



January 28, 2025

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Dear Mr. Smith:

RE: MSRB Notice 2024-10 – Request for Information on the MSRB’s Rate Card Process

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on the MSRB’s Request for Information on the Rate Card Process (RFI). 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.

We appreciate the opportunity to comment on the discussion items in the RFI. In responding to many of the concepts and questions, we reference the MSRB’s own statements from Notice 2022-23¹.

The Rate Card Process Remains the Appropriate Way for the MSRB to Assess Fees

The work that the Board completed in 2022 which led to the Rate Card being adopted, and the MSRB’s continued evaluations of the Rate Card in its 2023 and 2024 fee filings, reach conclusions that remain valid today with regard to MA fees.

NAMA continues to support the Rate Card Process and submitted a letter to the SEC supporting the Rate Card Process in 2022². Previous concerns – lack of information about the MSRB Funding Policy in 2022 (which was remedied), lack of budget information that determines whether fee increases are needed, and the need for the MSRB to develop other/greater revenues from other sources (e.g., data subscription fees) – have been the focus of our previous comment letters.

Over the past three years, there has been no “material shift in market structure or circumstances” to warrant a change in the MSRB’s approach to assess fees on regulated entities.³ In developing the Rate Card Process, the MSRB spent months deliberating and studying the matter. Page 36 of the 2022 filing stated:

The Board determined it was necessary and appropriate to conduct a comprehensive review of the MSRB’s overall fee structure to devise a methodology that reasonably and appropriately defrays the costs and expenses associated with operating and administering the Board, with a goal of arriving at a longer-term solution for MSRB’s revenue generation process that continues to ensure a sustainable financial position...

¹ <https://www.msrb.org/sites/default/files/pdf/MSRB-2022-06.pdf>

² <https://www.sec.gov/comments/sr-msrb-2022-06/srmsrb202206-20137789-308118.pdf>

³ MSRB 2022-23, footnote 68: *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.*

It is additionally noted on page 12 of the 2022 Filing that:

Based on these factors considered, the Board found that the current fee structure – including the basis on which fees are assessed and the relative contribution of revenue from each of the current fees assessed on regulated entities – overall remains reasonable, fair, and equitable.

These conclusions should continue to be utilized by the MSRB.

The objectives of the Annual Rate Card also continue to be met as stated in the 2022 Filing, pages 67-68:

Adjustments to the Annual Rate Card will be used to revise the Rate Card Fees to annual levels that the MSRB anticipates will be sufficient to: (i) cover anticipated expenses for the related fiscal year; (ii) maintain target contribution balances between fees on regulated entities in line with recent historical precedents; (iii) address any prior-year variance between the amounts of each of the Rate Card Fees actually collected versus budget (i.e., “Rate Card Fee Variances”); and (iv) address any variance between the amount of the Board’s organizational reserves versus the Board’s target (i.e., “Reserves Variances”). Fee rates may increase year-to-year, subject to certain limitations discussed in additional detail below, or decrease from year-to-year, as needed to meet these objectives.

While we understand some of the volatility concerns that exist for various broker-dealer fees, the MSRB correctly concluded it is difficult to see any other way to assess fees on regulated entities that would be more appropriate than the current Rate Card or that would avoid the same problems of volatility in broker-dealer fees due to the reliance on market predictions.

Fairness Remains Intact with The Rate Card

The MSRB determined in its 2022 filing that the Annual Rate Card Amendments are equitable based on many factors and the MSRB’s own research. As noted on page 35 of the 2022 Filing:

The Annual Rate Card Process proposed by the Rate Card Amendments is intended to introduce a new fee structure that would (i) better mitigate the impact of market volatility on the MSRB’s revenue structure (and, consequently, also better mitigate the impact of market volatility on the MSRB’s organizational reserves), and (ii) maintain rates within a reasonably predictable range that, while subject to more incremental changes each year, would be comparably more stable over the long term than the MSRB’s current fee structure. Furthermore, the Annual Rate Card process applies equally to all those MSRB regulated entities who may pay dealer Market Activity Fees and/or the Municipal Advisor Professional Fees. Accordingly, the MSRB believes that the proposed Annual Rate Card Process would not have an impact on competition and, consequently, would not impose any burden on competition, relieve a burden on competition, nor promote competition. The MSRB therefore believes the Annual Rate Card Process would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Also from page 35:

Moreover, the Board’s Rate Card Amendments apply equally to each MSRB regulated entity who may pay the Rate Card Fees and, thereby, equitably and non-discriminatorily distribute the fee burden across all MSRB regulated entities who participate in the municipal securities market.

The determinations from the 2022 Filing remain true today, and per the question in this Notice, “What methodologies are most appropriate for determining the fair and reasonable distribution of fees among regulated entities?” the conclusions that the MSRB made in 2022 continue to apply, and there are no material shifts in market structure or circumstances that would cause a change in distribution of fees.

