



November 9, 2010

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

In regard to File Number SR-MSRB-2010-10

Dear Ms. Murphy,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is pleased to provide comments on the Securities and Exchange Commission’s (“SEC”) Release No. 34-63095, the Municipal Securities Rulemaking Board’s (“MSRB”) “Notice of Filing 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 “Notice”).

We oppose the MSRB’s proposal for a number of reasons, including the following, which we discuss in greater detail below:

- The fee increases would disproportionately affect the retail segment of the municipal market and much of the increase would ultimately be borne by retail municipal bond investors.
- Because of the over-the-counter nature of the municipal bond market, certain elements of the proposed new and increased fees would be levied multiple times on a single transfer of bonds from one investor to another.
- The fees proposed in the Notice would nearly double the MSRB’s revenue. There has been little transparency in the process of determining the structure and application of such a sizable increase in revenue for the MSRB and in determining the uses of additional funds.
- The MSRB’s proposal does not include any fees levied on municipal advisors; the MSRB’s jurisdiction recently expanded to include rulemaking over advisors, and non-dealer advisors should be expected to pay their fair share of the MSRB’s expenses.
- The MSRB already has a significant accumulated surplus which should be spent down before collecting additional revenue.

The MSRB is responsible for a number of initiatives that are valuable to the municipal bond market, and we recognize that the MSRB needs a stable and robust funding source to cover its

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<sup>1</sup>The Securities Industry and Financial Markets Association (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). For more information, visit [www.sifma.org](http://www.sifma.org).

expenses. However, the fees proposed in the Notice would be borne by municipal market participants in an unfair manner, and the MSRB has been less than fully transparent with regard to the uses of additional revenue and the manner in which the fee increases proposed in the Notice were determined. We urge the SEC to reject the fee proposal in the Notice, and we urge the MSRB to work with its dealer, bank and advisor members and the SEC to determine an alternative fee structure that is fair and transparent.

### ***The MSRB's fee proposal and the retail municipal market***

The MSRB has proposed in the Notice amendments to its Rule A-13 that would result in one fee increase and one new fee. One aspect of the proposal would double the existing transaction assessment on inter-dealer and customer sales from .0005% to .001% of the par value (from \$.005 to \$.01 per thousand dollar bond). The second would impose a new “technology fee” of \$1.00 per transaction on inter-dealer and customer sales.

Taken together, these two new fees would be disproportionately borne by participants in the retail market for municipal bonds. For example, under the current \$.005 per bond transaction fee, a typical dealer sale to a retail investor of \$25,000 par value of municipal bonds would generate a fee to the MSRB of \$.125. Under the amendments proposed in the Notice, that same customer sale would generate a fee of \$1.25—a doubling of the transaction fee to \$.25 plus the \$1.00 technology fee—an increase of 900% relative to current rules. Moreover, it is likely that the process of transferring bonds from one retail investor to another would result in that same fee being charged multiple times.

Say, for example, a retail customer wants to liquidate a \$25,000 par amount municipal bond investment. That investor sells his bonds to a dealer; because the dealer is buying bonds from, not selling to, a customer, that transaction does not generate a fee. However, assume that dealer does not have another customer who wants to buy those bonds, so the dealer sells the bonds to another dealer. Because that transaction is a sale to another dealer, it would, under the proposal in the Notice, result in a \$1.25 fee paid to the MSRB—versus \$.125 under current rules. When the second dealer sells that same \$25,000 of bonds to its customer, the MSRB would receive a second \$1.25 fee.

Moreover, many transactions in the retail municipal bond market are effected through brokers' brokers, some of which are organized as dealers who take a “riskless principal” position in the trade between two dealers. In this case, for the same \$25,000 transaction, there would be one \$1.25 fee when the bonds move from “Dealer A” to the brokers' broker, a second \$1.25 fee when the bonds move from the brokers' broker to “Dealer B”, and a third \$1.25 fee when “Dealer B” sells the bonds to its customer. The MSRB's current transaction fee applies in a similar manner; however, under the Notice, each step of the transaction would generate a fee 900% larger than under current rules, so the total cost of transferring bonds from one retail investor to another would increase substantially.

