



May 21, 2014

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: SR-MSRB-2014-03 Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of New Rule A-11, on Assessments for Municipal Advisor Professionals**

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on SR-MSRB-2014-03, Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of New Rule A-11, on Assessments for Municipal Advisor Professionals<sup>2</sup>. We oppose the proposed fee increases, and urge the Securities and Exchange Commission (“Commission” or “SEC”) to suspend the rule change and institute proceedings to disapprove the Municipal Securities Rulemaking Board’s (“MSRB”) proposal. The proposed changes are not consistent with the Dodd-Frank Act<sup>3</sup> as there is not a reasonable relationship between amounts assessed to municipal advisors and the level of rulemaking, system development and operational activities currently undertaken, and expected to be undertaken, by the MSRB in connection with such constituency. Additionally, there is no harm in the delay of implementing the Proposal. Annual and initial fees paid to the MSRB currently represent three

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> SR-MSRB-2014-03, available at <http://www.sec.gov/rules/sro/msrb/2014/34-72019.pdf>. See also MSRB Notice 2014-09 (April 17, 2014) *MSRB to Implement New MSRB Rule A-11 Establishing Fees for Municipal Advisor Professionals* (the “Proposal”), available at <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2014-09.ashx?n=1>

<sup>3</sup> Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amending Section 15B of the Securities Exchange Act of 1934 (“Exchange Act”).

percent<sup>4</sup> of the MSRB's revenue. The total amount of fees to be collected pursuant to the Proposal is unknown<sup>5</sup> and will not significantly increase MSRB revenues. The expected suite of MSRB municipal advisor rulemaking largely extends concepts to non-dealer MAs that dealers have been subject to since the MSRB's inception. Dealers have already paid for the cost of regulation. Additionally, certain dealers that have no intention to pursue municipal advisory business are considering registering public finance investment bankers as "belt and suspenders" protection in the event of a MA "foot fault". They should not be made to shoulder the cost of additional MA regulation and rulemaking.

SIFMA supports the notion of allocating the MSRB's expenses fairly across all regulated entities, including brokers, dealers, municipal securities dealers, and municipal advisors. The Proposal does not establish an equitable fee structure – a concern recognized by the SEC in 2010<sup>6</sup> in connection with a significant increase in dealer fees. Moreover, the proposed fee assessment is a double tax on municipal securities dealers that will engage in municipal advisory activities.

These points are discussed in more detail below.

## **I. Processing Fee Filings – In General**

The MSRB recently filed, for immediate effectiveness, a rule filing to assess a per head assessment on municipal advisors.<sup>7</sup> SIFMA believes this fee filing raises a number of issues concerning the overall handling of changes to MSRB fees. In particular, SIFMA believes all MSRB fee changes, including the Proposal, could benefit from reasonable prior notice of proposed changes, solicitation of feedback from market participants on implementation/effectiveness of fee changes, and a more fulsome discussion of the rationale for a fee change. SIFMA's concerns are discussed in the following sections of this comment letter.

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<sup>4</sup> MSRB 2013 Financial Highlights, available at <http://www.msrb.org/msrb1/pdfs/MSRB-2013-Financial-Highlights.pdf>

<sup>5</sup> The Proposal would assess on each municipal advisor an annual fee of \$300 for each Form MA-I on file with the SEC in the relevant year. A separate fee for MA-I is to be filed for each individual engaged in municipal advisory activity. Current municipal advisor ("MA") registration is based on the entity level only. Identification of individuals engaged in MA activity will only commence with the filing of Form MA-I. See SEC Release No. 34-70462; File No. S7-45-10 ("SEC MA Rule"), available at <http://www.sec.gov/rules/final/2013/34-70462.pdf>.

<sup>6</sup> See SEC Release No. 34-63621, File No. SR-MSRB-2010-10 (December 29, 2010), Order Granting Approval of Proposed Rule Change Consisting of Amendments to Rule A-13 to Increase Transaction Assessments for Certain Municipal Securities Transactions Reported to the Board and to Institute a New Technology Fee on Reported Sales Transactions (the "2010 Dealer Fee Order"), available at <http://www.sec.gov/rules/sro/msrb/2010/34-63621.pdf>

<sup>7</sup> See SR-MSRB-2014-03, *supra* note 2.