To support this point, pages 35-36 of the 2022 Filing state:

In this way, no firm would be unduly burdened as compared to another firm. In particular, smaller municipal advisory firms would continue to pay less Municipal Advisor Professional Fees than larger municipal advisory firms, and, therefore, the Rate Card Fees proposed by the Rate Card Amendments are not unduly burdensome, comparatively, between small municipal advisory firms and large municipal advisory firms. Because the Rate Card Fees proposed by the Rate Card Amendments would equitably and non-discriminately distribute the fee burden across all MSRB regulated entities, the MSRB believes that the Rate Card Fees proposed by the Rate Card Amendments would not have an impact on competition and, consequently, would not impose any burden on competition, relieve a burden on competition, nor promote competition. Accordingly, the MSRB believes the Rate Card Fees proposed by the Rate Card Amendments would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

And on Page 36:

The Board determined it was necessary and appropriate to conduct a comprehensive review of the MSRB’s overall fee structure to devise a methodology that reasonably and appropriately defrays the costs and expenses associated with operating and administering the Board, with a goal of arriving at a longer-term solution for MSRB’s revenue generation process that continues to ensure a sustainable financial position. The current fee structure has a semipermanent fixed rate of assessment for each of the above categories. Under the proposed Annual Rate Card Process, categories of fees assessed for regulated entities would remain the same. However, the Board proposes using an annual rate-setting method to recalculate fee rates every year for each category based on factors described herein.

Also, on page 42:

The MSRB believes that the proposed Annual Rate Card Process would not have an impact on competition and, consequently, would not impose any burden on competition, relieve a burden on competition, nor promote competition.

Additionally, since per-MA fees were first assessed in 2014, MA fees have risen with every MSRB fee proposal. This represents a nearly four-fold increase over the years, from \$300 in 2014 to the 2024 proposal of \$1160. Additionally, the estimated percentage of MA fee contributions to overall fee revenues rose concomitantly from 3% in FY2017 to 10% in FY2021 (see page 105 of the 2022 Notice). When looking at the totality of policy matters and application of fees, MAs have consistently contributed fees that provide a steady, even increasing, revenue source for the MSRB.

Other Options for MA Fee Assessments Are Not Viable

The MSRB has asked two questions regarding whether other models or ways to assess fees on MAs should be considered.

Should the MSRB consider an alternative model other than the number of covered professionals or MA activities as discussed in #2? The MSRB conducted a great deal of work to determine the appropriate model to assess per-MA fees. As reference, the 2022 release states that:

After considering alternatives, the Board first determined that the Municipal Advisor Professional Fee and the current set of Market Activity Fees – i.e., Underwriting Fees, Transaction Fees, and Trade Count Fees – remain the most reasonable and practical mechanisms for assessing fees on regulated entities and so should not be replaced with alternative fee mechanisms. The Board came to this determination primarily because it continues to believe that the respective mechanisms for assessing the Municipal Advisor Professional Fee and the Market Activity Fees remain superior to potential alternatives – some of which may require establishing significantly more burdensome recordkeeping and reporting requirements to achieve comparatively greater precision in the alignment of the total amount of the fees assessed on a given firm with such firm’s total regulated activities; and, therefore, these fee mechanisms remain the best option among alternatives to ensure that the amount of the Municipal Advisor Professional Fees and Market Activity Fees paid by a given firm is both (i) appropriately balanced to the burdens and benefits of the MSRB’s regulatory and transparency activities, and also (ii) generally proportional to the differing resources devoted to the regulation of firms with different business models and differing degrees of complexity. These existing fee methods also have the advantage of being established mechanisms for assessing fees on regulated entities; and, in this regard, the Board believes that maintaining this current set of fee methods is more advantageous than other alternatives because firms already understand and have embedded such assessments into their business operations.

While the Board determined that the mechanisms for assessing the Municipal Advisor Professional Fee and the Market Activity Fees should not be replaced, the Board also determined it would be beneficial to refine its approach to review and amend these fee rates for each calendar year on an annual basis going forward. Specifically, to avoid the MSRB accumulating excess reserves through the collection of fee revenue above budgeted amounts over multiple fiscal years and then utilizing short-term fee reductions to return the excess revenues to the regulated entities who paid the fees, the Board is proposing to review and incrementally refine the rates of assessment for each of these fees each year. (pages 14-15)

Also, Page 40 of the Notice:

Additionally, the Board also considered a different way to apportion fees within each class of fee payer but decided that the proposed Annual Rate Card Process is the best way to achieve proportionate revenue based on the MSRB’s available information, i.e., underwriters pay based on their volume underwritten, trading firms pay based on their trading activities (in par value and trade count), and municipal advisory firms pay based on the headcount of a firm.

