



August 30, 2022

Ms. Vanessa Countryman
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-95417; File No. SR-MSRB-2022-06

Dear Secretary Countryman:

The National Association of Municipal Advisors (NAMA) welcomes the opportunity to submit comments on the MSRB's Filing of a 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 (the "Filing"). NAMA represents independent municipal advisory firms and individual municipal advisors (MAs) from across the country and is dedicated to educating and representing its members on regulatory, industry and market issues.

NAMA appreciates the information included in Release No. 34-95417 related to the MSRB's new Annual Rate Card Process, updated Funding Policy, proportional amounts being sought from regulated entities, and clarifications on the way in which caps would be administered under this proposal. Due to these additional data in the Filing, we ask that the SEC not suspend the rulemaking, and allow it to take effect on October 1, 2022.

In NAMA's July 6, 2022, comment letter to the prior Filing on Amendments to Rules A-11, A-12, and A-13 and the new fee proposal and rate card process (which was withdrawn on August 3, 2022), we commented on other factors related to fees and the MSRB's budget, expenditures, and statutory mission (attached). We continue to believe that these issues need to be addressed by the MSRB and the SEC and discussed openly with market participants for a myriad of reasons. These include ensuring that the MSRB's budget is appropriate and its work and expenses are related to its statutory mission, and that in the future the MSRB should be looking to cut expenditures, especially on ancillary matters not directly tied to its authority, before considering raising fees on regulated entities.

Again, NAMA supports this Filing and asks that it move forward and take effect on October 1, 2022.

Sincerely,

A handwritten signature in black ink that reads "Susan Gaffney". The signature is written in a cursive, flowing style.

Susan Gaffney
Executive Director



July 6, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC. 20549

RE: File Number SR-MSRB-2022-03. Release Number 34-95075: Notice of Filing of a 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

Dear Secretary Countryman:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on MSRB's recent filing to amend Rules A-11, A-12 and A-13 (the "Filing"*). NAMA represents independent municipal advisory firms and individual municipal advisors (MAs) from across the country and is dedicated to educating and representing its members on regulatory, industry and market issues.

NAMA had hoped to support the MSRB's Filing and Annual Rate Card concept establishing a new framework for assessing fees on regulated entities. However, NAMA cannot support the Filing, as key provisions of this framework are absent from the Filing discussion and specific to MAs, are absent from the Amendments to Rule A-11. The new fee framework is dependent on the new proportionate ratios assigned to regulated entities, an Annual Rate Card Process, and a new Funding Policy. Yet, none of these items are specifically included in the Filing. Further, the Filing is unclear on its approach to establishing Caps on the fee components of the framework. The Filing also fails to include necessary information about the MSRB's budget, including what controls are in place to contain expenditures. Without these critical pieces of information, we are unable to evaluate whether the new fee framework will create undue burdens on regulated entities, especially small MA firms that are protected under Section 15B(b)(2)(L)(iv) of the *Securities and Exchange Act of 1934* ("Exchange Act") nor can we judge if the fees contribute specifically to work related to the MSRB's mandate under Section 15B(b) of the *Exchange Act*. **Until this critical information is provided and we are able to review for comment, we call on the SEC to suspend the Rules changes.**

These items are further discussed below.

Specific Details of the Annual Rate Card Process Are Not Detailed in the Filing

Neither the narrative nor the Amendment language includes the proportionate ratio amounts, the Annual Rate Card Process, or the updated Funding Policy. These items need to be provided and evaluated before NAMA can support the Filing. Further, the discussion on Caps does not provide certainty nor a reasonable level of increase. Simply put, the Caps are set too high and the language used in the Amendments does not bind the MSRB to a predictable process in the future. Again, this could inadvertently result in regulatory – and thus financial - burdens on small MA firms.

MA and Broker-Dealer Proportionate Ratio Amounts of the Rate Card Are Not Included in the Filing.

The Filing states that *“Each of the four Rate Card Fees will be responsible for a proportionate amount of the overall Rate Card Funding Amount (each a “Proportional Contribution Amount”). The MSRB will maintain a fair and equitable balance of the Proportional Contribution Amounts in line with recent historical precedents”* (Page 67 and referenced in Footnote 68 and presented in Table 3 - Historical Actual Revenue for the Rate Card Fees as a Percentage of the Total Rate Card Fee Revenue). The Filing does not include the proportionate amounts, but states that they are in line with recent historical precedents. In conversation with MSRB staff and Board members, we have been told the MA portion is 8% and this percentage can be derived from information in Table 3. Without specific ratios, or a detailed, clear process for those how those ratios are calculated, the Filing offers us no specificity as to fees. The Filing should include the specific fee ratios (or a very detailed and clear process for determining such ratios) in both the narrative discussion and within the Amendments to Rule A-11.

The Annual Rate Card Process and Updated Funding Policy Are Not Included in the Filing.

The Filing states on Page 69 that *“If the proposed rule change becomes operative, the MSRB Funding Policy will be updated as of such operative date to reflect the Annual Rate Card Process.”* This is also discussed within the Rule A-11 Amendment language on Page 105, *“The subsequent amendment of the Annual Rate Card Fee will be determined through the Board’s Annual Rate Card Process. As further discussed in the Board’s Funding Policy, the Annual Rate Card Process includes, when applicable, (i) a Maximum Cap on Targeted Revenue that generally caps a year-over-year increase in the total targeted revenue for a Rate Card Fee at 10% and (ii) a Maximum Cap on Assessment Rate Increases that generally caps the maximum year-over-year increase in the assessment rate for a Rate Card Fee at 25%. The Board’s Funding Policy may be accessed at msrb.org.”* However, the Filing and the Amendments including to Rule A-11, do not include detailed information about the Annual Rate Card process nor the revised Funding Policy. Since the entire fee structure is predicated on these items, it is imperative to include and provide these details in the Filing and in the Amendments.