### **A. Prior Notice of Intent to Change/Impose Fees**

SIFMA believes it would be constructive for the MSRB to provide market participants with reasonable prior notice of the MSRB's intent to change existing fees or impose new fees. Reasonable prior notice will permit market participants to evaluate any fee proposal(s) and provide the MSRB with meaningful comments prior to filing the fee proposals with the Commission. Having the opportunity to provide comments early in the process is particularly significant since self-regulatory organization fee filings can<sup>8</sup> be filed with the Commission for immediate effectiveness. One of the rationales for allowing SROs to file for immediate effectiveness of fee changes relates to competition among exchanges. This does not apply to non-exchange rule filings by "regulatory" self-regulatory organizations ("SROs") such as the Financial Industry Regulatory Authority ("FINRA") and the MSRB. Many of their fees relate to operating their regulatory programs and not to offering a competitive service to dealers.

SIFMA believes that the Proposal could have particularly benefited from prior notice and comment from market participants since this is the first effort by the MSRB to assess a new fee directed at municipal advisors since the SEC issued in September 2013 the SEC MA Rule<sup>9</sup>. This per head assessment proposal deviates from existing MSRB fees which are primarily based upon market activity of regulated entities.

### **B. Effectiveness of New/Changed Fees**

SIFMA believes the MSRB should solicit market participant feedback prior to establishing an effective date for new or changed MSRB fees. Firms generally determine their budgetary needs at the end of the prior calendar year or beginning of the current calendar year. A regulatory fee change can have a significant impact on previously determined member firm resource allocation. SIFMA believes firms and the MSRB would benefit from a fee change process that includes a consideration of member firm budgetary processes, including timing related issues.

### **C. Discussion of Rationale for Fee Changes**

SIFMA believes MSRB fee changes would benefit greatly from increased discussion by the MSRB of the rationale for a particular fee change as well as a comprehensive discussion of the overall structure of the MSRB's fees. A

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<sup>8</sup> We note that the MSRB has not always filed fee increases for immediately effectiveness. See SR-MSRB-2010-10 (September 30, 2010), available at <http://msrb.org/Rules-and-Interpretations/SEC-Filings/~media/Files/SEC-Filings/2010/SR-MSRB-2010-10.ashx>

<sup>9</sup> SEC MA Rule, *supra* note 5.

cornerstone of our securities markets is disclosure of information to investors. The same core benefits of disclosure – such as better informed decisions and more efficient allocation of resources – apply to MSRB fee changes. A more fulsome and detailed discussion of the reasons for a particular fee change will contribute to a more robust and thoughtful rulemaking process. When the MSRB first proposed a fee assessment on municipal advisors<sup>10</sup>, SIFMA proved detailed comments<sup>11</sup>, offering an alternative fee structure consistent the MSRB’s and other non-exchange SRO fee structures - which have not been pursued.

SIFMA thinks the Proposal, in particular, lacks a sufficient discussion of the rationale for the fee changes or methodology of deriving at the fee structure or amount of the fee. The Proposal lacks any specific breakdown of the costs associated with each function/system that should be supported by municipal advisors, nor does the MSRB estimate the expected revenues to be received<sup>12</sup>. SIFMA believes it is very difficult to appropriately evaluate the reasonableness (or necessity) of a particular fee change without the MSRB disclosing and discussing granular cost and revenue numbers for the applicable function/system.<sup>13</sup>

## II. Current MSRB Fees and Fee Structure

The MSRB currently assesses the following fees:

Fee Type	Fees Paid by Dealers	Fees Paid by Municipal Advisors
<b>Initial Fee</b>	\$100 upon registration per MSRB Rule A-12	\$100 upon registration per MSRB Rule A-12
<b>Annual Fee</b>	\$500 each fiscal year per MSRB Rule A-14	\$500 each fiscal year per MSRB Rule A-14
<b>Underwriting Assessment Fee</b>	\$.03 per \$1,000 of the par value paid by the underwriters on most primary offerings. MSRB Rule A-13	

<sup>10</sup> See Dealer 2010 Fee Order, *supra* note 6.

