



Invested in America

December 2, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

In regard to File No. SR-MSRB-2010-10

Dear Ms. Murphy,

On November 9, 2010 the Securities Industry and Financial Markets Association (“SIFMA”)¹ submitted comments to the Securities and Exchange Commission (“SEC”) in regard to SEC Release No. 34-63095 relating to the Municipal Securities Rulemaking Board’s (“MSRB” or “Board”) Proposed Amendments to MSRB Rule A-13, on Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers (the “Proposal”). On November 19, 2010 the MSRB filed a letter (“November 19 letter”) with the SEC in response to those comments and the comments of other parties.² While we appreciate the additional perspective the MSRB has given on the Proposal, the Board has still not provided sufficient justification for such a large increase in its revenues. The Proposal remains seriously flawed and unfair, and we continue to urge the SEC to reject it in its present form.

Key problems with the MSRB proposal

The magnitude of the increased revenues that would result from the Proposal is excessive relative to the MSRB’s current budget, much larger than the increases that can be reasonably anticipated in the MSRB’s expenses. In the November 19 letter, the MSRB estimates that its expenses for the fiscal year that ended on September 30, 2010 increased by 8.5 percent over fiscal 2009 and asserts that its expenses will continue to rise “at significantly higher rates” in the coming two years. However, the MSRB provides no real information about its anticipated expenses that would justify a near doubling of its revenues. In our previous comment letter on this matter, we pointed out that the MSRB is proposing to increase its revenue by 84 percent compared to its average annual revenue of recent years. The Board should—but has not—provide a detailed budget for its current fiscal year to justify such an inordinate increase. Other than the generalizations contained in the November 19 letter, the MSRB’s plans and the related costs remain hidden.

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

² Letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB to Elizabeth M. Murphy, Secretary, SEC, November 19, 2010.

Even some of the additional details on the need for the proposed new and increased assessments fail to justify the Proposal at this time. For example, the MSRB states the technology underlying its Real-time Transaction Reporting System and public access portal for Rule G-37 filings “can be expected to need comprehensive re-engineering in the coming years.” However, the MSRB does not answer some key questions such as when specifically will the re-engineering be undertaken, what is the projected cost of that re-engineering, and why does the MSRB need to raise funds now for initiatives that will be undertaken “in the coming years.” In the same vein, according to the November 19 letter, “the Board undertakes long-range strategic planning” and has in place a process to ensure the long-term value and sustainability of its initiatives. In the interest of transparency, the MSRB should communicate more openly with its members and the public details of its future plans and how it sets priorities, including documentation associated with its “long-range strategic planning.”

The MSRB also states in its November 19 letter that it has “not previously set aside reserves for replacement of” technology systems. The MSRB indicates that at least a portion of the revenue derived from the proposed new and increased fees is not needed now but will be held in reserve for future expenses. At the same time, the MSRB states—in the context of establishing a revenue model encompassing both dealers and municipal advisors—that the Board will “continuously review its fee structure” over time to ensure fairness. Before it begins establishing substantial new reserves for future projects and initiatives, the MSRB should establish a fee structure that fairly allocates costs across all regulated constituencies. Moreover, while the MSRB has stated in its letter that it will “periodically” reviewing its fee structure, nothing in its Proposal would obligate it to do so or sunset any of the proposed new or increased fees in the future.

Paying assessments to the MSRB is not an option for regulated entities, and so the MSRB has significant flexibility to set its fees to meet projected expenses from year to year. While there is some variation in the MSRB’s revenues based on variability in issuance and trading volume, the MSRB has the ability to adjust its fees to closely match its budgeted expenses in a given year. As a result, there is no reason for the MSRB to assess the dealer community more than is necessary to cover annual expenses simply to hold those funds in reserve for future initiatives without at least a more comprehensive discussion with the dealer community of how much those initiatives will cost, when they will be started and what are the projected benefits to the wider community. The MSRB should maintain a reasonable cash reserve to cover variations in revenue and unanticipated, unbudgeted expenses while adjusting its revenues from year to year to match its budget. The MSRB should not collect revenue from dealers expressly for the purpose of funding a reserve without any dialogue with the parties shouldering the burden.

As we pointed out in our previous comment letter on this matter, the MSRB will derive increased revenues from several new and expanded sources, including:

- Assessments levied on municipal advisors;
- Enforcement fines shared by the SEC and the Financial Industry Regulatory Authority; and
- Increased fees paid by vendors who subscribe to the MSRB’s data products.

There is nothing in the MSRB’s Proposal or November 19 letter to support the contention that the Board’s financial needs are acute or dire. The MSRB has a sizable accumulated reserve to draw against as it develops a fair and comprehensive budgetary model that encompasses these additional sources of revenue and the timing of the expenses for its new initiatives.

Summary

Section 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o–4(b)(2)(J)) (the “’34 Act”) states the MSRB’s rules should “provide that each municipal securities broker, municipal securities 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” (emphasis added). Quite simply, the MSRB’s Proposal does not meet the reasonableness test, and the MSRB has not adequately described how the proposed added revenue is necessary to meet its projected increased costs and expenses. We urge the SEC to reject the Proposal as submitted and encourage the MSRB to work with industry participants on a more thorough review of its revenue model.

SIFMA’s membership includes hundreds of firms of all sizes and business models with focuses on all sectors of the municipal market. In our internal discussions there has been virtually universal opposition to the MSRB’s Proposal. In challenging the MSRB’s proposed new and increased fees, we are not, as the MSRB suggests in its November 19 letter, seeking “to influence which initiatives the MSRB pursues by attempting to limit the resources available to it.” We simply believe the MSRB has failed to provide sufficient justification for an assessment increase as large as it has proposed. The MSRB has been a champion and leader in improving informational and price transparency in the municipal bond market. We are urging the same degree of transparency in the MSRB’s own governance and rulemaking.

The MSRB’s accumulated reserves and ongoing revenue sources give the Board more than enough time to carefully develop such a revenue model which can be fully vetted by all affected constituencies. In the meantime, the Board should withdraw its current fee proposal, undertake a comprehensive review of its revenue model in a fully transparent manner, and develop an assessment structure that meets the requirements of the ’34 Act. SIFMA commits to contribute to that effort in a good-faith manner.

We appreciate the opportunity to provide additional comments on this matter.

Sincerely,



Michael Decker
Managing Director