



Municipal Securities Rulemaking Board

January 26, 2024

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

Re: Response to Comments on SR-MSRB-2023-06

Dear Ms. Countryman:

On November 30, 2023, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change to establish new rates of assessment on municipal advisors under Rule A-11 and on brokers, dealers, and municipal securities dealers (“dealers”) for underwriting, transaction and trade count fees under Rule A-13 (the “2024 Rate Card Fees”).¹ The 2024 Rate Card Fees were established under the MSRB’s annual rate-setting process adopted in 2022 (the “Rate Card Process”).² The proposed rule change was published for comment in the Federal Register on December 12, 2023. Five comment letters were filed with the Commission.³

The MSRB appreciates the constructive input and has had additional discussions with each of the commenters to gain a clearer understanding of their stated concerns. The commenters’ input will greatly assist the MSRB in administering its Rate Card Process, providing additional meaningful financial transparency, and engaging more broadly with market participants in the course of developing future budgets and work plans. This letter represents the first step in an ongoing process of engagement to address concerns raised by commenters, which process will include, as described more fully below:

- Undertaking a retrospective review of the Rate Card Process;

¹ See SR-MSRB-2023-06 (Nov. 30, 2023) (the “2024 Rate Card Filing”), available at <https://www.msrb.org/sites/default/files/2023-11/SR-MSRB-2023-06.pdf>.

² See Exchange Act Release No. 95417 (Aug. 3, 2022), 87 FR 48530 (Aug. 9, 2022), File No. SR-MSRB-2022-06 (the “Rate Card Process Filing”).

³ See letter from Michael Decker, Senior Vice President, Research and Public Policy, Bond Dealers of America (“BDA”) (Jan. 2, 2024) (the “BDA Letter”); letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”) (Jan. 2, 2024) (the “NAMA Letter”); letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (Jan. 2, 2024) (the “SIFMA Letter”); letter from Jessica Giroux, General Counsel and Head of Fixed Income Policy, American Securities Association, Mr. Decker, BDA, Ms. Gaffney, NAMA, and Ms. Norwood, SIFMA (Jan. 2, 2024) (the “Joint Letter”); and letter from Mr. Decker, BDA, and Ms. Norwood, SIFMA (Jan. 24, 2024) (the “BDA/SIFMA Supplemental Letter”).

- Instituting certain financial transparency enhancements, including more granular details regarding key technology services and initiatives; and
- Developing avenues to provide municipal market participants an opportunity to offer input to the MSRB in advance of finalization of annual budgets.

Rate Card Process, 2024 Rate Card Fees, and Retrospective Review

Rate Card Process. The Rate Card Process was designed to provide greater transparency to regulated entities into the rate setting process. It was expected to better mitigate the impact of market volatility on the MSRB’s revenue structure and organizational reserves levels and maintain rates within a reasonably predictable range 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 then-current fee structure.⁴ Rather than retain accumulated excess revenues collected during the course of the year, the Rate Card Process was designed to effectively return such excess revenues the following year by being netted against forecasted revenue for such following year and thereby producing lower fee levels.⁵

Commenters suggested changes to certain aspects of the Rate Card Process, which the MSRB will consider during the retrospective review of the Rate Card Process described below.

2024 Rate Card Fees. The 2024 Rate Card Fees were set at rates that would, based on the MSRB’s assumed levels of market activity for each of the 2024 Rate Card Fees, generate approximately \$3.09 million in lower net rate card revenues over the course of 2024 as compared to what would be assessed on regulated entities and collected by the MSRB if the 2023 rates were to remain in effect for 2024.⁶ This \$3.09 million represents the effective return in 2024 of excess revenue assessed on regulated entities and collected by the MSRB in 2023.

No commenter suggested that the 2024 Rate Card Fees should not apply for the current year. BDA stated that it is “not asking for any changes to the 2024 fees” while focusing on potential changes for 2025.⁷ SIFMA’s comments also were forward looking and did not seek to have the 2024 Rate Card Fees reversed, with SIFMA requesting that the MSRB “change its Rate

⁴ See Rate Card Process Filing at 18.

