

July 6, 2022

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

(Transmitted electronically to rule-comments@sec.gov.)

Comments on Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change To Amend Certain Rates of Assessment for Rate Card Fees Under MSRB Rules A-11 and A-13, Institute an Annual Rate Card Process for Future Rate Amendments, and Provide for Certain Technical Amendments to MSRB Rules A-11, A-12, and A-13 (Release No. 34-95075; File No. SR-MSRB-2022-03)

Dear Madame Secretary,

The Bond Dealers of America (“BDA”) is pleased to provide comments on the Municipal Securities Rulemaking Board’s (“MSRB” or the “Board”) “Notice of Filing of Proposed Rule Change To Amend Certain Rates of Assessment for Rate Card Fees Under MSRB Rules A-11 and A-13, Institute an Annual Rate Card Process for Future Rate Amendments, and Provide for Certain Technical Amendments to MSRB Rules A-11, A-12, and A-13”¹ (Release No. 34-95075; File No. SR-MSRB-2022-03) (the “Proposal”). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Proposal would amend MSRB Rules A-11 and A-13 to establish a new variable annual fee rate setting process (“Annual Rate Card Process”) for certain fees charged by the MSRB to broker-dealers (“BD”) and municipal advisors (“MA”). BDA generally believes that a process for establishing annual fee rates based on the Board’s anticipated budget and a projection of market activity is sound and preferable to the current system where the Board often collects too much revenue from the industry. However, we believe in its comprehensive review of its finances, the MSRB has failed to address important and long-standing issues surrounding the MSRB’s fees and budget, especially the gross mismatch between the relative contributions of BDs and non-dealer MAs to the MSRB’s resources and the opacity and lack of stakeholder input in the Board’s budgeting process, the primary driver of fee levels under the Proposal. We ask the SEC to reject the Proposal and direct the MSRB to address these important issues generally in the context of establishing a new fee structure.

In its 47-year history, the role and scope of the MSRB’s activities have evolved and grown. The MSRB is a bigger, more visible and more influential organization than ever before. The MSRB has taken on the role not only of regulator but of data collector and vendor, educational services provider, and even host for academic fellows. But the Board’s funding scheme has changed very little during that time. The MSRB still relies almost exclusively on revenue derived from fees imposed on regulated entities for its resources.

¹ 87 FR 36164 (www.federalregister.gov/documents/2022/06/15/2022-12839/self-regulatory-organizations-municipal-securities-rulemaking-board-notice-of-filing-of-a-proposed)

Revenue from data subscriptions makes up less than 10 percent of the Board's revenue. We encourage the MSRB to broaden its funding base and maximize revenue from non-industry sources. As an organization chartered in federal statute, it may even be appropriate for the MSRB to explore congressional appropriations as a funding source.

Taxing regulated entities

The Proposal states that the MSRB beginning last year conducted a review of its fees to address certain goals, one being "maintain a fair and equitable balance of reasonable fees and charges among regulated entities." As we have argued to the Board many times, the current mix of fees between BDs and MAs is not fair and equitable currently and would remain unfair and inequitable under the Proposal.

The MSRB collected \$35.1 million in revenue in fiscal year 2021.² Approximately \$32.2 million of that, or 92 percent, was derived from fees collected from regulated entities. Ignoring the \$1.6 million from "Annual and initial fees" since that figure is not broken down by BDs and MAs, of the revenue derived from regulated entities, 90 percent came from three fees imposed on BDs, underwriting assessment fees, transaction fees, and technology fees.³ In FY 2020, the share paid by BDs was even higher, 94 percent of all industry-derived revenue.

By no measure is this breakdown fair and reasonable. And from the Proposal, the MSRB apparently intends to maintain this lopsided burden on BDs in the future. The Proposal states that the MSRB plans to set annual fee rates at such levels that would "maintain target contribution balances between fees on regulated entities in line with recent historical precedents." The Proposal also states "to maintain fairness and equity in fees, the Board intends contribution targets to be relatively stable over time, unless there is a durable, material shift in market structure or circumstances that would indicate that the expectations for the relative contributions from one or more fees are no longer reasonable or appropriate." Presumably this means that BDs will continue to pay 90+ percent of the MSRB's industry-derived revenue forever, or at least until there is a "material shift in market structure." Ironically, this decision ensures that fees will remain *unfair* and *inappropriate* well into the future.

The Board offers little justification for this decision. The Proposal states the Board "examined MSRB expense allocations to inform its understanding of how much of the MSRB's expense budget relates to various activities." Should we conclude from this that the MSRB spends 90+ percent of its resources on BD-related activity such as rulemaking? If so, that reflects an even more troubling aspect of the Board's priority-setting process. If not, then BDs are covering the cost of regulating MAs.

The obvious solution to this is to increase the contribution of MAs to the MSRB's revenue and reduce the contribution of BDs by the same degree. The fee reform Proposal provides an excellent opportunity to examine and address this issue.

One element of right-sizing the imbalance between the contributions of BDs and MAs is to adjust fees paid by non-dealer MA firms. Currently MAs pay one annual fee, \$1000 per covered professional in FY2022. There is no fee imposed on MAs that reflects their market activity comparable to BD fees based on underwriting and trading. This omission is glaring, and the Board's failure to address the BD-MA fee imbalance is a major shortcoming of the Proposal.

The Proposal indicates that the Board considered a fee for MAs "based on a percentage of each municipal advisory firm's revenue" but rejected the idea because it would require additional financial reporting by MA

² Municipal Securities Rulemaking Board, "2021 Annual Report," page 12.