<sup>11</sup> See letter from Michael Decker SIFMA, to SEC, dated August 29, 2011, available at <http://www.sifma.org/issues/item.aspx?id=8589935232>

<sup>12</sup> It is impossible to estimate the anticipated revenues as MAs have never before needed to be identified on an individual basis. This will not be known until 2015, the end of the SEC’s permanent registration compliance period.

<sup>13</sup> For example, municipal advisor fees should be assessed and allocated to cover each of the expense categories identified in the MSRB’s Annual Report: market information transparency programs and operations; board governance and rulemaking oversight; administration; rulemaking and policy development, and market leadership, outreach and education.

<b>Transaction Fee on Inter-Dealer Sales</b>	\$.01 per \$1,000 of the total par value of inter-dealer municipal securities sales that it reports per MSRB Rule G-14(b).
<b>Transaction Fee on Customer Sales</b>	\$.01 per \$1,000 of the total par value of sales to customers that it reports per MSRB Rule G-14(b).
<b>Technology Fee on Inter-Dealer Sales</b>	\$1.00 per transaction per MSRB Rule A-13 for each inter-dealer municipal securities sale that it reports per MSRB Rule G-14(b)
<b>Technology Fee on Customer Sales</b>	\$1.00 per transaction per MSRB Rule A-13 for sales to customers that it reports per MSRB Rule G-14(b).

As discussed in detail below, a significant MSRB fee increase was imposed on dealers in 2011. Since the beginning of 2011, dealers have been assessed an increase in municipal market related fees in excess of \$56 million.<sup>14</sup> The Proposal does not sufficiently shift a sufficient portion of the MSRB's revenue to municipal advisors that are not brokers, dealers, or municipal securities dealers<sup>15</sup> – nor does it encompass municipal advisory activities which are not captured in any MSRB fees.

### **III. 2010 Dealer Fee Order**

In 2010, the MSRB sought, and the SEC approved significant fee increases imposed on dealers based upon trading activity. The fee increases included an increase in transaction fees and a new technology fee. The technology fee was represented as being transitional in nature and would be reviewed annually to determine whether it should continue to be assessed. In approving these new fees the SEC stated:

In the proposal, the MSRB stated that it will continue to review its assessments on market participants it regulates to ensure that costs of rulemaking are appropriately allocated among the entities it regulates. Although the MSRB recognizes that an appropriate allocation of such regulatory costs may not be feasible during the transition of the MSRB to its broader mission, it stated it expects to revisit the manner in which its activities are funded in the coming years, as appropriate. The

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<sup>14</sup> As a result of Dodd-Frank, dealers also pay a new fee to FINRA to support the Government Accounting Standards Board (GASB). Fees assessed for this purpose amount to \$15.8 million in 2012 and 2013 combined.

<sup>15</sup> For example, in 2013, the State of California's top five financial advisory firms, based upon deal count and par amount, were non-dealer advisors. See California Debt and Investment Advisory Commission, *Debt Line Monthly Newsletter* (May 2014) available at <http://www.treasurer.ca.gov/cdiac/>.

MSRB also restated its commitment to ensure that its assessments are balanced based in large part on the level of activity of all of its regulated entities.<sup>16</sup>

SIFMA and its members believe that the MSRB's transition to its broader mission is now generally complete. The scope of MA rulemaking is known. As is the scope and level of MA activity in the marketplace. The time is ripe for MSRB revenues to be balanced based in large part on the level of activity of all of its regulated entities. The Proposal does not meet this standard. It may be a step, but it is a baby step. There is ample time for a comprehensive review of the MSRB's fee structure before imposing additional fees on dealers.

In the Proposal, the MSRB does not in any place discuss how the Proposal is related to each of the expense categories identified in the MSRB's Annual Report: market information transparency programs and operations; board governance and rulemaking oversight; administration; rulemaking and policy development, and market leadership, outreach and education. Currently these functions are paid nearly 100% by the underwriting and sales and trading activities of brokers, dealers, and municipal securities dealers.