⁵ See Rate Card Process Filing at 19, footnote 63.

⁶ Based on the MSRB’s assumed levels of market activity for each of the 2024 Rate Card Fees set forth in footnote 16 of the 2024 Rate Card Filing, such fees would generate approximately \$36.20 million in total rate card revenue during calendar year 2024 if assessed at the 2024 Rate Card Fees, as compared to \$39.29 in rate card revenue if instead assessed at the rates in effect in 2023, which are the rates that would apply if the 2024 Rate Card Fees were to be suspended. Thus, reversion from the 2024 Rate Card Fees back to the 2023 fee rates would be estimated to generate approximately \$3.09 million of excess revenue during calendar year 2024, if the 2023 rates were in effect rather than the 2024 Rate Card Fees for the entire year.

⁷ BDA Letter at 1.

Card setting process for 2025”⁸ and stating that “the MSRB should reconsider the underlying assumption of the Rate Card Process before proceeding with further rate increases.”⁹ While the Joint Letter stated that it was difficult to assess whether the fees assessed are reasonable and asked that attention be paid to the concerns expressed in the letter, the Joint Letter did not suggest that the 2024 Rate Card Fees should not remain in effect and stated that the signatories “look forward to constructive dialogue on these matters going forward.”¹⁰

Retrospective Review. The MSRB understood when it first established the Rate Card Process that it would need to review its implementation to ensure that it was operating as intended and that the Rate Card Process would evolve over time. The MSRB will undertake such retrospective review of the Rate Card Process in light of the input received from commenters and the MSRB’s experience implementing the first rate adjustment to establish the 2024 Rate Card Fees.¹¹ Commenters noted the following specific concerns regarding the Rate Card Process that the MSRB will consider in its retrospective review.

(a) Volatility, Predictability and Potential Adverse Impact of Fee Changes

SIFMA and BDA commented that the 2024 Rate Card Fees, in comparison to those in effect during 2023, demonstrate volatility rather than stability or predictability.¹² SIFMA stated that the increases and decreases in fee rates were material and that there was no guarantee that additional material changes might not occur in connection with fee rates for 2025.¹³ SIFMA noted that the 2024 Rate Card Filing provided that the Rate Card Process would better mitigate the impact of market volatility on the MSRB’s revenue structure¹⁴ and maintain rates within a reasonably predictable range.¹⁵ SIFMA recommended that the MSRB “reduce the cap on each type of fee to prevent dramatic fee changes from reoccurring.”¹⁶

As SIFMA noted, the Rate Card Process seeks to reduce the impact of market volatility on the MSRB’s revenue and reserve structure. The MSRB is able to establish a more stable

⁸ SIFMA Letter at 2. See also BDA/SIFMA Supplemental Letter at 1.

⁹ Id. at 4.

¹⁰ Joint Letter at 1.

¹¹ The implementation of the Rate Card Process and this first rate adjustment occurred during a period in which the municipal securities market experienced a record low trade count in 2021 followed by a significant swing in trading activity to a record high trade count in 2023, representing an approximately 70% increase from 2021 to 2023.

¹² SIFMA Letter at 2; BDA Letter at 1.

¹³ SIFMA Letter at 2.

¹⁴ As noted in the 2024 Rate Card Filing, this mitigation of the impact of market volatility also applies to the MSRB’s organizational reserves. See 2024 Rate Card Filing at 12.

¹⁵ SIFMA Letter at 2.

¹⁶ Id. at 3.

revenue and reserve structure through the adjustment of fee rates to account for changes in market activity levels. Accordingly, the MSRB believes that the Rate Card Process has operated as expected with regard to reducing the impact of market volatility on the MSRB's revenue and reserve structure. The MSRB notes, however, that the significant swings in market activity did produce the relatively large changes in some of the individual components of the 2024 Rate Card Fees as identified by the commenters.

