January 2, 2024

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

Re: File Number SR-MSRB-2023-06; 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

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input to the SEC on the Municipal Securities Rulemaking Board's ("MSRB's") filing to establish its 2024 Rate Card Fees.[2]

SIFMA is concerned that:

- The proposed rule change reflects significant fee volatility and less fee predictability, and so fails the commitments the MSRB made in its 2022 Rate Card Filing.
- The proposed rule change does not provide adequate transparency on the MSRB's rate setting process, and so fails the commitments the MSRB made in its 2022 Rate Card Filing.
- The proposed rule change fails to address potentially fatal flaws in the Rate Card Model that could create real market harms.

[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] 88 Fed. Reg. 86188 (Dec. 12, 2023) (the "Filing").

SIFMA requests the MSRB to change its Rate Card setting process for 2025 to include discussions with its regulated constituents and increase transparency regarding the inputs to the Rate Card on a rolling basis, as well as address other comments shared below.

I. <u>The proposed rule change reflects significant fee volatility and less fee predictability, and fails the commitments the MSRB made in its 2022 Rate Card Filing.</u>

As noted in the MSRB's 2022 Rate Card Filing,[3] one of key commitments the MSRB made in establishing the Annual Rate Card Process was that Annual Rate Card Process would "better mitigate the impact of market volatility on the MSRB's revenue structure."[4] However, in the first year of the new Annual Rate Card Process, SIFMA is surprised and concerned that the MSRB has failed to meet its own standard by proposing to materially alter its existing fee structure by (1) materially increasing the amount of its underwriting fees by 25%; (2) materially increasing the amount of its municipal advisor professional fees by 9%; (3) materially reducing the amount of its trade count fee by 48%; and (4) materially reducing the amount of its transaction fee by 15%. Further, there is no guarantee from the MSRB that these changes will not be matched next year with equally drastic and temporary changes to the fee structure in December 2024 relating to 2025 fees. The only reason why the underwriting fee was not increased more is because of the addition of an outsized cap of 25% to the 2022 Rate Card amendments; the MSRB has foreshadowed that another material increase can be expected in underwriting fees in the MSRB's 2024 Rate Card filing for fees to be assessed in 2025.

Accordingly, the MSRB has not met its burden of addressing how this proposed rule change meets the standards it set out in the 2022 Rate Card filing. Certainly, the degree and volatility of the fees proposed in this filing deserve greater explanation than provided as to why this filing's volatility in fee rates will not be repeated in each year going forward. The MSRB should directly and fully address the standards it sets out.

Specifically, the MSRB stated that the revised Rate Card fee approach will "better mitigate the impact of market volatility" and "maintain rates within a <u>*reasonably predictable range*</u> that, while subject to more incremental changes each year, would provide regulated entities a comparably more stable fee structure over the long term than the MSRB's current fee structure" (emphasis added). No one anticipated the drastic fee changes proposed in this rule change. Instead of mitigating the impact of market volatility, the MSRB's Rate Card process has passed through market volatility to firms' budgeting processes, and further amplified the whipsaw of market activity occurring as a result of significant interest rate volatility on any given day. Instead of promoting incremental changes, the Rate Card process has resulted in drastic and materially significant changes to the fee amounts regulated entities will be required to pay next calendar year – amounts that are in some cases greater than any historical change previously enacted by the MSRB. More specifically, the 48% precent change in the trade count fee is a greater percentage change than even the 40% change in 2021, which the MSRB described then

[3] SR-MSRB-2022-06.

[4] Id, at page 35.

as "the most substantial move yet".[5] By the MSRB's own standards, the proposed rule change fails the commitments made to the SEC and regulated entities in its 2022 Rate Card Filing. The MSRB should reduce the cap on each type of fee to prevent dramatic fee changes from re-occurring.

II. <u>The proposed rule change does not provide adequate transparency on the MSRB's rate setting process, and so fails the commitments the MSRB made in its 2022 Rate Card Filing.</u>

Among other commitments made in the 2022 Rate Card Process regarding greater predictability and less volatility, the MSRB stated that the Rate Card Process would also provide greater "transparency regarding the internal process for how the Board … would amend such fees on an annual basis going forward." As noted above, the MSRB is proposing significant and material changes to its fee structure; has given firms the first official description of the amount of such changes in a filing distributed to the market on December 6, 2023; and filed it as immediately effective without the ability for prior comment. In essence, firms have been roughly three business weeks during the year-end holidays to review and implement fee changes that can appropriately be described as unprecedented in terms of historical comparatives.