#### **IV. Equitable Allocation of Expenses**

The proposed rule and the assessments it would impose would apply to both non-dealer advisors and to brokers, dealers and municipal securities dealers (collectively, "dealers") who are also registered as municipal advisors ("dealer advisors"). In this regard, the new fee for dealer advisors would be in addition to the many fees these firms already pay to the MSRB by virtue of their status as dealers. As detailed above, dealers registered with the MSRB now pay a \$.03 per \$1,000 new issue underwriting assessment, a \$.01 per \$1,000 assessment on bond sales to customers or other dealers, and a "technology fee" of \$1 per transaction on sales to customers and other dealers in addition to a \$500 per year registration fee. In total, dealers paid to the MSRB in excess of \$33.8 million<sup>17</sup> in the fiscal year that ended September 30, 2013 – representing 86 percent of revenues.

As the MSRB recognized when it first released the proposed rule, which is identical to the Proposal<sup>18</sup>, even if the new advisor assessment were levied as proposed, fees imposed exclusively on dealers would comprise well over 90 percent of the MSRB's total revenue. In that regard, we urge the Commission to

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<sup>16</sup> See Letter from Lawrence P. Sandor, MSRB to the SEC, dated December 28, 2010, available at <http://www.sec.gov/comments/sr-msrb-2010-10/msrb201010-17.pdf>

<sup>17</sup> Including underwriting assessment fees, transactions fees, and technology fees. Excluding annual and initial fees, data subscriber fees, and rule violation fine revenue.

<sup>18</sup> See SR-MSRB-2011-08, Notice of Filing of Proposed New Rule A-11, on Municipal Advisor Assessments, and New Form A-11-Interim (August 2, 2011), available at <http://www.sec.gov/rules/sro/msrb/2011/34-65015.pdf>.

ensure that any activities of dealer advisors for which firms already pay MSRB assessments are not also covered by the advisor assessment in proposed Rule A-11<sup>19</sup> or that current fees are reduced based upon underwriting and trading activity. It would not be appropriate or fair for dealer advisors to pay the MSRB twice for the same activities.

Furthermore, the MSRB has argued that the proposed \$300 annual municipal advisor assessment for each assessable professional is designed to defray a portion of the MSRB's expenses, "particularly the increased costs as a result of the regulation of municipal advisors." It is not appropriate or fair that the MSRB has not structured the proposed assessment so that non-dealer advisors would pay their fair share of expenses associated with initiatives not directly associated with advisor regulation, such as the development and operation of the Electronic Municipal Market Access ("EMMA") system. Non-dealer advisors use and benefit from these systems extensively, and it is appropriate for non-dealer advisors to bear a portion of their cost.

## V. Proposal is Inconsistent with Statutory Basis

It has been nearly eight months since the SEC approved the final MA rule. Many market participants expected the MSRB to conduct an analysis of its revenue structure to equitably allocate its cost among municipal advisors – so that the fees assessed to each municipal securities broker, municipal securities dealer, and municipal advisor would be reasonable. The MSRB's filing of the Proposal with the SEC seems to indicate that it did not do so.<sup>20</sup> Accordingly, SIFMA believes the Proposal is inconsistent with Section 15B(b)(2)(J) of the Act.

With respect to Section 15B(b)(2)(L)(iv) of the Act, which requires the MSRB "not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection

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<sup>19</sup> SIFMA proposes the following underlined revisions to Rule A-11 (a) and (c), as filed with the SEC:

**Rule A-11: Assessments for Municipal Advisor Professionals**

(a) *Annual Municipal Advisor Professional Fee.* Each municipal advisor that is registered with the Commission, that is not a broker, dealer, or municipal securities dealer, shall pay to the Board a recurring annual fee beginning with the Board's fiscal year 2015 (which begins October 1, 2014), equal to \$300 for each Form MA-I filed with the Commission by such municipal advisor as of January 31 of each year. The annual professional fee shall be due by April 30 and shall be payable in the manner provided by the MSRB Registration Manual.

(c) *Transitional Municipal Advisor Professional Fee.* Assessments for each municipal advisor, that is not a broker, dealer, or municipal securities dealer, registered either temporarily or permanently with the Commission on or before September 30, 2014, shall be due ten business days after the acceptance of its permanent registration by the Commission, and in an amount equal to \$300 for each Form MA-I filed with the Commission by such municipal advisor. The transitional professional fee shall be payable in the manner provided by the MSRB Registration Manual.

