MSRB
Municipal Securities Rulemaking Board

September 30, 2015

Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File Number SR-MSRB-2015-08

Dear Secretary,

On August 10, 2015, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") that was effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act[1] of 1934 ("Act") and Rule 19b-4(f)(2)[2] thereunder.[3] The rule change amended MSRB Rule A-12 on Registration with an implementation date of October 1, 2015 applicable to brokers, dealers and municipal securities dealers and municipal advisors ("MAs") (collectively "regulated entities") and MSRB Rule A-13 on Underwriting and Transaction Assessments for brokers, dealers and municipal securities dealers (collectively "dealers") with an implementation date of January 1, 2016. The rule change was published for comment in the Federal Register on August 28, 2015.[4]

The Commission received three comment letters questioning the need, justification and timing of the fee changes.[5] SIFMA and NAMA both suggest the MSRB be more transparent in its budgeting and expenses, with SIFMA believing the fees non-dealer MAs pay are too low and, conversely, NAMA believing the fees MAs pay are too high.[6] Grodsky and NAMA assert that the increase in the annual registration fee from $500 to $1,000 and the initial registration fee from $100 to $1,000 create an undue burden on small firms while SIFMA asserts that the

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1 15 U.S.C. 78s(b)(3)(A)(ii).

2 17 CFR 240.19b-4(f)(2).

3 File Number SR-MSRB-2015-08.

4 Securities Exchange Act Release No. 75751 (August 24, 2015), 80 FR 52352 (August 28, 2015).

5 See letters from Sheldon Grodsky, President, Grodsky Associates ("Grodsky") dated August 18, 2015, Michael Decker, Managing Director, Securities Industry and Financial Markets Association ("SIFMA") dated September 17, 2015 and Terri Heaton, CIPMA, President, National Association of Municipal Advisors ("NAMA") dated September 18, 2015.

6 See SIFMA and NAMA.

MSRB's fee structure imposes a disproportionate burden on dealers.[7] In addition, SIFMA asserts that the continuing nature of the technology fee is disingenuous.[8]

The MSRB disagrees with these comments and maintains that the proposed fee changes are necessary, appropriate and reasonably allocated among regulated entities in a manner to ensure that the MSRB is sufficiently funded to fulfill its Congressional mandate to, among other things, protect investors, municipal entities and obligated persons by promoting the fairness and efficiency of the $3.7 trillion municipal securities market. The Commission has previously found MSRB's overall fee structure to be consistent with Section 15B(b)(2)(J) of the Exchange Act,[9] which provides, in pertinent part, that each 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 and that the MSRB shall have rules specifying the amount of such fees. The MSRB believes the amended fee structure continues to be consistent with the Act and is appropriately designed to reasonably defray the costs and expenses of operating and administering the Board.

The MSRB responds to the key issues raised in the comment letters below.

**Equitable Allocation of Fees**

The MSRB assesses regulated entities various fees designed to defray the cost of its operations, including rulemaking, market transparency and educational initiatives. The MSRB regulatory programs provide investors, state and local governments and other market participants with free access to disclosure and transparency information in the municipal securities market through its Electronic Municipal Market Access (EMMA®)[10] website, the official repository for information on virtually all municipal bonds. The MSRB also maintains the Real-time Transaction Reporting System ("RTRS"), the Short-term Obligation Rate Transparency ("SHORT") system, as well as other market transparency systems. Additionally, the MSRB serves as an objective resource on the municipal market, conducts extensive education and outreach to market participants, and provides market leadership on key issues impacting the municipal securities market.

Commenters assert that the MSRB's fee structure does not correlate effectively with the benefits that each registrant gains from the MSRB's regulatory programs and is, therefore, disproportionate.[11] Specifically, NAMA asserts that the fees MAs pay are too high believing the MSRB should allocate only those expenses dedicated solely to MA rulemaking and SIFMA

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7 See Grodsky, NAMA and SIFMA.

8 See SIFMA.

9 15 U.S.C. 78o-4(b)(2)(J).

10 EMMA is a registered trademark of the MSRB.

11 See SIFMA and NAMA.

asserts that the fees non-dealer MAs pay are too low believing the MSRB should more fairly allocate expenses associated with MA-related initiatives including the benefits MAs receive from the MSRB's technology and transparency systems.[12] SIFMA contends that "[m]unicipal securities dealers have shouldered the cost of the MSRB for 40 years" and "[n]ow that MAs are finally regulated entities, it is time for the MSRB's costs to be fairly shared."[13] SIFMA suggests that the MSRB impose an activity-based fee on MAs, analogous to the underwriting activity fee. The MSRB believes it is premature to determine whether an analogous activity fee on MAs would be a reliable measure for an assessment, as the scope of municipal advisory activities is quite diverse. The MA professional fee could be viewed as a fixed activity fee for MAs because each MA is assessed $300 per associated person that is engaging in municipal advisory activities on its behalf.[14] The MSRB understands SIFMA's concern that MA fees may need to be increased to more fairly allocate expenses associated with MA-related initiatives and has acknowledged that the MA professional fee is expected to generate only approximately 3% of total revenue in fiscal year 2016. As noted in the rule filing, the Board intends to revisit this fee structure after providing additional time for the MA regulations and business models to more fully develop.