Thus, the MSRB understands that the protections it instituted in the Rate Card Process may not always fully maintain individual rates within reasonably predictable ranges when market activities vary considerably from past norms and current projections. As the commenters observed, one such protection – a 25% cap on the maximum increase in the assessment rate for an individual fee – was triggered in connection with the 2024 Rate Card Fees to limit the increase in the underwriting assessment to 25% and thus operated as intended. However, one fee reduction was at a larger scale and the current Rate Card Process does not include caps on such fee reductions. The MSRB will consider whether it would be appropriate to institute caps more broadly – for example, on both increases and decreases in rates – or to introduce other means to limit the magnitude of year-to-year changes into the Rate Card Process. The MSRB would engage in outreach to market participants ahead of proposing any such changes.

SIFMA observed that new issuance activity has been suppressed and that, “[i]nstead 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.”¹⁷ As noted above, the fee increase cap of 25% was triggered for the underwriting fee component of the 2024 Rate Card Fees, limiting the impact of higher fee rates on declining activity. The MSRB will include consideration of potential steps to further limit such impacts – for example, by setting lower caps for both increases and decreases – in the course of its review of caps described above.

(b) Balance of Fee Contributions Between Dealers and Municipal Advisors

BDA stated that the MSRB's current fee structure “places too much burden on dealers and not enough on non-dealer municipal advisors.”¹⁸ BDA further asked for transparency and justification related to the MSRB's determination of the “Proportional Contribution Amounts” of the underwriting fee, transaction fee, trade count fee, and municipal advisor professional fee.¹⁹ NAMA, in contrast, expressed concerns about the 9% increase in the municipal advisor professional fee and the overall increase in municipal advisor fees since 2014.²⁰

The increase in the municipal advisor professional fee for 2024, while maintaining the same rounded contribution target figure as compared to the prior fee rates (8%), constitutes a modest incremental increase in the share of fees borne by municipal advisors as compared to dealers. The MSRB determined that the municipal advisor contribution target for 2024 was an appropriate refinement to the municipal advisor professional fee in light of the factors considered

¹⁷ Id. at 4.

¹⁸ BDA Letter at 1.

¹⁹ Id. at 2.

²⁰ NAMA Letter at 1, 2.

in the context of establishing the full range of 2024 Rate Card Fees. The MSRB could reconsider a revenue-based or transaction volume-based fee assessment model in the course of its retrospective review,²¹ although it is not clear whether such alternative models would result in a change in the balance of fees among regulated entities.

Financial Transparency

The Joint Letter sought greater detail about significant budget areas and initiatives, including the MSRB's essential operations, as well as specific costs and comparable budget analyses of expenditures. The Joint Letter asserted that "there is a significant lack of specificity regarding these [technology] projects, their associated costs, changes in their costs from previous years, and their alignment with the MSRB's role as a repository for disclosure documents and to run functional systems for the marketplace."²² BDA stated that it was unclear what initiatives would be covered by the increase in the technology budget and sought "better insight into the MSRB's priority setting and budgeting process."²³ NAMA requested that "the MSRB provide market participants with specific and detailed cost information related to its vital information systems as well as the costs related to other projects within the MSRB's congressional mandate" and "for projects that are outside of the Congressional mandate."²⁴

The MSRB will seek to expand upon earlier steps taken toward greater transparency of financial information and budgeted expenses that included (i) the annual publication of a budget summary, (ii) the annual publication on its website of IRS Form 990 making public key financial information including a broad range of functional expenses,²⁵ and (iii) for the current year, an

²¹ The MSRB had considered a fee assessment method for municipal advisory activities based on a percentage of each firm's revenue but determined not to pursue such alternative. See Rate Card Process Filing at 40. However, while this approach might result in a more precise allocation of fee burdens among regulated entities, it would require a potentially burdensome recordkeeping and reporting regime on both municipal advisors and dealers to ensure that only revenues from municipal securities or municipal advisory activities would be taken into account, particularly for firms that have a diversified business. The MSRB also had considered a fee assessment method for municipal advisors based on transaction volume (par), although such an approach would likely be complicated, not capture the full range of municipal advisory activities (because some portion of the municipal advisory activities of many firms is not transactional), and require additional resources on the part of the MSRB and municipal advisors to institute.

