July 6, 2022

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
Securities and Exchange
Commission, 100 F Street, NE
Washington, DC 20549

Re: File Number SR–MSRB–2022–03; MSRB Notice 2022-03 – Amendments to Certain Fees for Dealers and Municipal Advisors and Proposing an Annual Rate Card Process

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input to the Securities and Exchange Commission ("SEC") on the Municipal Securities Rulemaking Board's ("MSRB's") Notice 2022-03 (the "Notice")[2] and its Filing of a Proposed Rule Change to Amend Certain Rates of Assessment for Rate Card Fees Under MSRB Rules A-11 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 "Filing").[3]

We believe that the MSRB fulfills an important function as a regulator in the municipal securities market, and that the organization needs to ensure it has sufficient revenue to fund its statutory mandate. SIFMA appreciates the MSRB's review of its fee structure, its efforts to reduce its reserve levels and attempt to create relatively stable fee levels subject to annual incremental rate changes. We do believe that an annual rate setting process can be a beneficial

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] MSRB Notice 2022-03 (June 2, 2022).

[3] 87 Fed. Reg. 36164 (June 15, 2022).

tool to assist in managing the MSRB's budget and reserve levels. SIFMA does, however, have serious concerns about the proposed amendments in the Filing, as set forth below. For these reasons, we request that the SEC reject this proposal because of the inconsistency in the dealer and municipal advisor fee assessment methodologies, resulting in a significant imbalance in assessments, and the lack of data provided to the municipal securities market participants supporting the MSRB's conclusions. Approving these proposed changes will systematize this imbalance. Further, we ask that the MSRB require regulated municipal advisors to disclose revenues associated with their municipal advisory business to the MSRB. Only after the MSRB collects and analyzes the amount of fees it collects from registered municipal advisors as a portion of total municipal advisor revenues can the MSRB determine a fair and equitable proportion of fees.

I. MSRB Fees Generally

The MSRB is funded by a variety of fees. The MSRB has acknowledged that it has maintained excessive reserves for years, and those reserves have been largely funded by fees on the regulated dealer community. SIFMA members appreciate the MSRB's previous efforts to reduce its level of reserves and recognize that predictable and incremental fee changes are preferable to rebates and fee holidays. The MSRB sets its reserve level target annually as part of its budget process.[4] Despite the MSRB's efforts over the past few years, the reserve levels remain unnecessarily high which is unfair for the dealer community who continue to pay the vast majority of fees to support the MSRB. For example, for the year ended September 30, 2021, the MSRB's 2021 Annual Report shows reserves of $66,277,985, representing 161% of its operating expenses of $41,164,114.[5] In FY2018, the MSRB had reserves of $67,444,698, representing 180% of its operating expenses of $37,378,304.[6] Actual reserve levels have exceeded targeted levels since 2013.[7] Given that the MSRB is a regulator with the ability to charge and collect mandatory regulatory fees, SIFMA feels that the MSRB reserve level should not exceed six months of operating expenses, and the Annual Rate Card[8] fees should be reduced to reflect such a cap.

[4] The MSRB's Reserve Policy can be found here: https://www.msrb.org/About-MSRB/Financial-and-Other-Information/Sources-and-Uses-of-Funding.

[5] *See* https://www.msrb.org/-/media/Files/Resources/MSRB-2021-Annual-Report.ashx?.

[6] *See* https://www.msrb.org/-/media/Files/Resources/MSRB-2018-Annual-Report.ashx?,

[7] See the Filing at 103.

[8] Capitalized terms used but not defined herein have the meanings set forth in the Notice.

II. Balancing the Fee Burden

The MSRB states that a fair and equitable balance of fees among regulated entities is important; however, the balance is not currently and it is not clear it has ever been fair and equitable. In the Filing, the MSRB states that a fee assessment method based on a percentage of each municipal advisory firm's revenue would not be feasible at this time as the MSRB does not currently require municipal advisory firms to report such information; and, many municipal advisory firms would likely have business activities not solely related to municipal advisory services. Further, the MSRB stated concerns about increasing the burden on municipal advisory firms if there was a requirement instituted for them to collect and report the relevant information to be used for MSRB's fee assessment. Also, the MSRB stated that a per person Municipal Advisor Annual Professional Fee is a reasonable proxy for the size of relevant business activities conducted by each municipal advisory firm. SIFMA members challenge the MSRB to prove its conclusion. We strongly disagree with the MSRB's assumptions and do not understand why regulated municipal advisors should not be similarly burdened with regulatory reporting as the dealer community has been since the genesis of the MSRB.