It is impractical to suggest a regulatory organization specifically apportion the costs and benefits of rulemaking, systems development, operational activities and the protections afforded investors, municipal entities and/or obligated persons required to promote a fair and efficient municipal securities market between dealers and MAs. The Act does not require that rules relating to fees and charges be that prescriptive. The Board, as it has historically, sought to establish a reasonable fee structure that ensures long-term sustainability. Proxies used by the Board for reasonably allocating the cost of MSRB regulation to regulated entities include, but are not limited to: being registered to engage in municipal securities or municipal advisory activities; the level of dealer market activity as determined by the number of transactions executed and total par value of transactions executed; and the number of associated persons engaged in municipal advisory activities on behalf of a registered MA.

As previously stated, the MSRB firmly believes that it must be adequately funded to undertake all necessary rulemaking in the service of protecting investors, municipal entities, obligated persons and the public interest with rules applicable to dealers, MAs or both without the constraint of determining whether such rulemaking bears a close relationship to the level of funding obtained from each constituency at a particular point in time. The MSRB maintains that its fee structure is reasonable and necessary or appropriate to defray the costs and expenses of operating and administering the Board and, as a result, is consistent with the Act.

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12 See SIFMA and NAMA.

13 See SIFMA.

14 See Exchange Act Release No. 72019 (Apr. 25, 2014), 79 FR 24798 (May 1, 2014) (File No. SR-MSRB-2014-03). The MA is assessed $300 per professional for each Form MA-I filed with the Commission as of January 31 of each year.

**Transparency**

SIFMA and NAMA both suggest the MSRB be more transparent in budgeting and expenses in relation to market participation. The MSRB already maintains the highest level of transparency with respect to its governance and financial information, as illustrated by SIFMA's ability to specifically reference MSRB financial information and, as noted above, seeking additional transparency on the allocation of costs and benefits of the MSRB's regulatory initiatives between dealers and MAs is unrealistic.

The MSRB's Financial Statements and Auditors' Reports and Annual Reviews regarding the organization's financial condition from 2002 to the present are publicly available on MSRB.org. The MSRB also makes available on its website the most recent annual IRS 990 informational filings, currently for fiscal year 2014. Moreover, in 2014, the MSRB undertook an independent audit by an external audit firm, which confirmed that the MSRB's corporate transparency exceeds that of its peers. The audited financial statements provide a breakdown of revenue by assessment type and a breakdown of total expenses for the core five functional expense categories, including: rulemaking and policy development; board governance and rulemaking oversight; market information transparency programs and operations; market leadership, outreach and education; and administration.

NAMA suggests that the MSRB submit any fee filing for notice and comment to provide a greater opportunity for comment. It would be imprudent to restrict the Board's flexibility in operating and administering the MSRB if all fee filings were required to be submitted to a public comment period. Moreover, as NAMA noted, the Act provides that a proposed rule change of a self-regulatory organization establishing or changing a due, fee or other charge imposed by the self-regulatory organization of any person, whether or not the person is a member of the self-regulatory organization, shall take effect upon filing with the Commission. The MSRB believes that, in providing for the immediate effectiveness of such rules, Section 19(b)(3)(A) of the Act serves a prudent goal – allowing self-regulatory organizations to be funded to operate as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act. Therefore, while the MSRB may, from time to time, publish rule proposals that establish or change a fee for comment prior to filing, it will do so as the Board determines appropriate.

**Technology Fee**

The technology fee on inter-dealer and customer sales trades was implemented in January 2011 to fund capitalized hardware and software for the MSRB market transparency systems to ensure the operational integrity of such systems and to fund new technology initiatives.[15] SIFMA's suggestion that the Board's credibility could be harmed if the technology fee is not expired belies the fact that in introducing the technology fee the MSRB specifically noted that "[b]y indicating in the rule filing that the technology fee is viewed as transitional, the Board has committed itself to review, in particular, the necessity for the technology fee on an on-going

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[15] See Exchange Act Release No. 63621 (Dec. 29, 2010), 76 FR 604 (Jan. 5, 2011) (File No. SR-MSRB-2010-10).

basis, including whether the technology fee should continue to be assessed and, if so, at what level. Such review would take into consideration, among other things, whether there is a continuing need for ensuring proper funding of capital expenditures and a technology renewal fund, the other sources of revenue then available to it, issues of equity among regulated entities and any potential impact on retail investors."[16] In addition, the MSRB stated that it would not provide a specific date to sunset the fee, but 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.[17] The Board's review of the technology fee to determine the necessity of the assessment as part of its budgeting process and whether fees are appropriately assessed are wholly consistent with its earlier representations.