In another trading model common in the retail market, a dealer buys a “round lot”—say, \$1 million—of bonds in the inter-dealer market and redistributes those bonds to retail customers in smaller denominations. A single \$1 million block might result in 40 or more retail sales

transactions, each one generating separate \$1.00 fees, as well as the .001% transaction fee. Assuming a \$1,000,000 block were sold to retail customers in 40 \$25,000 transactions, total fee revenue collected by the MSRB in connection with these retail sales would rise ten times from \$5 under current rules (\$1,000,000 of total customer sales times .0005%) to \$50 under the proposal in the Notice (\$1,000,000 times .001% plus \$1.00 times 40 customer sales transactions), an inordinate increase.

Ultimately, we believe the extraordinary fee increase the MSRB is proposing, particularly in retail transactions, would ultimately be borne by retail investors in the form of higher transaction costs—wider bid-ask spreads—in the retail market.

Some of our members with significant retail fixed-income businesses have reported that the fees they pay to the MSRB on secondary market trading activity would triple under the proposals in the Notice. Such a large increase in regulatory fees associated with retail transactions is not justified based on the reasons for the fee increases the MSRB provided in the Notice. A significant reason the MSRB has cited for the fee increase is the MSRB's cost associated with regulating municipal advisors under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), but initiatives related to advisor regulation have nearly nothing to do with the secondary or retail municipal markets.

### ***Higher fees relative to the MSRB's current budget***

According to recent MSRB annual reports, the MSRB collected \$17.8 million, \$21.5 million, \$22.2 million, and \$19.6 million in revenue in 2006-2009, respectively, for an average annual revenue over the last four years of \$20.3 million. In the Release the MSRB has projected that under its fee proposal it will collect approximately \$7 million annually from the doubled transaction fee and \$10 million annually from the new technology fee, for an annual increase in its revenue of \$17 million. This would represent an approximately 84 percent increase in its annual revenue over its recent four-year average. We are not aware of any fee proposal by any other financial regulator in recent memory that would increase revenue to the regulator by a factor approaching this amount. The MSRB has provided little justification for such a sizable increase in its revenue, and has certainly not provided any detail as to how its expenses are expected to rise by 84 percent.

On average over the last four years, the MSRB has generated nearly \$1.25 million in surplus annual revenue (revenues net of expenses). Moreover, according to its annual report for fiscal year 2009, as of September 30, 2009, the MSRB had \$1.5 million of cash and \$18.2 million of liquid investments, representing a \$19.7 million accumulated surplus of revenue collected over many years from its dealer members. This reserve is much bigger than the MSRB needs, and the MSRB should spend down a sizable portion of this accumulated surplus before taxing municipal dealers further.

According to the National Center for Charitable Statistics ("NCCS"), the Center on Nonprofits and Philanthropy at The Urban Institute, and the United Way Worldwide, Membership & Financial Accountability Department, nonprofits like the MSRB should maintain "a minimum operating reserve ratio, at the lowest point during the year, of 25 percent or 3 months of the

annual expense budget.”<sup>2</sup> The MSRB’s annual expenses over the last four years have averaged \$19.0 million, suggesting that the MSRB’s operating reserve needs to be no larger than \$4.8 million. The recommendations of the NCCS *et al.* are targeted primarily at non-profit organizations that depend on voluntary contributions and as such, they likely overstate the need for an operating reserve for an organization like the MSRB whose funding source, because it is mandated in regulation, is more predictable and stable. Still, even doubling the recommendation of the NCCS *et al.*, the MSRB could operate comfortably with an operating reserve of no more than \$10 million. The MSRB should spend down at least half its accumulated reserves before seeking additional revenue from regulated member firms.

### ***Higher fees not levied on advisors***

One of the principal justifications provided by the MSRB in the Notice for the new and increased fees is resource demand brought about by new authority provided to the MSRB in the Dodd-Frank Act, including regulation of municipal advisors, rules related to the protection of bond issuers, and new enforcement and examination responsibilities. While we recognize that these additional responsibilities will place additional demands on the MSRB’s resources, we feel the new and increased fees proposed in the Notice are unfair because they are levied solely on dealers and not on municipal advisors.