At no point prior to the proposed rule change has the MSRB provided regulated entities to comment on the most critical variable of the Rate Card setting process – the MSRB's estimation of market activity levels. While the proposed rule change describes the rate changes as a mere formulaic calculation, the description in the proposed rule change belies the amount of discretion the MSRB has in determining the final rate levels. More specifically, as described by the proposed rule change and funding policy, the final rate levels are ultimately determined based on two essential variables – (1) the MSRB's expense budget and, more importantly, (2) the MSRB's predictions regarding anticipated market activity levels.

The MSRB's expense budget has continued to increase at a rate of approximately 5% per year over the past couple of years. Unlike businesses that must trim their expenses to match their revenues, the MSRB continues to increase its revenues to cover its own desired activity level and projects. The industry feels that this is unsustainable.

Also, given the critical nature of the MSRB's determination regarding anticipated market activity levels, particularly considering the drastic changes in the fee structure proposed, the MSRB must provide greater transparency, clarity, and opportunity to comment on the MSRB's estimate of market activity levels, perhaps through a formal request for comment process. Accordingly, the MSRB has failed to meet the transparency standard it set out in the 2022 Rate Card Filing.

SIFMA requests the MSRB to change its Rate Card fee setting process going forward for its 2024 Rate Card filing for fees to be charged in 2025. Regulated parties should have more transparency regarding the inputs to the Rate Card, and the ability to have constructive conversations about the inputs prior to the MSRB's budget being finalized. These conversations

[5] *See* MSRB Press Release, *<u>MSRB's Board Votes to Return $19 Million in Excess Reserves to the Industry</u>* (January 29, 2021).

could be done at any point in the year but should start no later than spring or early summer, so that constituents have the opportunity to have a thorough understanding of the issues and an opportunity to comment. Data for such conversations should be based on a 12-month rolling basis, to ensure that current market dynamics are taken into consideration.

III. The proposed rule change fails to address potentially fatal flaws in the Rate Card Model that could create real market harms.

As noted in the comments provided to the MSRB's 2022 Rate Card Filing, the Rate Card Model has certain feedback loops that could be harmful to the market. This year's rate changes are a perfect example. The current rate environment, among other factors, has significantly discouraged new issuance, leading to suppressed market activity that has stressed the business model of certain firms. Instead of buffering or otherwise accounting for current market dynamics, the Rate Card Model amplifies the stress placed on underwriting firms by drastically increasing underwriting fees. In effect, underwriting firms that were already experiencing market pressure in their budgeting process must now account for a 25% increase in underwriting fees from the MSRB. While this fee increase may not be sufficient to break a firm's business model on its own, as recent headlines show, the municipal securities banking model is under increasing scrutiny within firms and there necessarily is a point at which another straw could break the proverbial camel's back. The impact on regulated entities of increasing MSRB fees that they may not have budgeted for, as well as the direct and indirect costs of regulatory changes, hurts the viability of the municipal marketplace. As 2024 begins, fewer firms are active in the municipal securities market, which means less liquidity in the market. Ultimately, just as the industry it regulates is focused, the MSRB should be similarly focused on improving its own efficiency and cutting costs, rather than placing additional budgeting pressure on regulated entities in a down market.

Most importantly, the MSRB's increased tax on the industry will further inhibit market activity on the margins and lead to less competition among underwriting firms for some issuers to choose from. Accordingly, the MSRB should reconsider the underlying assumption of the Rate Card Process before proceeding with further rate increases -- including by examining whether the market activity levels at which the MSRB originally pegged anticipated revenues for the market activity fees in 2022 remain valid.

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Thank you for considering SIFMA's comments. SIFMA appreciates the MSRB's efforts to update its fee structure, however additional review of the structure is necessary in light of the recent resets. We ask the MSRB to have more effective dialog with its regulated constituents on the inputs to the Rate Card throughout the year, including the MSRB budget and market activity levels. 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***
Ernesto A. Lanza, Chief Regulatory and Policy Officer