SIFMA noted that the MSRB issued a $3.6 million technology fee rebate in 2014, which SIFMA construed as an indication that the technology fee had become unnecessary. However, the MSRB made no representation that the technology fee would cease once the reserve target was met. Indeed, the rebate served as an impetus for the Board's review of the total fee structure. In fact, though the technology capital reserve targets had been met, the operational expenses for the MSRB's market transparency systems, which in fiscal year 2014 were approximately $14 million, continued to grow and are far exceeding the revenue generated from the technology fee.[18] The Board concluded that continuation of the technology fee was warranted and that assessing a fee on a per trade basis is a reasonable and balanced methodology when taken in conjunction with the par value-based transaction fee, to defray the operational expenses for the MSRB's market transparency systems. As part of its review, the Board recognized that, if the technology fee were reduced to a level to only fund annual technology capital, a new fee would be required, and the Board considered the potential additional operational and compliance costs associated with implementing a new assessment based on a per trade basis. The Board did not believe the additional costs associated with establishing a new fee were warranted, concluding that the continuation of the technology fee at its current rate of $1.00 per trade was reasonable and appropriate.

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16 See letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated November 19, 2010 ("Initial MSRB Response Letter").

17 See letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated December 28, 2010 ("MSRB Response Letter").

18 As outlined in MSRB Rule A-13, the MSRB does not assess fees on all trades. For example, sales from customers to broker dealers are excluded from the assessment. While SIFMA noted that from 2010 to 2013, total annual trading volume fell 15% from $3.3 trillion to $2.8 trillion, respectively, it failed to account for only those transactions that are assessed the technology fee, which actually increased 2.1% from 2010 to 2013 from $1.37 trillion to $1.4 trillion.

**The Impact on Small Regulated Entities**

Two commenters raised a concern with the increase in the annual fee under MSRB Rule A-12. Grodsky argued that an annual fee should be based on revenues because a fixed fee of $1,000 is unreasonable.[19] NAMA asserted that Section 15B(b)(2)(L)(iv) of the Act[20] requires that the rule provide relief for small MAs and suggested that any fee increase be phased-in over two years.

The majority of MSRB fees are based on real time market activity, with information that is reported directly to the MSRB. However, the annual fee is not activity based and represents a minimum annual fee for all regulated entities.[21] Recognizing that MAs and 35% of the entities registered with the MSRB as dealers do not regularly engage in any municipal securities trade activity subject to market activity fee assessments under Rule A-13,[22] the Board determined the increase in the annual fee from $500 to $1,000 to be reasonable and appropriate to ensure that regulated entities that do not regularly engage in the market activities share in the costs and expenses of operating and administering the MSRB. Likewise, the Board believes the increase in the initial fee under Rule A-12 from $100 to $1,000 is necessary and appropriate as the fee for initial registration has not been increased since its inception in 1975 and, as a result, the $100 fee does not reasonably defray the administrative costs of processing an initial registration, which currently exceed $1,000.

While any fee that is assessed on a per firm basis, rather than activity basis, will likely represent a greater share of a small firm's revenue than it will a larger firm's revenue, the MSRB believes that, in most cases, the fees will represent a very small percentage of a firm's revenue. The Board believes that a firm that is adversely impacted by a $500 per year increase may also find it difficult to fulfill other regulatory obligations, including, but not limited to, the cost associated with maintaining effective supervisory procedures and preserving books and records. While there is a possibility that some firms may find that these fees represent an initial barrier to entry, the expected impact is small and unlikely to negatively impact the competitiveness of registrants in the municipal securities market in which the registrants participate.

The MSRB believes the burdens associated with the fees on small MAs are limited and are necessary and appropriate to defray the costs of operating and administering the MSRB, including the costs associated with developing a regulatory framework for MAs designed to

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19 See Grodsky.

20 15 U.S.C. 78o-4(b)(2)(L)(iv).

21 Compare with FINRA's annual assessment pursuant to FINRA By-Laws, Schedule A, which is based on revenue, but has a fixed minimum of $1,200.

22 The annual fee is the primary way dealers who may only engage in municipal fund securities business (i.e., 529 college savings plan sales and Local Government Investment Pool sales) or have the occasional municipal bond sale share in the costs and expenses of operating and administering the MSRB.

protect investors, municipal entities and obligated persons. As the SEC noted in its final rule on the permanent registration of MAs, the market is likely to remain competitive despite the potential exit of some MAs (including small entity municipal advisors), consolidation of MAs, or lack of new entrants into the market.[23]

Section 15B(b)(2)(C) of the Act[24] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 15B(b)(2)(L)(iv) of the Act provides that MSRB rules "not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud."[25] In considering these standards with respect to the rule change, the MSRB was guided by the Board's Policy on the Use of Economic Analysis. The MSRB does not believe that the proposed rule changes will impose additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

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After reviewing all of the comments, the MSRB believes that the material issues raised in the comment letters were considered by the Board as discussed in the proposed rule filing and addressed above. If you have any further questions, please contact me at 703-797-6600; email gmarshall@msrb.org. The fax number of the Office of the General Counsel is 703-797-6700.

Regards,

Gail Marshall
Associate General Counsel – Enforcement Coordination

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23 See Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67467 (Nov. 12, 2013).

24 15 U.S.C. 78o-4(b)(2)(C).

25 15 U.S.C. 78o-4(b)(2)(L)(iv).