Dealers historically have paid over 75% of the fees to support the MSRB, and are scheduled to pay 90% of the fees in the new Annual Rate Card. The dealer community feels that their proportionate level of contribution of revenue to the MSRB is neither fair nor equitably balanced. When looking at MSRB fees as a percentage of revenue from each regulated business, SIFMA members feel that dealer fees to the MSRB are overweighted compared to municipal advisor fees. We urge the MSRB to consider a truly fair and equitable balance of fees among regulated entities, taking into account the revenue earned from each regulated business line. To do this, the MSRB needs to institute a requirement for municipal advisors to self-report their related revenues. While SIFMA understands that changing the fee methodology may be seen as burdensome in the short term for registered municipal advisors as new systems and processes are set up, it would lay the groundwork for a fairer and more balanced long-term fee model and be no more burdensome than the regulatory reporting required of registered dealers.

III. MSRB Should Collect Municipal Advisor Revenue Data

We urge the SEC to reject the filing and send this fee proposal back to the MSRB. It is now clear how the MSRB could have come to a reasonable conclusion that its fee structure and the proportion of fees paid by dealers versus municipal advisors is fair and equitable without knowing the revenues of registered municipal advisors. Transparency of this information is critical. The MSRB already has information from Form G-32 setting forth the transactions municipal advisors were engaged on and their par values. This is the same methodology the MSRB uses to bill the dealer community for the Underwriting Fee, and the principles of fairness dictate that municipal advisors also pay a fee based on the par amount of transactions. Other dealer activity on secondary market trades is readily ascertainable by dealer trade reports and existing systems at the MSRB. Other municipal advisory revenue, including but not limited to annual fees or retainers received from issuers or obligors, should be required to be self-reported to the MSRB by rule.[9] Dealers that are FINRA member are required to report their financial information on their FOCUS reports.[10] Such reporting should be no greater a burden on municipal advisors than it is on dealers. Moreover, that municipal advisors engage in businesses unrelated to municipal advisory services does not render an assessment method based on revenue unworkable, or even burdensome, because the fees could be based solely based on revenues related to municipal advisory activities, which municipal advisors undoubtedly already track. Further, because municipal advisors are commonly compensated based on a percentage of the value of a transaction, and the staffing on a transaction may not be directly proportional to the size of a transaction, the number of registered professionals is a poor proxy for the size of a municipal advisory firm's business activities, Accordingly, municipal advisor fees based on revenue would be more fair and equitable than reliance on the Municipal Advisor Annual Professional Fees. The MSRB cannot be in a position to truly assess the fairness and equity of its fee structure unless and until it has all the information it needs to do so accurately, including revenue information from registered municipal advisors.

IV. Municipal Advisors Are Using Market Information as Free Riders

The MSRB also states that the proportion of fees between the dealers and municipal advisors was based on the costs of regulatory activities and the cost of servicing each category of fees. On the first point, SIFMA feels that the costs of rulemaking are now similar for dealers and municipal advisors, as most rules cover both sets of regulated parties. On the second point, the MSRB noted that although it costs the MSRB significantly more to collect and disseminate trading data for transparency purposes than municipal advisory firm professional data, all regulated entities benefit from the publicly available transparency information. SIFMA's members have spent and continue to spend significant time and resources collecting and reporting valuable new issue information, rate reset and trade reporting information to the MSRB. Ideally, all beneficiaries of this data would contribute their fair share to the costs of servicing this data. It seems counter-intuitive that the regulated group that bears the greatest financial burdens in collecting and reporting its valuable transparency information to the MSRB

[9] We are aware that although some municipal advisors earn revenue based on the par amount of the transactions they advised on, some municipal advisors are paid annual fees or retainers pursuant to agreements with issuers or obligors, and yet others by a hybrid approach. SIFMA members feel that all such revenue related to a firm's regulated municipal advisory business needs to be captured to accurately assess the fairness of the MSRB fee structure. Also, although SIFMA members believe that acting as a placement agent is regulated broker dealer activity, it is believed that some municipal advisors continue to act as placement agents without being registered as a broker dealer. Any placement agent fees received by a municipal should also be reported.

Moreover, in order to provide further transparency and to ensure greater integrity associated with revenue associated with new issues, we believe that municipal advisor fees should also be disclosed in final offering documents on a per transaction basis, similar to what must be disclosed by underwriting dealers, given that municipal advisors are also regulated by the MSRB.