²² Joint Letter at 1.

²³ BDA Letter at 3.

²⁴ NAMA Letter at 2.

²⁵ IRS Form 990 includes a Statement of Functional Expenses (Part IX) that provides for disclosure of over 20 categories of organizational functional expenses, such as compensation, fees for services (e.g., legal, accounting, lobbying), advertising/promotion, and other line items. Other portions of the Form 990 provide related information that

expanded budget summary providing more detailed information on the MSRB’s technology expenditures.²⁶

The MSRB commits to continued engagement with commenters and other interested stakeholders to provide even greater budget transparency by providing more granular breakdowns of program expenditures, particularly with respect to technology-related expenses. For example, under “Section IV. Spotlight on Market Transparency and Technology Expenses” in the MSRB Budget Summary, the chart on page 11 illustrates the share of certain expenses in the FY 2024 budget to support the MSRB’s market transparency mandate which totals approximately \$14.9 million.²⁷ Of that figure, approximately 67% or \$9.96 million is budgeted for personnel expenses in support of internal software development. Examples of software development projects that the MSRB completed in the prior fiscal year (FY 2023) that illustrate the level of expenditure details commenters might find useful include the deployment of a data platform which will serve as the MSRB’s central repository for data; a municipal security master database and associated data management and analytic capabilities; certain enhancements to the EMMA website, including externally facing UI/UX (user interface/user experience) improvements; internally facing enhancements to cybersecurity; and display of BVAL yield curves. The MSRB will seek additional feedback from commenters on whether this type of project-level information on its technology-related expenditures is responsive to their requests for greater detail about significant budget areas and initiatives.

Technology infrastructure, data and software often are shared among multiple integrated or interdependent transparency systems and also may support internal MSRB staff technology needs. Furthermore, EMMA is often used as an umbrella term that includes the public website, document and data submission infrastructure, subscription dissemination functionalities, underlying securities master databases and other reference data, and cross-system conduits for information flows that allow the EMMA website to display data from various other MSRB technology systems in an organized manner. Nonetheless, by developing allocation assumptions that would be necessary to disentangle technology solutions and services that support multiple different systems into recognizable programs or system categories (e.g., RTRS; SHORT; EMMA),²⁸ the MSRB will be able to achieve further meaningful levels of granularity in the

provides additional details about the operations of the MSRB for the year covered by the form.

²⁶ See MSRB’s Fiscal Year 2024 Budget, available at <https://www.msrb.org/sites/default/files/2023-09/MSRB-FY-2024-Budget-Summary.pdf> (the “MSRB Budget Summary”) at 10-11.

²⁷ See MSRB Budget Summary at 11.

²⁸ Two commenters reference enhanced transparency of EMMALabs expenditures. See BDA Letter at 3; NAMA Letter at 2. Much of what EMMALabs is used for is similar to what many organizations undertake as part of their overall technology development process, with the difference that EMMALabs are accessible to the public as compared to most development activity for which no such public platform is available until development work is put into production. For example, the Disclosure Search Lab in EMMALabs constitutes work that most development processes would simply undertake

reporting of budgeted expenses for such programs or systems. The MSRB commits to developing reasonable allocation assumptions to aid in the understanding of the MSRB's technology system-related expenses.

Currently, the MSRB publishes on its website recent and future enhancements to its EMMA website to provide transparency to all market participants on key technology initiatives.²⁹ In addition, as a means of providing greater transparency in connection with potential future technology initiatives with the opportunity for public input, the MSRB is considering the development of a public product roadmap, which could be hosted in an interactive manner on EMMALabs or published in a long-range plan for transparency product development, a version of which the MSRB has previously published. As part of the MSRB's outreach to the commenters and other stakeholders, the MSRB will explore other possible avenues for improving the transparency of key technology initiatives and priorities.