The Caps Thresholds Could Cause Significant Fee Increases Over Time.

The Cap structure on the fees as discussed on Pages 23 and 68-69 and in the Amendment language, is a critical component of the new Annual Rate Card Structure and implies that fees would not increase significantly in a short amount of time. NAMA is troubled by the significance of the word “generally” in the discussion about the Rate Card Process and in the Amendment language to Rule A-11. It begs the question – are these Caps actually in place as stated or are they to be “generally” observed (which we read as meaning the Caps could change and still be consistent with the Filing)? The compounding of these increases would create an undue burden on small MA firms.

Proposal Does Not Appear to Bind MSRB to the Policy, Rate Structures, Proportional Ratios, CAPs and Other Items Discussed in Filing.

There are two sections of the narrative in the Filing that undermine the expressed intent for the Board to utilize this new Annual Rate Card Process as a foundation for fee assessments. First, Page 69 states, *“It should be noted that, pursuant to its terms, the principles described in the MSRB Funding Policy do not bind individual Board decisions but instead generally are intended as a guide to provide continuity in funding decisions and to help align strategic, operational, and financial planning.”*⁷³ Second, the Filing states in footnote 68, that *“The Board will consider whether contribution targets should be revisited when setting rates each year.”* *“However, 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.”*

We support the intent of a structure to maintain stable contribution targets through an Annual Rate Card Process. We also understand that in certain circumstances future Boards may need to adjust these targets. But critical details of this new framework are missing from the Filing (proportionate ratios, Annual Rate Card Process, the updated Funding Policy, and clarity on the Caps structure). NAMA would like to support a new long-standing structure that regulated entities can rely upon. However, if the Board intends to annually revisit and subsequently override this much discussed process in the Filing, in addition to our concerns of critical components of the process being absent from the Filing, then NAMA would not be able to fully support this proposed framework.

The Filing Does Not Address Key Factors Related to MSRB Expenditures, Budget and Mission

The Filing and the Amendments describe a process that relies on the size of the MSRB budget. We are unable to determine if the fee structure is appropriate because of the lack of transparency in that budget. Additionally, the Filing does not include sufficient information for us to link budgetary expenses to the MSRB's mandate under the *Exchange Act*.

Budget Transparency and MSRB Work Related to its Congressionally Authorized Mission.

NAMA has requested many times over the years (see Appendix A) that the MSRB be more transparent about its budget and expenditures. In this Filing, information on detailed expenditures is absent from the data provided. Further, there is no discussion on what portion of the budgetary expenses are linked to the MSRB's mandate under the *Exchange Act* and what portion is attributable to other work it has undertaken, or that the Board wishes to undertake. This information would be an integral step in determining budgetary needs before seeking additional revenues.

The Filing does not provide sufficient detail about how the MSRB sets and limits its expenditures and manages its budget. We understand the need to fund the Board's mandated activities, but we question the use of assessments on regulated parties to fund non-mandated, ancillary activity. The general statement "*In terms of expense control, the MSRB remains committed to responsibly managing expenses and aligning its resources to the fulfillment of the Board's statutory mandate*" (Pages 14 and 58) does not provide specificity as to how the MSRB addresses and determines appropriate expenditures for its budget. Within the Filing there are insufficient details to assess whether the fee structure is appropriate and related to work fulfilling the MSRB's statutory authority. This information should be transparent to the SEC, regulated entities, marketplace participants and the public. This would also lead to a better structure for knowing the actual expenditure needs which could also serve as an enhanced contributing factor to the basis for establishing fees rather than the emphasis on historical revenue data.

Increased expenses are particularly relevant today as the Filing does not provide detail describing what was done to scale back expenditures and align the budget with pre-Filing revenue numbers, when it was identified that "*For Fiscal Year 2023, the Board is also projecting a revenue/expense imbalance (i.e., an operating deficit) without a change in the current fee structure*" (Page 88).

Throughout this discussion, the MSRB appears to be driven by establishing expenditures first, and then determining its revenue needs. We would call on the MSRB to reverse this direction, and determine what revenues are needed to execute its mandate under the *Exchange Act*. We propose that the Board curtail other ancillary work and projects and implement a leaner overall budget. We also suggest the Board discuss other revenue sources that could be implemented (or increased) to provide more funds to the

MSRB instead of raising fees on regulated entities. Given the MSRB's key focus on its information systems, has the MSRB explored how subscription feeds fees can be increased? These activities require technical support and ongoing maintenance and arguably exceed the role of being a repository for continuing disclosure obligations.

Speaking to resources needed to meet the MSRB's congressionally authorized mandate, a quick overview and in summary, under Section 15B(b) of the *Exchange Act*, notes the MSRB's key authority rests in:

- 15B(b)(1), establish a Board to perform the duties noted in this Section;
- 15B(b)(2), propose and adopt rules for brokers and dealers related to municipal securities transactions and to municipal advisors and the advice they provide to municipal entities;
- 15B(b)(3), establish (a) information systems and (b) assess reasonable fees and charges for submission and receipt of information (within certain parameters);
- 15B(b)(4), provide guidance and assistance to the SEC and other regulatory agencies in the enforcement of, examination for and compliance with MSRB Rules;
- 15B(b)(5), have MSRB, SEC, and FINRA (staff), meet at least twice a year to discuss the Board's work involving regulation of municipal securities and to share information about the interpretation of Board rules and the examination and compliance with Board rules...