<sup>20</sup> See SR-MSRB-2014-03, *supra* note 2 at 5 "Rather than establish a new category of professional for purposes of assessing this fee, which would have required additional analysis . . . ."

of investors against fraud”, SIFMA urges both the SEC and MSRB to recognize that small dealers are also saddled with increasing regulatory costs – yet those costs are not assessed on a per head basis. Additionally, small firms (by personnel) can play a large role in the market.<sup>21</sup>

## VI. Alternative, Market Based, Fee Structure

SIFMA urge the MSRB to undertake a comprehensive review of its overall fee structure. The current hodgepodge of fees and assessments levied by the MSRB has evolved over decades and is not necessarily fair, reasonable or equitable. These weaknesses become more apparent as the MSRB seeks a means to assess municipal advisors. The MSRB should consider abandoning its existing system of assessments in favor of a single tax on dealers and advisors that is based on an equalizing factor such as gross revenue derived from municipal-related businesses regulated by the MSRB. FINRA derives a substantial portion of its revenue from a Gross Income Assessment based on its members’ top-line revenue from broker-dealer businesses.

A suggested fee vs. resources allocation grid is below:

Expenses	Amount <sup>22</sup>	Dealer Underwriting Activity	Dealer Sales & Trading Activity	MA Advice on Debt Issuance	MA Advice on Municipal Financial Products
Market information transparency programs and operations	\$13,947,500	% Allocation	% Allocation	% Allocation	% Allocation
Board governance and rulemaking oversight	\$1,651,295	% Allocation	% Allocation	% Allocation	% Allocation
Administration	\$5,330,747	% Allocation	% Allocation	% Allocation	% Allocation
Market leadership, outreach and	\$2,046,100	% Allocation	% Allocation	% Allocation	% Allocation

<sup>21</sup> James B. Stewart, *Goldman, Citi, UBS . . . and a Guy in an Office*, N.Y. Times, April 18, 2014, available at [http://www.nytimes.com/2014/04/19/business/a-tiny-deal-maker-among-giants-standing-on-his-own.html?\\_r=0](http://www.nytimes.com/2014/04/19/business/a-tiny-deal-maker-among-giants-standing-on-his-own.html?_r=0)

<sup>22</sup> MSRB Annual Report 2013.



education					
Rulemaking and policy development	\$4,802,688	% Allocation	% Allocation	% Allocation	% Allocation
Total	\$27,778,330	100%	100%	100%	100%

## VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment on the Proposal. SIFMA believes MSRB fee changes, including the Proposal, could benefit from reasonable prior notice of the proposed changes, solicitation of market participant feedback on implementation/effectiveness of fee changes, and a more fulsome and granular discussion of the rationale supporting a fee change.

SIFMA believes the Commission should suspend the rule change and institute proceedings to disapprove the MSRB's proposal. The MSRB has sufficient revenues and capital reserves, so tabling the proposal for now should not present a financial hardship to the MSRB to allow for a systematic analysis of MSRB functions to allow for a reasonable cost allocation across all regulated entities in relation to their market participation.

Short of suspending the Proposal, we urge the Commission to ensure that the new assessment would not apply to dealers. Dealer advisors already pay substantial fees to the MSRB, and double-taxing activities that will be covered under definition of municipal advisory activity would be unfair and inappropriate. The expected suite of MSRB municipal advisor rulemaking largely extends concepts to non-dealer MAs that dealers have been subject to since the MSRB's inception. Dealers have already paid for the cost of regulation.

Please do not hesitate to contact me with any questions at 212-313-1265. SIFMA welcomes the opportunity to discuss all aspects of the Proposal and our comments with the Commission and the MSRB.

Sincerely yours,



David L. Cohen  
Managing Director and  
Associate General Counsel

Ms. Elizabeth M. Murphy  
Securities and Exchange Commission  
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cc:           ***Municipal Securities Rulemaking Board***  
                  Lynnette Kelly, Executive Director  
                  Gary L. Goldsholle, General Counsel  
                  Michael Post, Deputy General Counsel