



September 17, 2015

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

Comments in regard to File Number SR-MSRB-2015-08

Dear Mr. Secretary,

SIFMA is pleased to respond to the Securities and Exchange Commission's (the "Commission" or the "SEC") request for comment on the Municipal Securities Rulemaking Board's ("MSRB" or the "Board") Notice 2015-13, "MSRB Adjusts Fees to Align Revenues with Operational and Capital Expenses" (the "Notice" or the "Rule Changes"), filed with the Commission on August 10, 2015.¹

SIFMA strongly opposes the rule changes contained in Notice 2015-13 and we urge the Commission to exercise its authority to temporarily suspend the Rule Changes and to institute proceedings to disapprove the MSRB's changes announced in the Notice. We believe that these changes need more time and process to be vetted, since the Rule Changes will have the effect of harming the credibility of the Board and will result in a fee structure that will continue to impose heavy and disproportional burdens on municipal securities dealers relative to non-dealer municipal advisors ("MA"). The changes could also impair the funding source for the market's vital information repository and technology tools maintained by the MSRB.

Background and Rule Changes

The MSRB collects fees from municipal securities dealers and municipal advisors from several sources, as described in the Notice. Among those is a \$1 per trade "Technology Fee" imposed on interdealer and customer sales of municipal securities. The Technology Fee was approved in December 2010 and implemented in January 2011. At the same time the Technology Fee was imposed, the MSRB also doubled the existing Transaction Fee also imposed on customer and interdealer sales from 0.0005 percent of the par value of all trades to 0.001 percent.

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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.

At the time these fee increases were proposed, the MSRB stated that “the technology fee would be transitional in nature and would be reviewed by the Board periodically to determine whether it should continue to be assessed,”² clearly indicating that the Technology Fee was considered to be temporary.

At the time the MSRB justified the new Technology Fee and the doubling of the Transaction Fee for three reasons, stating:

“First, the expenses of the MSRB are increasing and additional revenue is necessary in order to meet projected expenses associated with ongoing operations. Second, the MSRB needs additional revenue to cover anticipated expenses associated with its new regulatory responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”). Third, the MSRB needs additional revenue to replace aging and outdated information technology software and hardware. In particular, funding is needed to ensure the operational integrity of the MSRB’s information systems, retire and update computer hardware and software, and conduct ongoing risk management including business continuity activities and system maintenance. The new technology fee would be used to establish a new technology renewal fund, which would be segregated for accounting purposes. The technology renewal fund is intended to fund replacement of aging and outdated technology systems and to fund new technology initiatives.”³

It is noteworthy that a key reason the MSRB provided in 2010 for imposing significant new financial burdens on municipal securities dealers was the Board’s new responsibilities under Dodd-Frank, which for the most part entail regulation of municipal advisors. Also, the MSRB stated clearly at the time that revenue derived from the new Technology Fee would be dedicated to capital investments in technology infrastructure.

Between 2010, the year before these fee increases were imposed, and 2013, total revenue collected by the MSRB related to secondary market trading increased 219 percent, from \$6.9 million to \$22.0 million.⁴ At the same time, total annual trading volume in the municipal market fell 15 percent from \$3.3 trillion in 2010 to \$2.8 trillion in 2013.⁵ Since dealer revenue closely tracks market activity, trading fees paid by dealers to the MSRB more than tripled as trading revenue fell significantly. The MSRB’s cash and

² MSRB, MSRB Notice 2010-41, “MSRB Files Proposal to Increase Transaction Assessments and to Institute a New Technology Fee on Reported Sales Transactions Under Rule A-13,” September 30, 2010.

³ MSRB Notice 2010-41, “MSRB Files Proposal to Increase Transaction Assessments and to Institute a New Technology Fee on Reported Sales Transactions Under Rule A-13,” September 3-, 2010.

⁴ MSRB, “Annual Review 2010,” page 18, and MSRB, “Financial Statements as of and for the Years Ended September 30, 2014 and 2013, and Report of Independent Certified Public Accountants,” page 3. For 2010, includes “Transaction Fees.” For 2013, includes combined “Transaction Fees” and “Technology Fees.”

⁵ MSRB, “Market Statistics,” at <http://emma.msrb.org/marketactivity/viewstatistics.aspx>.

investments have grown 189 percent since the 2011 fee changes from \$17.9 million at the end of 2010 to \$51.8 million at the end of 2014.⁶ The MSRB generated a surplus of nearly \$12 million in 2013.⁷

Meanwhile, the Dodd–Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (“Dodd-Frank”) for the first time imposed a regulatory umbrella over municipal advisors, who were wholly unregulated before Dodd-Frank. The MSRB assumed significant new responsibilities with regard to rulemaking governing municipal advisors, much of which is still ongoing. Since the enactment of Dodd-Frank, the MSRB has devoted significant resources to developing rules and qualifications testing for MAs, and MA regulation will continue to be a priority for the Board for the foreseeable future.

In the Notice the MSRB announced that it has amended Rules A-12 and A-13 to make the following changes on fees imposed on municipal securities dealers and advisors:

- The one-time, \$100 initial registration fee for dealers and MAs will increase to \$1,000.
- The annual registration fee for dealers and MAs will increase from \$500 to \$1,000.
- The new-issue underwriting fee for dealers will decrease from 0.003 percent of par amount (\$.03/bond) to 0.00275 percent (\$.0275 per bond).
- The \$1 per trade “Technology Fee” will be made permanent. In addition, revenue collected from the Technology Fee will be available for both capital and operating expenses.