The discussion about each of these key headings within Section 15B(b) and the subsections to each of the Sections are the clear and defined parameters for the MSRB's authority. A review of the MSRB's Strategic Plan and mission under the lens of these specific authorities, leads NAMA to conclude that many activities described in the Strategic Plan and mission are removed from the necessary regulatory work of the MSRB and its function to serve as a repository for disclosure and transaction data. This is a very important point since in this Filing, regulated entities are being asked to fund MSRB's work without knowing if and how this work and expenditures are tethered to its authority under the *Exchange Act*.

The MSRB's Strategic Plan Should Be Consistent with its Congressional Mandate

The MSRB states on Page 6 that *"As a self-regulatory organization, the Board discharges its statutory mandate under the Exchange Act by establishing rules for regulated entities, enhancing the transparency of the municipal securities market through technology systems, and publicly disseminating data about the municipal securities market."* Additionally on Page 58, the Filing states *"In terms of expense control, the MSRB remains committed to responsibly managing expenses and aligning its resources to the fulfillment of the Board's statutory mandate."* Later in that same paragraph on page 58, the MSRB states that *"Based on these and other aspects of its Fee Review, the Board determined that the MSRB's Strategic Plan should serve as the main budgetary guidepost for how the MSRB allocates its limited resources and resolves competing fiscal priorities, particularly because various stakeholders provided significant written input regarding the Strategic Plan."* **We submit that the MSRB's work should be specifically aligned to its role as a regulator and its mandate as the Filing states on pages 6 and top of page 58, rather than the self-developed Strategic Plan which allocates resources and sets fiscal priorities for initiatives that are not related to the MSRB's mandate** (see Appendix C – areas of the MSRB's Strategic Plan that NAMA has identified as possibly being outside the MSRB's authority).

As an example of this expanded mission, the MSRB states in its Strategic Plan, that certain initiatives and work products – which take resources and funds to develop and implement – are undertaken with the heading of "public interest" or "public trust". While serving the public interest and public trust is laudable, NAMA questions whether these phrases tie directly into the MSRB's statutory authority.

In Section 15B(b) of the *Exchange Act*, the phrase “public interest” is part of the subset language to MSRB’s authority under 15B(b)(2) to *propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.* **This means under the *Exchange Act*, the MSRB’s actions for “the public interest” are not an independent mandated initiative but rather are part of the MSRB’s authority to develop and adopt necessary Rules for regulated entities.**

We also suggest review of the expenditure needs and the use of revenues for the MSRB’s EMMA system. The MSRB has mentioned in numerous forums recently and over the years, its efforts to update and expand EMMA (e.g., with EMMA Labs), and the millions of dollars being spent to do so. When one examines the SEC’s 2008 Final Rule giving authority to MSRB to be responsible for EMMA it was “*to collect, index, store, retrieve, and make available the pertinent documents.*” (Page 71, <https://www.sec.gov/rules/final/2008/34-59062.pdf>).

EMMA has become something far different than what it was intended at the time the MSRB sought SEC, and industry approval. In fact, at the time of the Final Rule that authorized the MSRB and the EMMA system to serve as a full repository and manage the collection and retrieval of continuing disclosure documents, the MSRB estimated the costs to be the salary and benefits of 3.5 FTEs, and \$1 million for the first year of developing the system and \$350,000 annually thereafter for systems maintenance (ibid). While we are not commenting on the benefits many find throughout the platform, there is the policy issue about whether the system should be so expansive. A key notation in the Final Rule was the “*Commission’s oversight of the MSRB as a self-regulatory organization (“SRO”)*” (page 25, ibid). Yet, it is unclear if the SEC has reviewed the growth of EMMA and engaged in this oversight. This raises the question: Should fee revenues support an expanded EMMA system that is far beyond that of a repository (“*to collect, index, store, retrieve, and make available the pertinent documents*”) and the SEC approved in 2008? We understand the opportunities and needs for EMMA to evolve with technology so that it can serve to better store and users can retrieve information from the system (e.g., utilizing the cloud and enhancing search functions). Nevertheless, there should still be a process for input and oversight of the components of the EMMA system and its expanded goals since inception. A cursory review of some of the expanded features of EMMA over the years and whether those components have been approved by the SEC include: adding credit agency ratings to securities – yes; developing a submission calculator – yes; issuer home pages – no; EMMA Labs – no; new issue calendar – no; ESG bond indicator on new issue calendar – no. EMMA was never intended to take the place of private industry information portals such as Bloomberg or BondLink or Lumesis or iPreo, or ICE Bonds. The MSRB seems driven to take the data that is required by issuers and broker-dealers to submit and use for purposes that are beyond that of its authority and role as a regulator. **The point we are emphasizing here goes back to one made above: if revenues from fees are needed for “adequately funding future MSRB expenses” (Page 62), what controls are in place to ensure that the MSRB is working within its statutorily authorized framework to determine its expenses?**

Another example of work ancillary to its mission is the Board’s current ESG initiative. NAMA responded to the MSRB’s Request for Information earlier this year on the topic. A key theme stated in this letter, and addressed in the letters from other market participants, was that it is premature for the MSRB to be working on any ESG related matters. The types and definition of the disclosure related to ESG needs to

come from the SEC, prior to determining if the MSRB needs to act on any of its rules, or systems. Yet, the MSRB continues to expend resources on this issue as evidenced by the recent announcement that an academic fellow will be joining the organization for the summer to work on ways to “leverage MSRB data to research Environmental, Social and Governance (ESG) trends in public finance.” While we applaud enabling academic research of the municipal securities sector, this raises the issue as to whether MSRB resources should be assigned to this work that is premature at best, and again ancillary to MSRB’s authority.