Finally, the MSRB believes all of its expenditures are within the MSRB's legal authority. Some expenditures can be directly traced to one or more of the specific minimum requirements for rulemaking or other activities set out in subparagraphs (A) through (L) of Exchange Act Section 15B(b)(2).³⁰ Congress clearly intended and expected that MSRB activities would not be restricted to these specifically identified items, however, but would also include activities such as additional rules not specifically required by subparagraphs (A) through (L)³¹ as well as transparency and other information systems (i.e., technology) established and operated by the MSRB since at least 1990 under the purview of or advancing the purposes of the MSRB's

within the context of the overall technology development budget and not as a distinct line of activity. It is not clear that undertaking this activity on an open platform allowing the public to view, test and make use of it in advance of moving it into production on EMMA in the future, rather than as a traditional internal development project, should result in a different budget disclosure result. Further, EMMALabs is not a distinct technology from EMMA, and therefore allocation assumptions would be necessary to achieve meaningful allocation between EMMALabs and the remaining portions of EMMA and might be more meaningfully made transparent on a project or initiative basis, similar to the software development project examples included in this letter, rather than on a "platform" basis.

²⁹ See "Emma Enhancements" available at <https://www.msrb.org/EMMA-Enhancements>.

³⁰ In addition to these minimum mandates, Exchange Act Section 15B identifies or implies other non-rulemaking activities such as a professional qualifications program, an arbitration program, examination and enforcement support to the enforcement agencies, development of information systems and implementation of data standards adopted by the Commission under the Financial Data Transparency Act as codified in Exchange Act Section 15B(b)(8).

³¹ See Exchange Act Section 15B(b)(2), language preceding subparagraphs (A) through (L).

rulemaking activities.³² Furthermore, MSRB expenditures advancing its Congressional mandate include expenditures to provide for the operation and administration of the MSRB as mandated by Section 15B(b)(2)(J) of the Exchange Act.³³

Engagement in Budget Process

In the Joint Letter, the signatories suggested that the MSRB “seek stakeholder input throughout the budget process.”³⁴ In addition, the Joint Letter asserted that the commenters “are unaware of formal efforts to seek input or socialization of projects beyond rulemaking.”³⁵ SIFMA sought more transparency regarding rate card inputs, as well as the opportunity to provide input and to have constructive conversations with the MSRB prior to finalization of the budget.³⁶ NAMA suggested that, in connection with additions or changes to EMMA, the MSRB should have the process include public comment and Commission approval. NAMA also suggested discussions among the MSRB, the Commission and market participants in connection with seeking input on the budget process.³⁷

Approval of an organization’s budget is a core governance function that is the responsibility of the board of directors, which in the case of the MSRB is comprised of statutorily dictated representatives of the various stakeholders within the municipal securities market, including the regulated entities represented by the each of the commenters (i.e., ASA, BDA, SIFMA, NAMA). Nonetheless, the MSRB looks to provide appropriate opportunities for market participants (including the commenters, other municipal market stakeholders and fellow regulators inclusive of the Commission) to offer input, through discussions or otherwise, at a point in time that would allow the MSRB board of directors to consider such input as it approves the budget. Further, while the MSRB currently reaches out to some of the commenters or their member firms to seek input on estimated levels of underwriting and trading activity for the coming year to develop this aspect of the input into the Rate Card Process, the MSRB could consider a more formalized manner of surveying relevant market participants ahead of the final rate setting process.

³² Congress expressly confirmed the MSRB’s authority with respect to the establishment of information systems in the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. See Exchange Act Section 15B(b)(3).

³³ These expenditures relate to the day-to-day operations and administration of an effective ongoing organization. Like other non-profit or for-profit organizations, such expenditures often entail the many routine costs of operating an enterprise that may not have direct bearing on specific mandates under the Exchange Act but constitute part of the ordinary costs of the MSRB as an organization that allow the MSRB to achieve its mandate.

³⁴ Joint Letter at 1. See also BDA/SIFMA Supplemental Letter at 1.

³⁵ Joint Letter at 1-2.

