



August 25, 2017

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, DC 20549-1090

Re: File No. SR-MSRB-2017-05; Proposed Rule Change to Assess an Underwriting Fee on Dealers that are Underwriters of Primary Offering Plans

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to the Municipal Securities Rulemaking Board’s (“MSRB’s”) rule filing SR-MSRB-2017-05 (the “Filing”),² which amends MSRB Rule A-13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers (collectively, “dealers”), to assess a new annual fee on dealers acting as underwriters to 529 college savings plans.

SIFMA and its members strongly urge the Securities and Exchange Commission (“SEC” or “Commission”) to institute disapproval proceedings regarding the Filing in its current form. The MSRB claims that the proposed fees are consistent with the purpose of Section 15(B)(b)(2)(J) of the Securities Exchange Act of 1934 (the “Act”), however, for the reasons stated herein, we disagree. We do not believe that the proposed fees as currently structured are appropriate.

Section 15A(b)(9) of the Act requires that the rules of a self-regulatory organization impose only those burdens on competition necessary to further the purpose of the Act. SIFMA and its members strongly believe this fee change would

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 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 <http://www.sifma.org>.

² 82 Fed. Reg. 36476 (Aug. 4, 2017) (File No. SR-MSRB-2017-05).

stifle competition and that changes should be made to the structure of the proposed fee before consideration of the Filing, and that dealer fees should be reduced at an offsetting level simultaneously.

I. Structure and Fairness of the Fee Level

The new fee is based on a percentage of total aggregate plan assets as of December 31 each year, as required to be reported by an underwriter on MSRB Form G-45. The new fee will be assessed at a rate of .0005% (\$.005 per \$1,000) of the total aggregate assets for the plan underwritten as of December 31 each year.

a. New Fee is Not Harmonized with Rule 24f-2

The MSRB states that it will assess the proposed fee in a manner similar to the SEC assessment of registration fees on mutual funds pursuant to Rule 24f-2 under the Investment Company Act of 1940 (the “40 Act”). Under the 40 Act, the SEC requires a fund to pay a registration fee within 90 days of the end of its fiscal year based on the aggregate sale price of fund securities sold that year, less the aggregate redemption price of fund securities redeemed that year. However, the MSRB proposes to assess its fee on a 529 plan’s total aggregate assets as of December 31 each year, as reported on Form G-45. The new MSRB fee, therefore, will be assessed annually on the same assets for those accounts not yet redeeming assets to pay for college. This multiple taxation seems patently unfair and incongruous with the fees for municipal securities underwriters.³ Assets in a 529 plan opened for an infant beneficiary are likely to remain in the plan for a period of eighteen years or longer, until the beneficiary begins college. Those assets would be subject to an annual fee assessment for nearly two decades. Therefore, SIFMA feels strongly that a fee on all assets under management is an inappropriate methodology; alternatively, a fee on net annual sales would harmonize the Filing with Rule 24f-2 and present a more fair methodology.

Further, it seems unfair to charge a fee on the amount of plan assets reported on Form G-45, when that amount may bear no relationship to the underwriting activities undertaken by the dealer underwriter. The amount of plan assets included

³ As noted in the Filing, the MSRB has an underwriting fee of \$.0275 per \$1,000 of the par value paid by a dealer on all municipal securities underwritten by or through such dealer, however, this fee does not apply to municipal fund securities. Municipal securities underwriters are not charged annually for securities they underwrote and subsequently sold, as they do not necessarily continue to have a nexus to the securities.

under Aggregate Plan Information on Form G-45 is the amount of assets held by the plan, not the amount held by the underwriter.⁴

b. Larger Plans Do Not Necessitate Larger Fees

It is unclear to us why the MSRB believes a larger fee assessment for a larger plan is appropriate or necessary. The size of a plan has little to do with the MSRB's regulatory activity. Larger plans do not necessarily require additional regulation, education, guidance or other activity on the part of the MSRB, and the MSRB is not sharing this fee with any regulators with enforcement authority.

The MSRB's assertion that the size of the assessment is "de minimis" is inaccurate. The fee assessment that the MSRB contemplates represents a significant business expense⁵ for some of the dealers engaged in this business.

II. MSRB Fees Generally

SIFMA and its members recognize that financial sustainability is a strategic priority of the MSRB, and agrees that this is an appropriate goal. The new underwriting fee will defray the MSRB's costs of operating and administering its rulemaking, market transparency and educational activities concerning dealers acting as underwriters to 529 college savings plans.