Questions about MSRB’s budget and mission are long-standing, both by NAMA and others in the municipal sector. While some may believe there is a benefit in the overall work the MSRB engages in, there should be a thorough and fundamental discussion that establishes the statutory parameters of the MSRB and the work thereof. The budget should be based on those expenses necessary to carry out these duties under the *Exchange Act*. Additional activities, and how to pay for them, should be the subject of conversation and agreement among impacted parties. The MSRB has a duty to the SEC, to the marketplace and to regulated entities whose fees pay for a majority of the MSRB’s expenses, to provide information about the MSRB’s activities and if and how they are related to its authority under the *Exchange Act*. We have illustrated above in discussion and examples areas that need this clarity and transparency in order for us, and others, to be able to effectively respond to the Filing.

OTHER CONSIDERATIONS

SEC Staff Guidance on SRO Rule Filings Related to Fees and Release of Additional Financial Information.

It is worth mentioning that in 2019 the SEC published staff guidance – SRO Rule Filings Related to Fees (<https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). While the staff guidance does not specifically mention the MSRB, the guidance relates to the same SEC filing requirements that apply to the MSRB, and there are some key factors that the MSRB should consider when engaging in fees review. The Guidance discusses the confidential treatment of data used to determine cost, budget, expenditure, and allocation data for for-profit exchanges, as well as concerns regarding the impact that releasing this information would have on competition. As the MSRB does not operate a for-profit exchange but instead performs quasi-governmental functions, we believe that the case for the MSRB to hold such data confidential is must less compelling and that the MSRB has no reasonable reason for not releasing additional financial information related to its budget and fees analysis that would be helpful for regulated entities and other marketplace participants to understand how fees are being applied and the priority of MSRB expenditures. At a minimum, the MSRB should be able to indicate what proportion of resources go to work related to its mission and the regulation of broker- dealers and MAs.

Seeking Stakeholder Input Early in the Process

While we were pleased to talk with members of the MSRB’s Finance Committee as the Committee affirmed its intent to go forward with a new Annual Rate Card Process, and again more recently with Finance Committee members and staff, the MSRB should seek stakeholder input early and throughout the process for rulemaking, including (and especially) related to fee assessments. MAs represent two seats on the Board, and unlike other regulated entities, the MA community is quite diverse with a variety of business and advisory practices, especially small MA firms that make up a vast majority of MA firms. More information and input from our community to the MSRB could help shape rulemaking that is fair and efficient for all parties. The fee discussion noted in the Filing, and the possibility of other types of MA fees being entertained by the Board, is a discussion that the industry should be brought into at the

beginning of these concepts and conversations, not following decision making and especially not when Notices are filed at the SEC with an immediate effective date.

Conclusion

In conclusion, while we support the concept initially discussed with us about an Annual Rate Card Process framework, **we cannot support this Filing, due to the significant lack of information.** Information about the Rate Card Process, the new Funding Policy, the specific proportionate ratios assessed on regulated entities, and understanding the true limits of the Caps discussed in the Filing, need to be provided both in the discussion and the specific Amendments to Rules A-11 and A-13 in the Filing. The MSRB must become more transparent about its budget and expenditures and differentiate between the work directly related to its congressional authority, and that which is ancillary to this authority. Without this information we cannot determine if the MSRB's Filing runs contrary to its authority under 15B(b) of the *Exchange Act* and the specific requirement to not impose undue burdens on small MA firms as noted in Section 15B(b)(2)(L)(iv) of the *Exchange Act*.

MAs support paying appropriate fees related to the MSRB's work for municipal advisors and continue to support the regulatory framework over our profession. Without true transparency of MSRB's budget, neither MAs or broker-dealers know what limits exist to curb MSRB's spending on initiatives generally and especially expenses not directly tied to its statutory and regulatory mandate. We do know there is significant work pending for the MSRB to accomplish with efforts like its Retrospective Rule and Guidance Review. The resources used for these efforts should be supported, transparent and understood. More importantly for both budget and policy decisions, the MSRB should make the SEC and market participants aware of and allow comment on ancillary initiatives where resources are currently directed and which could potentially be reduced, particularly as we head into uncertain economic times.

We welcome the opportunity to discuss our comments with SEC Commissioners and staff.

Sincerely,



Susan Gaffney
Executive Director

* References throughout this document reflect the Filing MSRB submitted to the SEC on June 2, 2022-
<https://www.sec.gov/rules/sro/msrb/2022/34-95075-ex5.pdf>

Below is a snapshot of some of the points raised by NAMA in past comment letters related to MSRB's budget, expenditures and mission.

March 8, 2022; Notice 2021-17; Request for Information for Environmental, Social and Governance (ESG) Practices in the Municipal Market

- ...we do not see any “non-regulatory approaches” that the MSRB should take in this area and do not believe this would be a good use of MSRB resources since most of the activity is outside of the MSRB's jurisdiction.
- [re: MSRB development and use of ESG indicator on EMMA New Issue Calendar] Issuers should control voluntary information presented about their issuance, not the MSRB.
- [re: ESG disclosures] Any regulatory discussion on this matter would need to come from the SEC and not the MSRB, who does not have jurisdiction over issuer disclosure practices or mandates.

January 19, 2022; MSRB Notice 2021-12: Municipal Advisor Considerations for Assessing Written Supervisory Procedures Regarding New Issue Pricing

- We have supported the MSRB's principles-based approach to transaction- related regulatory duties for MAs, and we are concerned that this document steps away from that approach. If indeed the MSRB is now determining that its resources and guidance will be more prescriptive about specific MA services and practices, there needs to be a larger – and more policy oriented - conversation.