A fee assessment method based on a percentage of each municipal advisory firm’s revenue, for example, would not be feasible at this time as it could require establishing a significantly more burdensome recordkeeping and reporting requirement. The MSRB does not currently require municipal advisory firms to report such information under existing rules; and, more importantly, many municipal advisory firms would likely have business activities not solely related to municipal advisory services. In addition, it would increase the burden on municipal advisory firms as municipal advisory firms would have the responsibility to collect the relevant information to be used for MSRB’s fee assessment and also would then be required to report it. The MSRB believes at this time that the costs and burdens associated with collecting and reporting such information are not justified, and the Municipal Advisor Annual Professional Fee for each person associated with the firm who is qualified is a reasonable proxy for the size of relevant business activities conducted by each municipal advisory firm.

There have been no “material shifts in market structure or circumstances” that would call for the MSRB to abandon the per-MA fee concept and assessment that it implemented in 2022.

The MSRB also asks if it should consider basing fees on the variety of advice that MAs provide clients (transaction-related, ongoing or time-to-time advice for currently held or future financial products, solicitation activities)?

NAMA’s position is that the MSRB should not consider basing fees on the type of advice MAs provide clients, for numerous reasons. These include:

- MA Firms may provide services outside of MA activity to clients. The extensive variety of scope of services developed by the issuer and conducted by an MA firm (including both SEC defined MA activity and other business services) could not be separated to determine fees only on MA activity.
- MAs are paid in a variety of ways for the services they provide. Some clients may wish to pay for ongoing (MA and non-MA) services within the bond issuance, and some may only have the MA services specific to the transaction. Similar to the point above about services provided by MA firms, there are no uniform practices in how MAs are paid (and what they are paid for) for the MSRB to utilize that would be considered fair, reasonable and appropriate to determine MA fees in a transaction.
- Recently there have been significant discussions on the definition of MA activity. While the MA Rule may appear to be clear, in fact there is not a bright line definition of MA activity for which the MSRB would need to develop a fee on “*the variety of advice an MA provides clients*” and “*for ongoing or time-to-time advice for currently held or future financial products*” as asked in this RFI. For instance, SEC’s OMS Director Dave Sanchez has noted in various forums that MA activity is determined by what is stated in the client-MA scope of services/contract. This could create great confusion and inaccurate information being provided and used by the MSRB if one firm includes fees (if they can be determined) for a particular service as MA activity and another does not. It would also likely create significant challenges for the SEC in reviewing whether regulated MAs had been fully complying with their MSRB fee obligations.
- Unlike broker-dealers, MAs provide professional services to their client and are not engaged in the business activity of market trading. This is why the MSRB establishes fees as they do, because there is a direct correlation between regulated activity and fees, with a majority of activity and rules being centered around the selling and trading of municipal securities, and having a robust trading information infrastructure in place to ensure transparency for investor protections.

Changing MA Fees Could Harm Small MA Firms

A vast majority of, if not all MA firms are considered “small MA firms” based on the Small Business Administration definition referenced in the MA Rule⁴. The MSRB has a specific and special responsibility to not burden small MA firms with its regulations per *Securities Exchange Act*, 15B (b)(2)(L)(iv).

According to the MSRB’s database, approximately 72% of MA firms have 5 MAs or less. By steering away from a historical practice of application of fees on a per person basis, the MSRB would impose significant burdens on small firms that could also lead to MAs leaving the profession. The key reason for the existence and regulation of MAs is to protect issuers, which is also part of the MSRB’s mission. Any actions that work to deter MA firms from existing should be avoided by the MSRB.

⁴ page 67557 Final MA Rule, <https://www.govinfo.gov/content/pkg/FR-2013-11-12/pdf/2013-23524.pdf>

Conclusion

The MSRB's extensive rate card development process in 2022 established a trigger on how and when revisions might be necessary. There have been no material shifts in market structure or circumstances since that point that would cause the MSRB to deviate from the current rate card process – both for how fees are assessed, and the proportional application of fees on regulated entities.

We continue to support and agree with having a regulatory regime over MAs that is administered by the MSRB. We also agree that it is essential that Section 15B(b)(2)(C) of the Act continue to be strongly in place -

The MSRB must be adequately funded to undertake rulemaking, designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

We understand the difficulty with finding a reasonable way to assess fees on MAs due to the significant variety of business models and practices used, and in basing broker-dealer fees on market projections. For MAs, the only common denominator between MA firms – the number of covered persons - remains the appropriate and fair way to assess fees on these professionals.

The variables used to determine the allocation of fees in 2022 reflect the realities and key differences between MAs and broker-dealers. MAs perform a variety of regulated and unregulated services to clients, and do not perform duties related to underwriting or trading of bonds, nor serve investors which are the main focus of the MSRB's rules and systems. Thus, the MSRB's allocation standards, as they exist, are fair and reasonable and should not be altered.

We would appreciate the opportunity to further discuss our comments with MSRB staff and Board members. Additionally, we look forward to vigorous and ongoing discussions with the MSRB and regulated entities about the rate card process or other proposals that will move forward prior to determining FY26 fees.

Thank you for the opportunity to comment on this important matter.

Sincerely,



Susan Gaffney
Executive Director