealers dually registered as municipal advisors.

Municipal securities dealers provide a large majority of both overall MSRB revenue and revenue derived from fees on regulated entities. In 2024, dealers will pay over 92 percent of industry fees—since dually registered dealer/MAs also pay a significant portion of the MA headcount fee—and over 79 percent of total revenue. The MSRB provides no justification in the Proposal for imposing such a heavy burden on dealers.

Last year the MSRB initiated the Rate Card system. Under this approach, the fee-setting process begins with the Board establishing its expense budget for the coming year, the "Operational Funding Level" referenced in the Proposal, part of which is effectively offset by the MSRB's previous year surplus or deficit, if any, and by anticipated revenue from sources other than fees on regulated entities. MSRB staff then forecasts market activity for the next year including new issuance volume, trading volume, and trade count. Staff also estimates the number of registered municipal advisors subject to the headcount fee.

The Proposal states "Each of the four Rate Card Fees are responsible for a proportionate amount of the overall Rate Card Funding Amount (each a 'Proportional Contribution Amount'). The MSRB maintains a fair and equitable balance of the Proportional Contribution Amounts by calculating contribution targets in line with recent historical precedents." These Proportional Contribution Amounts are a key element in the rate setting process. The ratios are set based on "historical revenue performance of each fee over time." The current Proportional Contribution Amounts as presented in the Proposal are:

Underwriting fee: 30%
Trading volume fee: 40%
Trade count fee: 21%
Municipal Advisor fee: 8%

The MSRB states in the Proposal that they assess "whether there is a durable, material shift in market structure or circumstances that would indicate that the expectations for the relative contributions from one or more fees are no longer reasonable or appropriate." However, the Municipal Advisor fee always, including the time period before the Rate Card system, is less than 10 percent of overall industry-derived revenue. It is not clear what inputs or formula the MSRB uses to determine the appropriate Proportional Contribution Amounts. At least one significant driver is previous practice, which obviously is not appropriate if previous years' Proportional Contribution Amounts are incorrect. There needs to be more transparency around the process of setting the Proportional Contribution Amounts.

MSRB budget

Another key input for the Board's rate setting process is the upcoming year's budget, the "Operational Funding Level" in the language of the Proposal. The MSRB has budgeted itself $47.4 million for fiscal year 2024, a 4.9 percent increase over fiscal 2023, which itself was a 5.1 percent increase over fiscal 2022. We believe that annual five-percent budget increases are unsustainable, unjustified, and unsupported. These increases threaten the reasonableness of the Board's fee structure and emphasize the need for more transparency in the MSRB's budget and fee-setting process.

Fifty-six percent of the MSRB's 2024 budget is not focused on internal/support functions or market regulation—the latter represents just 14 percent of MSRB expenses—but on "Market Transparency Products and Services" and "Information Technology Services." These budget categories apparently represent the cost of developing and maintaining the MSRB's online market services including the EMMA Web site, the Real-time Trade Reporting System, other dealer reporting platforms, and similar functions. This spending is excessive.

The BDA fully supports market transparency and robust MSRB systems for collecting and disseminating trade reports, issuer disclosure documents, and other important market information. We believe the

EMMA platform is a useful tool for the market. And while we recognize the importance of updating functions like cybersecurity in the context of the MSRB's online offerings, we do not believe the EMMA platform requires constant development and improvements in terms of usability. It works well as is. Moreover, the MSRB's project to move their online services to the cloud several years ago was supposed to be a cost savings initiative. Yet the budget for "Information Technology Services," which represents 25 percent of the MSRB's budget overall, has increased 13 percent in 2024, the biggest driver of the overall budget increase.

The MSRB's process around setting budget priorities is not transparent. It is not clear what specific initiatives will be covered by the 13 percent increase in the Information Technology Services budget or how the market would benefit. Projects like EMMA Labs, while creative, are also expensive and do not enhance transparency or provide an immediate benefit to market participants. As stakeholders in the MSRB's mission and as providers of a large majority of the Board's funding, we believe the industry and the public deserve better insight into the MSRB's priority setting and budgeting process. Because so much of the Board's budget—56 percent—is dedicated to IT development and maintenance, we are particularly concerned that Board members, while all noted experts in municipal finance and the municipal securities market, do not include representatives with expertise in information technology.

Finally, the Rate Card process was designed and sold as a means to provide stability to the Board's revenue and funding sources. In that regard, MSRB rules and policies limit both the increase in fee rates and the increase in dollar revenue per fee category as ways to mitigate fee volatility. Yet the 2024 Rate Card presented in the Proposal reflects major adjustments in fee rates. The Underwriting Fee rate will increase by 25 percent in 2024, the maximum allowed for a single fee increase under MSRB Rule A-13 (during a time when underwriting volume is at its lowest in five years). The Trade Count Fee will decrease by 48 percent and the Transaction Fee will decrease by 15 percent. These are not stable fee rates.

Summary

Two key inputs to the MSRB's fee-setting process, the Proportional Contribution Amounts and the Operational Funding Level, are flawed. The Proportional Contribution Amounts do not reflect a fair and equitable balance of fees imposed on dealers and nondealer MAs and the Operational Funding Level—the budget—is too big, too opaque, is growing too fast, and there is no oversight over the budget process. And the Rate Card process has resulted in an unacceptable level of fee rate volatility. We urge the MSRB to be more transparent in its budgeting, to limit the growth of its spending, and to concentrate on core mission functions, and we ask the Commission to actively encourage these reforms.

We appreciate the opportunity to present our views. As always, please call or write if you have any questions.

Sincerely,

Michael Decker
Senior Vice President, Research and Public Policy