January 11, 2021; MSRB Notice 2020-19; MSRB Requests Input on Strategic Goals and Priorities

- The MSRB has often ..engaged in activities that go beyond the congressionally mandated and SEC approved items. These expanded activities include focus on market leadership and an education role which we consider ancillary items.
- Discussion regarding the discrepancies between Section 15B(b) of the *Exchange Act*, the MSRB's Articles of Incorporation, and its self developed mission.

July 1, 2019; Letter to Lynnette Kelly (see Appendix B)

- How is MSRB spending accounted for within the general categories presented in MSRB's Executive Budget Summary for Fiscal Year Beginning October 1, 2018?
- What part of the budget is appropriated for MSRB's core regulatory responsibilities vs ancillary activities?
- What part of the budget is appropriated for matters related to the primary market vs secondary market activities?
- What are the costs of operating and maintaining EMMA. Including cost break-out of each EMMA component
- What are the costs of enhancements to EMMA
- What are the costs of operating and maintaining other data platforms...
- What are the costs related to MA rulemaking
- What are the costs related to underwriter and other broker-dealer rulemaking
- What are the costs related to MSRB's “market leadership and education initiatives”

- What are the costs associated with Muni-Ed-Pro
- What are the costs of the core administrative overhead for all activities
- [Changes to 2010 Articles of Incorporation] and the MSRB's intention to institutionalize self-identified additional responsibilities of the organization should be readdressed within the context of what work is affordable

November 14, 2016; Regulatory Notice 2016-25; MSRB Seeks Input on Strategic Priorities

- The MSRB should [have] a realistic assessment of its actual scope of authority.
- The MSRB has a great deal on its plate related to its core statutory responsibility to develop rules for municipal advisors and broker-dealers [to protect issuers and investors]. Furthermore the MSRB has also been tasked with managing EMMA and other market transparency systems. We believe it is important for the MSRB to focus on these efforts and not look to initiatives that may not be within the direct scope of their mission, which would take away resources – both staff and financial – from fulfilling their core duty to develop rules for MA and BD professionals, subject to the approval of the SEC.

July 1, 2019

Lynnette Kelly
President and CEO
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC 20004

Dear Lynnette:

We appreciated the opportunity to talk with MSRB staff about MSRB budget and fee issues. The conversation was constructive and improved our understanding of the MSRB's processes related to preparing and reviewing financial information.

During our call, we confirmed our understanding that the MSRB is looking at ways to diversify and expand its revenues to solve future budget deficits. We understand this to include consideration of both new types of fees and restructuring/revising current fee assessments. We want to reiterate our position that any discussion of fees for any regulated entity (that is, the revenue side of the budget) should be conducted after (or at a minimum concurrently with) a review of the expense side of the MSRB budget.

As we discussed on the call there are four items that we believe need to be addressed:

- How is MSRB spending accounted for within the general categories presented in the MSRB's Executive Budget Summary For the Fiscal Year Beginning October 1, 2018 (<http://www.msrb.org/~media/Files/Resources/MSRB-Executive-Budget-Summary-FY-2019.ashx?la=en>);
- What part of the budget is appropriated for MSRB's core regulatory responsibilities vs. ancillary activities;
- What part of the budget is appropriated for matters related to the primary market vs. secondary market activities; and
- What factors are the MSRB considering in an effort to determine a fair and equitable portion of the budget for municipal advisors (MAs), and has the MSRB Board or staff determined a percentage or fixed amount of the budget which should be paid by MAs?

Allocation of Costs Related to MSRB Spending

Over the past couple of years, the MSRB has made public its "Executive Budget Summary." This has been helpful to understand the general mechanics of the MSRB's financial standing. We appreciate that Nan Lawson and members of her staff are attempting to improve the availability of more detailed financial information. Nan relayed to us that this information was being developed for internal use and indicated that she hoped to implement more robust cost accounting. We request that this information be shared with stakeholders as it becomes available. The allocation of the MSRB's expenditures is critical to any discussion of fees, whether it is

fee holidays, fee reductions, or fee increases. Good decision-making requires good information. Neither the MSRB Board nor other industry participants can craft constructive solutions or feedback to MSRB's actions related to fee assessments without knowing the specific uses of MSRB revenues.

Examples of information that would be helpful to know related to the MSRB's spending include:

- Costs of operating and maintaining EMMA, including cost break-out of each EMMA component (portal, primary market service, continuing disclosure service, subscription service);
- Costs of enhancements to EMMA;
- Costs of operating and maintaining other data platforms (RTRS, SHORT, etc.) – to the extent figures for EMMA include these other systems, should be broken-out for the non-EMMA systems;
- Costs related to MA rulemaking;
- Costs related to underwriter and other broker-dealer rulemaking;
- Costs related to MSRB's "market leadership and education" initiatives, including cost break-out of specifically identified categories of activities;
- Costs associated with Muni-Ed-Pro, podcasts and other materials;
- Costs of the core administrative overhead for all activities.

As MAs, we tell our clients that a budget deficit requires review and analysis of both revenues and expenses.

In most cases raising fees and taxes is an option only after the examination of expenditures. In order for NAMA and others to be able to review and comment on the MSRB's financial matters, we believe that the MSRB should look at its own budget, understand the cost breakdown we detailed above, reassess required core services and allow that information to be public in order to solicit ideas and input on the services provided.

MSRB Resources Related to Core and Ancillary Functions

We suggested during our call that MSRB activities be identified as core or ancillary functions. Core functions would be defined as what is specifically required of the MSRB within the *Exchange Act* (Section 15B(b)) and SEC rulemaking (for instance, EMMA functions and related MSRB rulemaking driven by Rule 15c2-12).