³⁶ SIFMA Letter at 3-4.

³⁷ NAMA Letter at 2.

With respect to the budget process, the Joint Letter suggested that the MSRB should “adopt a more fiscally responsible approach, including demonstrating ways it sought internal cuts or harnessing new projects in the budget process.”³⁸ BDA stated that the MSRB’s budget is too big and is growing too fast.³⁹ NAMA called for the MSRB to “look for areas where the MSRB may be able to curtail its overall spending to meet its self determined budgetary needs, rather than place that funding responsibility on regulated entities.”⁴⁰ SIFMA observed that “[u]nlike 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.”⁴¹

One of the MSRB’s strategic goals outlined in its Strategic Plan for Fiscal Years 2022 to 2025 is to uphold the public trust in the MSRB as the principal regulator of the municipal securities market.⁴² Strong fiscal stewardship is essential to upholding the public trust, and the MSRB is committed to budget discipline and expense management.

For example, the MSRB had previously launched MuniEdPro as a technology-dependent structured series of educational courses designed to meet industry demand for more municipal market-focused training and continuing education material. After operating MuniEdPro for several years, the MSRB determined that the expenses did not justify the level of usage of MuniEdPro and therefore made the decision to terminate MuniEdPro while continuing to provide more tailored educational materials through its current more cost-effective efforts.

As a second example of effective expense management, when the MSRB embarked on an enterprise scale migration of its technology systems and data to the cloud in 2019 with the goal of ensuring a more stable, more scalable, more efficient and future-proofed systems infrastructure for EMMA and the MSRB’s other transparency systems, the migration served the dual purpose of helping to manage the rate of growth of the MSRB’s technology expenses, specifically the avoidance of large capital expenditures associated with maintaining its now-retired three co-located physical data centers.

The prudent management of organizational reserves is a third example of the MSRB’s fiscal stewardship. The cloud migration was completed on time and on budget with no system downtime, and the total project cost of approximately \$5.6 million was funded entirely from organizational reserves without any special fees or assessments levied on regulated entities. In addition, the MSRB used excess reserves to provide a temporary 40% reduction in market activity fees over the course of 18 months totaling nearly \$20 million returned to regulated entities in the form of reduced fees. One benefit of the Rate Card Process is that it is designed to enhance the ongoing management of the MSRB’s organizational reserves by automatically

³⁸ Joint Letter at 1.

³⁹ BDA Letter at 3.

⁴⁰ NAMA Letter at 2.

⁴¹ SIFMA Letter at 3.

⁴² See MSRB Strategic Plan available at <https://www.msrb.org/MSRB-Strategic-Plan-Fiscal-Years-2022-2025>.

adjusting fees lower to return any surplus revenue to regulated entities, as evidenced by the 48% reduction in the trade count fee for 2024, instead of accumulating that surplus as excess reserves.

Conclusion

The MSRB appreciates commenters' input on the 2024 Rate Card Fees. The MSRB is eager to engage fully with market stakeholders on the issues raised in the comment letters and to launch the various undertakings described herein. We view meaningful progress in this area as a key objective of the organization. In the meantime, the MSRB believes that it is in the best interest of all market participants, including the commenters and their members, that the 2024 Rate Card Fees remain in effect as the MSRB undertakes its retrospective review of the Rate Card Process and pursues these transparency and budgetary initiatives. As noted above, were the 2024 Rate Card Fees to be suspended and the pre-existing fee rates thereby reinstated, the estimated total fees collected during 2024 based on such prior fee rates would be approximately \$3.09 million higher than the total fees projected to be collected based on the 2024 Rate Card Fees. The MSRB is confident that the budget for the current year provides sufficient basis to evaluate the reasonableness of the 2024 Rate Card Fees.⁴³

If you have any questions, please feel free to contact me or Omer Ahmed, Chief Financial Officer, at 202-838-1500.

Sincerely,



Ernesto A. Lanza
Chief Regulatory and Policy Officer

⁴³ See MSRB Budget Summary.