On September 1, 2010 the SEC published guidelines and requirements related to the registration and regulation of municipal advisors brought about by the enactment of the Dodd-Frank Act.<sup>3</sup> Through October 29, 2010, the SEC has received 741 advisor registration filings under the SEC’s interim final temporary rule.<sup>4</sup> While some of these registrants are also broker-dealers who are already paying fees to the MSRB—and therefore should not be taxed again as advisors—a large majority of new municipal advisor registrants are non-dealer municipal advisors or investment advisors who are not currently paying any fees to the MSRB. Once the MSRB devises its own registration scheme for municipal advisors and begins accepting advisor registrations, the MSRB should also begin collecting fees from advisors to cover the entire cost of advisor rulemaking activities and partially offset the cost other MSRB initiatives.

We are encouraged that at its first meeting on October 20-22, 2010, the MSRB’s newly constituted Board approved municipal advisor rulemaking activities and the “assessment of associated initial and annual fees to help defray a portion of the costs associated with the MSRB’s new role as regulator of municipal advisors.”<sup>5</sup> That first step, however, is not enough. Fees levied on advisors should cover the entire cost, not simply part of the cost, of regulating advisors. Moreover, municipal advisors who will soon register with the MSRB should be

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<sup>2</sup> The National Center for Charitable Statistics, the Center on Nonprofits and Philanthropy at The Urban Institute and the United Way Worldwide, Membership & Financial Accountability Department, “Operating Reserve Policy Toolkit for Nonprofit Organizations,” March 26, 2010 (exposure draft), page 14.

<sup>3</sup> Securities and Exchange Commission, “Temporary Registration of Municipal Advisors,” Interim final temporary rule, Release No. 34-62824, File No. S7-19-10, September 1, 2010.

<sup>4</sup> Securities and Exchange Commission, “Municipal Advisor Temporary Registration Form Received,” Web page, <https://tts.sec.gov/MATR/index.html>, accessed November 1, 2010.

<sup>5</sup> Municipal Securities Rulemaking Board, “Municipal Securities Rulemaking Board Holds Quarterly Board Meeting,” Press Release, October 25, 2010.

expected to pay their fair share of the cost of developing and maintaining MSRB initiatives such as the Electronic Municipal Market Access (“EMMA”) system.

Moreover, Section 975(b)(4) of the Dodd-Frank Act clarifies that the MSRB “shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services”, *i.e.*, the MSRB is permitted to charge reasonable fees to information vendors who redistribute data or information published by the MSRB. This could represent a potentially important revenue source for the MSRB and should be explored and implemented fully before imposing additional financial burdens on municipal bond dealers. We recognize that the MSRB has proposed increases in fees charged to subscribers for its Real-Time Transaction Price Service and its Comprehensive Transaction Price Service.<sup>6</sup> While we support this change, we feel MSRB could recognize the value of the trade data it manages to an even greater degree. Section 975(c)(8) of the Dodd-Frank Act requires the Financial Industry Regulatory Authority (“FINRA”) “to pay to the [MSRB] 1/3 of all fines collected by [FINRA] reasonably allocable to violations of the rules of the [MSRB].” This, too, will provide the MSRB with additional revenue.

Until the MSRB is prepared to develop a revenue model that fully and fairly allocates the costs of its activities among all its members, including advisors, we feel strongly that imposing new financial burdens on its dealer members is inappropriate and unfair.

### ***Transparency in the fee-setting process***

The new and increased fees proposed in the Notice represent the largest expansion of the MSRB’s resources—and the largest tax increase imposed on the municipal bond dealer community—since the MSRB was established in 1975. Yet, before it filed its fee proposal with the SEC, the MSRB provided no opportunity for discourse with its members regarding the revenues the MSRB believes it needs, the projects the MSRB intends to pursue with its proposed additional revenue, or the best and fairest way to allocate the MSRB’s costs across the industry. The MSRB itself did not seek public comments on any aspect of its fee proposal and made no attempt to solicit ideas or suggestions regarding alternative approaches. In short, the process the MSRB has undertaken to nearly double its revenue has been far less than open and transparent.

Members of the municipal bond dealer community value many of the MSRB’s initiatives and projects. The EMMA system, for example, is an outstanding achievement and has helped investors and others with quick and user-friendly access to vital market information. Members of the municipal bond dealer community are quite willing to pay their appropriate share of the costs associated with such initiatives. However, if, as it has argued, the MSRB requires such substantial new revenue to begin and maintain its initiatives, it should undertake a more open and inclusive process with regard to its revenue model.