We have suggested that the MSRB is engaged in many activities that go beyond this congressionally developed and approved mandate. You have told us that that the MSRB has a responsibility and obligation to engage in additional activity – for instance market leadership and education – as instructed by its Board and adopted in the Board's approved Articles of Incorporation. The most significant changes to the Articles occurred in 2010, and items that go beyond the MSRB's responsibilities within the *Exchange Act* were added at that time.

We suggest that the inclusion of these activities as part of the MSRB core mission within the Articles of Incorporation filing was done without a public comment period. While changes to Articles of Incorporation are often pro forma in nature, the changes in 2010 and the MSRB's intention to institutionalize self-identified additional responsibilities of the organization should be readdressed within

the context of what work is affordable. Many organizations have expressed frustration during the MSRB Roundtable with the MSRB's belief that it has the right and responsibility to engage in work outside of its congressionally developed mandate. Even if one were to accept the argument that, as a Virginia non-profit corporation, the MSRB has corporate authority to engage in ancillary activities, we believe that there are significant concerns regarding the use of revenues obtained through the MSRB's quasi-governmental powers to impose non-discretionary fees on both MAs and broker-dealers for use in undertaking ancillary activities. Separate from any discussion of the appropriateness or legality of such use, the use of obligatory funding for discretionary ancillary activities must at a minimum be accompanied by detailed public accountability for such use.

As it relates to the MSRB's budget, a review of the MSRB's work under this core vs. ancillary construct, and a review of the MSRB's mission (both congressional and self-imposed) would be a worthwhile effort for all parties with an interest in the MSRB's operations.

MSRB's Responsibilities Related to Primary and Secondary Market Functions

Another prism that should be used to address MSRB's allocation of costs and assessment of fees relates to work on primary market functions and secondary market functions. We believe that developing an understanding of budget allocations in this manner (overlaid with core and ancillary functions as well) would help determine for what functions and for whose benefit various work is done (and fees assessed to). The primary function of EMMA is for marketplace sales and trading (most of it in the secondary market), and MAs are not typically involved in these activities. While there is market information on EMMA, MAs use many other sources for gathering information to form their view on the pricing of primary market securities.

MAs Paying Their Fair Share

MSRB staff, and some MSRB Board members, have said that MAs need to pay their fair share related to MSRB operations. However, an objective definition of what is a fair share that MAs should be paying has not been communicated, and therefore we are left unable to constructively discuss what is or is not appropriate related to the current fee structure and new fees. It is also important to note that an overwhelming majority of MSRB rules exist for broker-dealers, and that the municipal advisor rules, for the most part except for G-42, stem from existing broker-dealer rules.

Additionally, as broker-dealers are paid differently than MAs, the discussions that the MSRB undertakes related to MA fees should respect these differences. This is especially true if the MSRB is considering new types of fees on MAs similar to those assessed on broker-dealers, for instance transaction-based or revenue-based fees. The fees that the MSRB assesses onto broker-dealers relate to market activities and the selling and trading of securities. However, the MSRB fees imposed upon MAs – a per firm and per individual fee – relate to these professionals being service providers to their clients, and do not have a transactional nexus to the selling and trading of securities.

MA firms charge client fees in a variety of ways. Many times, the client determines how the MA is to be paid for a variety of MA services within a single transaction; the decisions are often out of the MA's control. There is no uniformity to how client fees are assessed or accounted for across the universe of MA firms. The MSRB seemed to realize this in 2011 when it contemplated a survey be sent to MAs to

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better understand fees and revenues related to MA firms (MSRB Notice 2011-34 (July 26, 2011)). We would expect that the MSRB would find that these types of fees could not be easily calculated or assessed and therefore would not seek additional types of fees to be assessed on MAs. At a minimum, consideration of new types of fees calls for consultation with the broad universe of MAs.

The other key concern related to fees, and overall within the MSRB regime for MAs, is that under the *Exchange Act* the MSRB has a responsibility to not overly burden small MA firms. While NAMA has consistently raised this point with the MSRB in its rulemaking efforts, it is a particularly critical concern in the context of considering changes to MA fees. With the majority of independent MA firms likely falling within the Small Business Administration's definition of annual revenues of less than \$7 million, adding fees – whether increasing current fees or creating new fees – could have a significant effect on these firms.

Furthermore, by taking action that would directly harm these firms and which could contribute to their leaving the business for reasons limited to financial viability, the MSRB would not be fulfilling one of its core tenets – to protect issuers.

One area where this manifests itself is when the MSRB seems to argue that MAs have general market responsibilities outside of their prescribed client scope of services. We disagree with this premise and if the MSRB is using this argument in relation to fees and possible rulemaking, then it has a responsibility to discuss this (including the legal basis for this responsibility) with the MA community and others, since this is a responsibility that has never before been formally enunciated by the SEC and MSRB. As NAMA has commented before, MAs are hired by clients to provide a service to that client related to the issuance of municipal securities or other financial products. Their relationship is to serve and have a fiduciary duty to the client. We disagree with arguments that the MSRB may be making (for example, that MAs should contribute to the costs for EMMA because some MAs may extract information from the system) or conclusions that MAs have broader responsibilities, other than to act fairly to other market participants, and call upon the MSRB to disclose its arguments on this matter if in fact they are used within the framework of MA regulation and fees.

Conclusion

MSRB Board members and staff have stated that a current key initiative is providing greater transparency and better communications with stakeholders. In the past when the MSRB has imposed new or additional fees, it has been done through an immediately effective filing with the SEC without public comment. As the MSRB continues its internal deliberations about its financial operations and fee structures, we encourage staff and the Board to socialize different ideas with stakeholder organizations during the discussion phases in order to solicit information that would be helpful to make informed decisions and seek ideas from affected parties.