[10] 17 CFR § 240.17a-5

also bears the brunt of MSRB fees related to the MSRB collecting and disseminating this information, which is a benefit all.[11] We ask that the MSRB acknowledge that municipal advisors receive and use valuable dealer transparency data without incurring the cost of providing it, and increase their fees accordingly to cover the MSRB's costs to service these transparency systems.[12]

V. Fee Increase

SIFMA members question the need for a fee increase starting October 1, 2022, and question why the additional revenue generated from these amendments is necessary. In September, the MSRB will complete a return of approximately $19 million in excess reserves to the industry. However, the MSRB's proposal would promptly increase the rates of assessment for the MSRB's market-based fees, including the Underwriting Fee, Transaction Fee and Trade Count Fee (currently known as the Technology Fee) described in MSRB Rule A-13. The proposal also would increase slightly the rate of assessment for the MSRB's Municipal Advisor Professional Fee described in MSRB Rule A-11, all in an effort to once again increase MSRB reserves. These proposed rates of assessment would remain operative through December 31, 2023. If there are anticipated operating shortfalls and other near-term funding priorities, additional transparency on those projects and priorities would be helpful.

We also note that the proposed rates of assessment operative as of October 1, 2022 include larger rate increases for dealer fees than the Municipal Advisor Professional Fee. The increase in the Municipal Advisor Professional fee is 6%, However, on the dealer side, the Transaction Fee increase is 7%, the Underwriting Fee increase is 8%, and the Trade Count (Technology Fee) increase is 10%. As a result, the fee increases exacerbate the fee imbalance between regulated entities.

VI. Annual Rate Card Process

A key issue for SIFMA members regarding the Filing is the desire to have additional transparency regarding the Annual Rate Card Process inputs. The MSRB states that in the future, rates will be set based on several inputs including: annual expense budget; forecasted volume for the basis for each of the Market Activity Fees and the Municipal Advisor Professional Fee; variances between actual and budgeted prior-year Market Activity and

[11] Taking into account the burden on dealers in that they are required by rule to submit and make transparent their valuable data, one could argue that the municipal advisor community, that uses such data but neither creates nor submits any valuable data into the MSRB transparency systems, should pay a larger proportion in fees than the dealer community.

[12] To be clear, we are not suggesting price of the MSRB's Real-Time Transaction Data Subscription or other data products should be increased. Our comments are focused on the fees attributable to municipal advisory firms as part of the Annual Rate Card.

Municipal Advisor Professional Fees; reserves variances versus target; and expected revenue from sources other than the Market Activity Fees and Municipal Advisor Professional Fee. SIFMA feels that transparency specifically on the proposed expense budget as well as methodology for forecasting future volumes for each of the Market Activity Fees and Municipal Advisor Professional Fees is important.

VII. Max Cap on Assessment Rate Increases

The MSRB's proposed amendments set a Maximum Cap on Assessment Rate Increases "that generally caps the maximum year-over-year increase in the assessment rate for each Rate Card Fee at 25%. An increase in any particular assessment of 25%, or potentially more, because the cap is not binding, is not in the spirit of establishing a stable and predictable fee model. We believe a more reasonable Maximum Cap on Assessment Rate Increases would be no more than 20%, unless reserve levels are below target. Regardless, if the MSRB is in a position where it needs to increase its overall targeted revenue for the Rate Card Fee over 10%, or any of the Assessment Rates over 20%, SIFMA members expect that the MSRB would first analyze if reserves should be used to offset the increase, as well as implement a commensurate reduction in expenses. SIFMA members can only assume that these types of increases would only occur if there was a dramatic downturn in new issue and secondary market activity in the municipal securities market, and if so, then the MSRB should only increase fees as minimally as possible. Industry members will look askance at the MSRB dramatically increasing fees in market downturn without taking all appropriate measures to avoid any such dramatic fee increases.

VIII. Revised Funding Policy

The MSRB states its Funding Policy will be updated, as of the operative date of the proposed rule change, to reflect the Annual Rate Card Process. As many elements of the proposed amendments refer back to the MSRB's Funding Policy, SIFMA's members feel that the revised Funding Policy should have been included in the Filing. Additionally, SIFMA's members are concerned that the Funding Policy does not bind the Board's decisions, but instead is generally intended as a guide to provide continuity in funding decisions. SIFMA's members feel that to be an effective tool upon which regulated parties can rely, the Funding Policy should bind the Board going forward.

IX. Budget Transparency

SIFMA members feel that additional transparency regarding the MSRB's budget and expenses would be helpful. In the past there have been concerns about the MSRB's undertaking projects arguably outside of their statutory authority. While we appreciate the recent increased outreach efforts to the industry, additional transparency regarding planned projects and budgeted expenses would be helpful to justify Rate Card Amendments.

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Thank you for considering SIFMA’s comments. Overall, SIFMA appreciates the MSRB’s review of its fee structure, even though we have serious concerns about the proportional burden on the dealer community, rates of current and future assessment increases, and transparency with respect to projects and expenses. Again, we request that the SEC reject this proposal because of the inconsistency between dealer and MA fee assessment methodologies, which results in a problematic imbalance in assessments, and the lack of data provided to commentators in support of the MSRB’s conclusions. SIFMA asks 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 advisors and dealers accordingly. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Omer Ahmed, Chief Financial Officer
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