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<sup>6</sup> Securities and Exchange Commission, Release No. 34-63089, “Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Fee Changes to its Real-Time Transaction Price Service and Comprehensive Transaction Price Service, and Termination of its T+1 Transaction Price Service,” October 13, 2010.

Indeed, there are a number of projects on the MSRB's agenda that we believe justify a commitment of resources. For example, the MSRB does not currently use data from the Depository Trust and Clearing Corporation's New Issue Information Dissemination Service ("NIIDS") in the context of seeding new issue disclosure records on the EMMA system, resulting in significant costs to dealers associated with data checking and correction. We have requested and would fully support systems changes so that EMMA new issue records are populated with NIIDS data. There are other systems and operational initiatives we believe the MSRB should undertake related to such areas as ensuring that published customer prices on Build America Bonds truly reflect market values net of principal repayments and others. Projects like these could add real value for dealers and investors, and we recognize they entail costs. A more inclusive and transparent process for agenda-setting, combined with an industry dialog regarding the MSRB's revenue model, would likely garner industry support for value-added initiatives and their costs.

There may be alternatives to the MSRB's existing revenue scheme—which depends heavily on new-issue and secondary market assessments imposed on dealers—that would more fairly allocate the costs of the MSRB's initiatives. For example, some of the biggest users and beneficiaries of the MSRB's EMMA and Real-Time Transaction Reporting Systems ("RTRS") are institutional investors. Although the MSRB does not have statutory authority to impose fees on investors, the SEC does have authority over registered investment advisors, some of whom manage municipal bond portfolios for institutional investors, and over registered investment companies. Perhaps the SEC should consider imposing a fee on mutual funds and registered investment advisors with institutional clients active in the municipal market, with the revenue to be remitted to the MSRB to help cover the costs of those MSRB projects that directly benefit those investors.

Alternatively, the MSRB could consider a fundamental movement away from assessments based on market activity and towards fees based on firms' overall sizes. For example, the MSRB could consider fees based on its member firms' gross incomes derived from municipal market activity, including underwriting, trading, sales and advisory. Firms, including dealers and advisors, would report these data, and fees would be assessed based on total gross revenue associated with activities under the MSRB's jurisdiction. This approach could potentially allow the MSRB to more closely match its revenues with budgeted expenses since it could allow the MSRB to set *pro rata* assessments based on firms' trailing revenue in such a way that its revenues were largely predictable, in contrast to the current model, which is subject to vagaries in issuance and trading volumes. FINRA already derives a significant portion of its revenue from assessments based on overall broker-dealer revenue (Gross Income Assessments).<sup>7</sup> At least some firms already report to FINRA the revenue they derive from municipal securities-related activities as part of their Financial and Operational Combined Uniform Single (FOCUS) Reports under SEC Rule 17a-5.

If the MSRB opens its decision-making process in a more transparent way, it is likely that market participants will have creative ideas and proposals for allocating the costs of the MSRB's initiatives fairly among those who benefit most. We urge the SEC and the MSRB to withhold

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<sup>7</sup> Financial Industry Regulatory Authority, "FINRA 2009 Annual Financial Report," page 4.

action on the pending fee proposal in the Notice and to undertake an open and transparent process in determining the best methods to fund the MSRB's activities.

### **Summary**

SIFMA recognizes the burdens placed on the MSRB as a result of its new responsibilities under the Dodd-Frank Act as well as the high costs associated with operating technology-intensive initiatives such as EMMA and RTRS. For a number of reasons, however, the proposal contained in the Notice for raising additional revenue for the MSRB is seriously flawed, including:

- The new and increased fees would severely and negatively affect retail municipal bond investors and the retail market.
- The MSRB should develop a comprehensive revenue model where burdens are shared appropriately among all its members, including dealers and advisors.
- The MSRB has not adequately justified the need for such a substantial increase in its revenues.
- The process the MSRB has undertaken with regard to developing its fee proposal has been opaque.
- The MSRB already has a large accumulated surplus it should spend down before imposing new or increased fees.

For these reasons, we urge the SEC to reject the proposed new and increased fees in the Notice. Instead, we urge the SEC, the MSRB and municipal market participants to work together in a transparent fashion to develop a revenue model that shares the costs of funding the MSRB fairly and appropriately.

We appreciate the opportunity to express our views.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Decker", written in a cursive style.

Michael Decker  
Managing Director and Co-Head, Municipal Securities Division