It is also worth mentioning that recently the SEC published staff guidance - *SRO Rule Filings Related to Fees* (<https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). While the staff guidance does not specifically mention the MSRB, the guidance relates to the SEC filing requirements that apply to the MSRB, and there are some key factors that the MSRB should consider when engaging in their fees review. The guidance emphasizes the need for meaningful analysis and data, especially related to the burdens caused by proposed fees. The analysis discussed in the Guidance appears to be greater than the analysis the MSRB has conducted in the past. The Guidance also discusses the confidential treatment of data used to determine cost, budget, expenditure, allocation data for for-profit exchanges and concerns that releasing

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the information would have on competition. However, as the MSRB does not operate a for-profit exchange but instead performs quasi-governmental functions, we again ask that the MSRB consider releasing additional financial information related to its budget and fees analysis that would be helpful for regulated entities and other marketplace participants to understand.

We believe that the MSRB has a responsibility to provide additional financial information to the market regarding its operations and workload. This transparency is especially essential as the MSRB continues to look at its fee structures over MAs, broker-dealers, and other participants (e.g., data subscribers). It is difficult to engage and respond to the MSRB's financial decisions and possible new or enhanced MA fee structures without having budget information related to the MSRB's core and ancillary work as well as what is done related to the primary and secondary markets.

Once again, thank you for taking the time to have this discussion with NAMA. We appreciate this opportunity and look forward to continuing this discussion.

Sincerely,

A handwritten signature in cursive script that reads "Susan Gaffney".

Susan Gaffney
Executive Director

APPENDIX C

Review of MSRB's Strategic Plan and its intersection with the MSRB's authority under the *Exchange Act*. Areas identified as possibly outside this authority are highlighted in yellow.

Municipal Securities Rulemaking Board Strategic Plan

FISCAL YEARS 2022-2025



VISION

We give America the confidence to invest in its communities.

MISSION

The MSRB protects and strengthens the municipal bond market, enabling access to capital, economic growth, and societal progress in tens of thousands of communities across the country.

- We create trust in our market through informed regulation of dealers and municipal advisors that protects investors, issuers and the public interest.
- We build technology systems that power our market and provide transparency for issuers, institutions, and the investing public.
- We serve as the steward of market data that empowers better decisions and fuels innovation for the future.

VALUES

The MSRB aspires to **excellence** in everything we do to protect and strengthen our market. We embrace **teamwork** and diversity of people and perspectives to develop innovative approaches. Our people act with **integrity** by doing what's right to serve our mission. And we create **trust** by engaging with stakeholders and ensuring the MSRB's rules, technology and data benefit all market participants.

MSRB Guiding Principles

Our highest priority is to fulfill the MSRB's congressional mandate to protect investors, issuers and the public interest by promoting a fair and efficient market and ensuring access to capital for communities across the country. Our guiding principles define our role in fulfilling our mandate, engaging with stakeholders and ensuring accountability to the public.



ADHERE TO OUR CONGRESSIONAL MANDATE

We address potential harms to investors and issuers by developing, modernizing and clarifying rules through an open and inclusive regulatory process.

We ensure a clear understanding of the MSRB's rules through education for market participants and close coordination with the SEC, FINRA and federal bank regulators responsible for enforcing our rules.

We promote market transparency and efficiency by serving as the municipal bond market's central data repository and building technology systems that facilitate compliance with our rules and provide free access to market data for the public.



ENGAGE WITH OUR DIVERSE STAKEHOLDERS

We identify and address market challenges to protect investors and issuers, promote a fair and efficient market and enable capital formation.

We respond to the needs of all market participants, facilitate public dialog and serve as a forum for discussion and analysis of emerging issues and important topics for our market.

We engage with stakeholders, including interested members of the public, that reflect the diversity of our industry to help develop effective solutions and best practices that strengthen our market.



ENSURE ACCOUNTABILITY TO THE PUBLIC

We are a self-regulatory organization that exists to regulate the industry and advance the public interest in a fair and efficient municipal securities market.

Our Board of Directors exercises its accountability and governance responsibilities through oversight of the MSRB's strategic plan, operations and regulatory activities.

We are accountable in our engagement with stakeholders, in the disciplined execution of our strategy and in reporting progress to the SEC, Congress and the general public.

MSRB Strategic Goals

FY 2022 – FY 2025

I. Market Regulation

We create trust in our market through informed regulation of dealers and municipal advisors to protect investors and issuers. Our Market Regulation strategic goal focuses on modernizing our rulebook and establishing a clear and consistent regulatory framework that effectively addresses an evolving market and enables efficient compliance.

Goal

Our goal is to modernize municipal securities market regulation through a prudent and practical approach that promotes a fair and efficient market and facilitates capital formation; aligns with the broader landscape of securities regulation; addresses market harms to investors and issuers; analyzes costs and benefits of compliance burdens; and strengthens our market and the opportunities it provides.

Actions

- Anticipate and address harms to investors, issuers and the public interest, and identify emerging risks and issues to keep pace with a dynamic and evolving market.
- Conduct a comprehensive and holistic review of interpretive guidance in order to update guidance to reflect current market practices, archive guidance that is no longer relevant and develop new guidance to facilitate regulatory compliance.
- Engage with a representative cross-section of market participants and the public throughout the regulatory process to seek diverse perspectives and data that inform our rules.
- Promote regulatory certainty with internally consistent rules and alignment with federal securities regulation to ensure a coherent rulebook and reduce compliance burdens.
- Collaborate with the SEC, FINRA and other financial regulators to facilitate the examination and enforcement of the MSRB's rules.