With that in mind, SIFMA also recognizes that the MSRB, as a regulator, has a reliable revenue stream that consists of a number of ever-increasing mandatory fees on market participants. A financial services firm cannot operate in the municipal securities arena without paying MSRB (and other) regulatory fees. SIFMA strongly feels that the MSRB currently has excessive levels of reserve funds due to overtaxing its regulated constituents, and has repeatedly urged the MSRB to review and reduce its reserve levels.

SIFMA strongly urges the MSRB to engage in fiscal prudence to reduce its fees on broker dealers, in light of any new fee on 529 plan underwriters. Historically, municipal securities underwriting and secondary market trading fees paid by dealers have financed virtually all of the MSRB's activities. The recent addition of a small fee on municipal advisors has not resulted in any offsetting structural fee reduction on the dealer community. On two occasions, the MSRB has

⁴ Another aspect of this Filing that is unfair is that, by imposing this new fee based on Form G-45 submissions, the MSRB is limiting the burden of paying such fee to only certain classes of municipal fund securities (529 plans and, in the future, ABLE programs) but wholly exempting other forms of municipal fund securities.

⁵ The new fee will range up to approximately \$250,000 per dealer.

rebated funds to the dealer community⁶, but these rebates can cause operational issues or other concerns. The MSRB should not, as a matter of practice, systemically overcharge the entities it regulates and then rebate back the excess. This methodology is a fundamentally unfair way of setting regulatory fees. We urge the MSRB to exercise fiscal restraint by lowering its fees on the dealer community and reducing its excess reserve levels. If the MSRB finds that market conditions have changed so substantially that a fee increase is necessary at that time, then the MSRB should only increase its fees at that time.

III. Impact on Competition

It is critical to point out that this new fee on municipal fund securities will have a disparate impact on different municipal fund securities plans. Direct-sold plans that do not have a dealer underwriter will not incur a fee, whereby dealer sold plans will incur an annual fee on total amount underwritten by the underwriter that is still outstanding. As this is a low-margin business, the addition of a new fee to dealer-sold plans will certainly have a negative impact on a dealer-sold plan's attractiveness to issuers and investors alike.

IV. MSRB's Policy on the Use of Economic Analysis

The MSRB's current Policy on the Use of Economic Analysis in MSRB Rulemaking (the "MSRB Economic Analysis Policy")⁷ does not require a full economic analysis with respect to "a proposed rule change that the MSRB reasonably believes would qualify for immediate effectiveness under Section 19(b)(3)(A)".⁸ The MSRB's Economic Analysis Policy should not exempt the MSRB from conducting a full economic analysis for rules that qualify for immediate effectiveness. As we feel we have shown above, a full economic analysis would have better informed the MSRB about the potential impact on the industry, including issues regarding the fairness of the fee and its negative impact on competition. A full economic analysis also would have informed the SEC in regard to its own required analysis of the Filing in connection with determining

⁶ See here for the announcement of the 2014 rebate: <http://www.msrb.org/News-and-Events/Press-Releases/2014/MSRB-Authorizes-Technology-Fee-Rebate-to-Firms.aspx> and here for the announcement of the 2016 rebate: <http://www.msrb.org/News-and-Events/Press-Releases/2016/MSRB-Holds-Quarterly-Board-Meeting-July-2016.aspx>.

⁷ See: <http://www.msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>.

⁸ Filing at fn. 22.

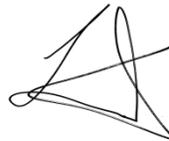
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whether to institute disapproval proceedings in light of the concerns that we and others have raised. For these reasons, we urge the MSRB to consider updating its MSRB Economic Analysis Policy to require a full economic analysis even in the case of a proposed rule eligible for immediate effectiveness, and in the interim, we request the MSRB conduct an economic analysis on all proposed rulemakings.

V. Conclusion

Again, although SIFMA supports the stated purpose of the draft amendments to assess an appropriate fee on college savings plans, SIFMA and its members strongly urge you to institute disapproval proceedings regarding the Filing in its current form. We believe changes should be made to the structure of the fee and dealer fees should be reduced at an offsetting level simultaneously. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. Additionally, we would like to meet with MSRB and SEC staff to discuss our comments. If you have any questions, please do not hesitate to contact the undersigned at [REDACTED] or Jillian Enoch at [REDACTED].

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Michael L. Post, General Counsel
Pamela Ellis, Associate General Counsel