³ *Ibid.*

firms and some MA firm revenue may not be directly related to bond transactions or other defined MA activity. The Proposal, however, does not discuss the prospect of a MA fee based not on revenue but on market activity. The MSRB should impose a fee on MAs that relates to the new-issue transaction volume which each firm advised on in addition to MAs' headcount fee.

One criticism we have heard of an activity-based fee for MAs is that while MAs receive revenue at the time of a bond closing, some of the services they provide may be unrelated to the bond transaction, and imposing a fee based on advisory volume would tax revenue earned on non-securities work. However, this dynamic is also true for BDs. Public finance bankers often assist issuers with functions outside the limited scope of work as underwriters and receive no revenue tied explicitly to that activity. Yet the Underwriting Fee imposed on BDs makes no adjustment for non-securities work.

While in the Proposal the MSRB argues that the current per-professional fee is a "reasonable proxy" for the activity that each MA engages in, the Board does not provide any data to support this assertion. Because the bulk of MAs' revenue is based on a percentage of the size of transactions on which they provide advice, and because a \$100 million transaction does not require ten times the staffing as a \$10 million transaction, the per-professional fee is almost certainly not a reasonable proxy for MA activity.

There is no justification for failing to impose a fee on MAs related to transaction volume as BDs have paid for nearly five decades. Data on MAs' advisory volume are easily obtainable. A reasonable fee level could be established that would not unduly cut into MAs' profit margins on advisory engagements. BDA members who are dually registered BDs and MAs have even told us that they support an activity-based fee for MAs as a way to ensure that MAs pay their fair share of the MSRB's expenses. Because it fails to address the gross imbalance in MSRB revenue derived from BDs and MAs, BDA cannot support the Proposal.

Transparency in budgeting

In describing the mechanics of the new proposed Rate Card Process, the Proposal states "the Board will approve the annual expense budget and, thereby, establish the baseline revenue that the organization will need to operate for that fiscal year." Establishing the MSRB's budget would be the first step in setting annual fee rates. The budget, as well as projections of market activity, drive the rate of fees the MSRB would impose. The budget is the most fundamental element of the Proposal. That is why the lack of transparency in the Board's budgeting process is so troubling.

The Board provides no practical way for stakeholders, especially BDs and MAs who are responsible for more than 90 percent of the MSRB's revenue, to provide meaningful input on the budget. There is no request-for-comment process and no draft budget circulated publicly. The strategic planning process does not provide an opportunity for stakeholders to comment with any specificity on initiatives and priorities in the context of budgeting. This is a huge hole in the Board's governance.

The MSRB should be judicious in establishing new initiatives or projects on the fringes of its mission which tax the Board's resources. The MSRB is not a technology company, education company, or think tank. The Board's statutory mandate is explicit. The bar should be higher than it is for approving projects that advance investor or issuer protections only on the margins or not at all relative to their costs. In announcing the Proposal last month, MSRB Chair Patrick Brett said "Among the highest responsibilities of an SRO is prudent stewardship of the revenue from regulated entities."⁴ We agree, and a more open and transparent budget process would contribute to that goal.

⁴ Municipal Securities Rulemaking Board, "MSRB Files Proposal with SEC to Implement Structural Changes to Its Fee Setting Process," press release, June 2, 2022, www.msrb.org/News-and-Events/Press-Releases/2022/Fee-Filing.

The Proposal makes clear that the MSRB's 2022-2025 strategic plan⁵ is the commanding policy behind the Board's priority setting that drives the budget and fees. Yet the strategic plan goes well beyond the MSRB's core statutory mission. The plan discusses "building technology systems" and "customizing user experiences" on the EMMA platform. While these initiatives may be laudable, they are expensive and risk focusing the Board away from its core mission of regulating the industry for the purpose of investor and issuer protection. We urge the MSRB to exercise prudence in committing to big, expensive technology projects with minimal market benefit. Also, as we have before, we ask the MSRB to publish detailed usage statistics on the EMMA platform. It is simply not possible for stakeholders to gauge which MSRB technology initiatives are worthwhile without knowing who is using EMMA and how often.

Reserve levels

The Proposal states that "if there are material Reserves Variances in future fiscal years, the amount of such Reserves Variances will be added to or subtracted from the Operational Funding Level to develop a final 'Budgeted Revenue Target' for a given fiscal year."

We generally agree with the treatment of reserves in the Proposal. We also note that the MSRB's published policy on reserves⁶ is not specific with respect to targeted reserve levels. Because reserves factor significantly into annual fee-setting calculations under the Proposal, it is important for stakeholders to have a clear understanding of reserve levels and target levels. We urge the Board to be more transparent in this respect.

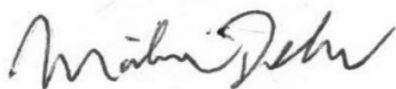
Conclusion

We generally agree with the Annual Rate Card Approach to setting fees for regulated entities. We believe it would be an improvement over the current system of collecting too much revenue, rebates, temporary fee reductions, and the like.

However, in conducting the review that resulted in the Proposal, the Board failed to address the long-standing and gross mismatch between the financial contributions of BDs and MAs. For this reason, we cannot support the Proposal and we urge the Commission to reject it. In addition, we remain concerned about the opacity of the MSRB's budget process which will drive the fees that will be paid by regulated entities. We urge the Board to be more transparent and provide more opportunity for public comment around the budget.

As always, please call or write if you have any questions.

Sincerely,



Michael Decker
Senior Vice President for Public Policy

⁵ Municipal Securities Rulemaking Board, "Strategic Plan – Fiscal Years 2022-2025," www.msrb.org/-/media/Files/Resources/MSRB-Strategic-Plan-2022-2025.ashx.

⁶ Municipal Securities Rulemaking Board, "MSRB Funding Policy," msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Funding-Policy.