Outcomes

The MSRB's rulebook protects investors and issuers, creates a more fair and efficient market and facilitates capital formation.

- Regulated entities understand the purpose and intent of MSRB rules and are able to comply without undue burden.
- Diverse stakeholder perspectives are considered throughout the rulemaking process and contribute to achieving better regulatory and market outcomes.
- Examination and enforcement authorities are equipped with the resources needed to fairly and consistently examine regulated entities and enforce MSRB rules.
- Emerging risks and market harms are addressed through evaluating the existing regulatory framework for any necessary amendments or guidance, coordination with financial regulators and outreach to market participants.

MSRB Strategic Goals

FY 2022 – FY 2025

II. Market Transparency

We build technology systems that power our market and provide transparency for investors, issuers and all market participants. Over the past decade, the MSRB significantly advanced transparency in the municipal securities market through its EMMA® website and technology systems. Our Market Transparency strategic goal is focused on the continued enhancement of EMMA® as a premier municipal market transparency platform and the modernization of the MSRB's technology systems.

Goal

Our goal is to leverage our investment in the cloud and in our people to enhance the value of EMMA® as a platform that benefits all market participants and the public; adopt new technologies that strengthen our ability to protect investors and issuers and enhance overall market fairness and efficiency to foster market liquidity and resiliency; and leverage technology to enable education about and engagement with the municipal securities market.

Actions

- Modernize the MSRB's technology systems to deliver reliable, efficient and cost-effective transparency solutions to the market and general public.
- Engage with external stakeholders to understand their evolving information technology and market transparency needs.
- Customize the EMMA® user experience and enhance transparency tools and resources based on a stakeholder's role, interests and information needs.
- Leverage technology to support broader delivery of public education and tools that increase understanding and engagement with the municipal securities market.
- Deliver educational resources to help investors, issuers and all market participants learn to use EMMA® to understand the fundamentals of the market, comply with their regulatory obligations and enhance market transparency.

Outcomes

- EMMA® is recognized as a leading securities market transparency platform.
- EMMA® users are increasingly satisfied with their experience and ability to access the information they need to make informed decisions.
 - MSRB technology systems evolve with the changing information needs of market participants and ensure broad access for issuers, market professionals and the public.
 - All MSRB technology systems operate on highly available, resilient and secure platforms, engendering continued public confidence and trust.

MSRB Strategic Goals

FY 2022 – FY 2025

III. Market Data

We serve as the steward of municipal market data that empowers better decisions and fuels innovation for the future. Our Market Data strategic goal will leverage the MSRB's investment in cloud computing and data analytics to enhance the quality, accessibility, security and value of its market data for investors, issuers and all market participants.

Goal

Our goal is to provide high quality market data that enable comprehensive analysis and insight of the municipal securities market; **develop innovative data products and services that provide value for investors, issuers and all market participants;** and increase the opportunities for data to strengthen market efficiency and fairness.

Actions

- Modernize the MSRB's central repository of municipal securities market data with enhanced protocols for data use, privacy, protection and security.
- **Support market-led initiatives to establish uniform data and technology standards in the municipal securities market that facilitate better disclosure and analysis of market information.**
- **Leverage new sources of data, analytic tools, partnerships and platforms that enhance the value of MSRB data for investors, issuers and all market participants.**
- **Enable market-led research and development efforts and data-driven insights to promote market fairness and efficiency.**

Outcomes

- The MSRB is the trusted source of data and insight for the municipal securities market.
- The MSRB's central repository serves as the authoritative record for high quality market data that is reliable and trustworthy.
 - Market data validation is streamlined and automated and error correction is enabled through user-friendly self-service interfaces.
 - MSRB's data platform supports market-adopted data and technology standards that enable enhancements to market efficiency, more consistent and reliable price transparency and overall market liquidity.
 - Market participants and interested members of the public can effectively and efficiently access MSRB's data platform to support decision making, analysis and understanding of the municipal securities market.

MSRB Strategic Goals

FY 2022 – FY 2025

IV. Public Trust

As the principal regulator of the municipal securities market, the MSRB is in a unique position of public trust. Communities across the country access capital in this market to enable economic and social progress and build a more sustainable and resilient future. We have a duty to uphold the public interest and the integrity of this market through a commitment to social responsibility, diversity, equity and inclusion.

Goal

Our goal is to fulfill our Congressional mandate to protect the public interest. We do this by fostering dialog and working collaboratively with all market participants and the broader community we serve and building an organization that lives according to its core values and delivers on its strategic goals.

Actions

- Put people first as an organization that fosters diversity and inclusion at all levels and is committed to upholding the public trust in our role.
- Nurture a culture committed to our Congressional mandate to protect the public interest and serve the communities across the country that access capital in the municipal securities market.
- Support equal access to the market for under-represented groups and cultivate diverse voices within the municipal securities market.
- Coordinate with regulatory and industry efforts, promote dialog and use MSRB data to inform the market's understanding of environmental, social and governance (ESG) factors and emerging issues.


Outcomes

- The MSRB's commitment to upholding the public trust strengthens our market and contributes to economic and social progress and a more sustainable and resilient future for communities across the country.
- We embrace our social responsibility as the principal regulator of the municipal securities market.
 - Our organization reflects the diversity of the communities we serve and we foster greater diversity and inclusion in the industry we regulate.
 - MSRB data is used to identify opportunities to understand or increase economic and social impact and measure outcomes in support of the public good.




CORPORATE OFFICE

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

 202-838-1500

MSRB SUPPORT

 202-838-1330

 MSRBsupport@msrb.org

ONLINE

 msrb.org

 emma.msrb.org

 [@MSRB_News](https://twitter.com/MSRB_News)