Discussion

The rule changes announced in the Notice raise several troubling concerns. First and most important, making the Technology Fee permanent contradicts the Board’s characterization of the Fee in 2010. Individuals who served on the Board in 2010 state that the clear decision of the Board at the time was that the Technology Fee would be a temporary initiative designed solely to raise a capital reserve, a “technology renewal fund,” to finance needed technology investments. It was not intended to be a permanent source of revenue to fund both capital and operating expenses, as will be the case under the Rule Changes. Indeed, the MSRB itself emphasized this point:

The funds accumulated in the technology renewal fund would be solely dedicated to funding technology-related capital expenses. In other words, the technology renewal fund would be used for a dedicated purpose—to pay for the development of new, or replacement of existing, information technology hardware and software.⁸

⁶ MSRB, “Annual Review 2010,” page 17, and Municipal Securities Rulemaking Board, “Financial Statements as of and for the Years Ended September 30, 2014 and 2013, and Report of Independent Certified Public Accountants,” page 2.

⁷ MSRB, “Financial Statements as of and for the Years Ended September 30, 2014 and 2013, and Report of Independent Certified Public Accountants,” page 3.

⁸ Letter from Lawrence P. Sandor, MSRB, to Elizabeth M. Murphy, SEC, December 28, 2010.

Making the Technology Fee permanent and redirecting the revenue to operating expenses damages the credibility of the Board and the market's respect of the MSRB, especially given that this change was imposed without any public discussion or opportunity to comment. The MSRB has provided little justification for the change in the Technology Fee, stating only that "revenue generated from all sources, excluding the technology fee, would be inadequate to fund projected operational expenses of the organization." Indeed, in 2014 the MSRB rebated back to dealers \$3.6 million of Transaction Fee revenue, suggesting that the MSRB was collecting more from the fee than was necessary.

The Board claims that the Rule Changes are "effectively revenue neutral." That is only true, however, in relation to revenue collected with the Technology Fee in place. Assuming the Technology Fee would be phased out as capital reserves met targeted levels, as the Board indicated in 2010, the Rule Changes impose an additional \$8 million per year tax—approximately the amount collected each year under the Technology Fee—on the municipal dealer industry with little justification.

The overall fee changes announced in the Notice fail to balance the burdens of funding the MSRB between dealers and non-dealer MAs. The Board has previously stated that dealer members of the MSRB provide well over 90 percent of the MSRB's revenue.⁹ That the MSRB has failed to address this disparity between dealer and non-dealer MA fees over five years after the enactment of Dodd-Frank cannot be justified. The "extensive holistic review of the MSRB's fees" that the Board recently conducted and which resulted in the Rule Changes represents a missed opportunity to devise a fee structure that fairly and reasonably balances demands imposed on dealer and non-dealer members of the MSRB and that would be transparent to all market participants

The MSRB should impose activity-based fees on MAs. The most sensible approach would be to devise a new-issue advisory fee that would apply to MAs when they advise on new bond transactions. This would be analogous to the 0.003-percent-of-par-value fee (0.00275 percent beginning November 1, 2015) new-issue underwriting fee that has been imposed on dealers for decades. A significant reason for increased demands on MSRB resources is the regulatory activity the Board continues to undertake with regard to MAs. Moreover, MAs benefit extensively from the technology and transparency systems the MSRB maintains, financed almost exclusively from revenue derived from dealers. The Board states in the Notice that the Rule Changes will "reasonably distribute fees among all regulated entities based on the level of involvement by brokers, dealers, municipal securities dealers and municipal advisors in the municipal securities market." This is simply not true. Under the Rule Changes, non-dealer MAs will continue to pay only a tiny fraction of the MSRB's expenses while benefiting significantly from products and initiatives financed almost entirely by dealers. It is vital that the Board balance the costs of regulation and technology between its two categories of regulated entities. The Rule Changes do not accomplish that goal.

⁹ SEC, Release No. 34-65015, "Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed New Rule A-11, on Municipal Advisor Assessments, and New Form A-11-Interim," August 2, 2011, page 8.

Finally, a troubling aspect of the Rule Changes is that they are being imposed in an environment where there is little transparency in the MSRB's budgeting and expenses. It would be illustrative, for example, for the Board to publish precisely how much of its revenue is derived from dealer and non-dealer MA members and the level of expenses associated with MA-related initiatives such as rulemaking and qualifications testing. It would also be useful for the MSRB to provide the industry with a detailed budget covering planned initiatives and expenses. We urge the Commission to encourage the Board to be more transparent in its finances, budget reporting and allocation of MSRB costs in relation to market participation.

Summary

The fee changes being imposed by the MSRB are unjustified. Moreover, making the Technology Fee permanent and applying it to operating expenses, in contradiction to the Board's previous communication that the Fee would be temporary, threatens the MSRB's credibility. The Rule Changes fail to appropriately balance the financial burdens of MSRB expenses between dealers and non-dealer MAs, and the Board's "extensive holistic review of the MSRB's fees" represents a missed opportunity to devise an appropriate, long-term fee structure applicable to MAs. The Board is applying the Rule Changes in an environment where there is insufficient transparency in the MSRB's budgeting and expenses.

Municipal securities dealers have shouldered the cost of the MSRB for 40 years. We have financed all the initiatives the MSRB has undertaken—rulemaking, market transparency, education, investor protection and many others—to improve and enhance the municipal market. Now that MAs are finally regulated entities, it is time for the MSRB's costs to be fairly shared.

For the reasons cited, we ask the Commission to exercise its authority to temporarily suspend the Rule Changes and to institute proceedings to disapprove the MSRB's fee changes. We are again please to offer our perspective. Please contact us if we can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Decker". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael Decker
Managing Director