

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99444; File No. SR-MSRB-2023-06)

January 29, 2024

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13

I. Introduction

On November 30, 2023, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-MSRB-2023-06) to establish the 2024 Rate Card Fees for Dealers and Municipal Advisors.<sup>3</sup> The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> The proposed rule change was published for comment in the Federal Register on December 12, 2023.<sup>5</sup> Pursuant to Section 19(b)(3)(C) of the Act,<sup>6</sup> the Commission is hereby temporarily suspending File No. SR-MSRB-2023-06 and instituting proceedings to determine whether to approve or disapprove File No. SR-MSRB-2023-06.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-99096 (December 6, 2023), 88 FR 86188 (December 12, 2023) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the SRO as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> See Notice 88 FR at 86188.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(C).

## II. Description of the Proposed Rule Change

The MSRB filed with the Commission the proposed rule change to amend, consistent with the MSRB’s annual rate-setting process (“Annual Rate Card Process”):<sup>7</sup> (i) Supplementary Material .01 to Rule A-11 to modify the rate of assessment for the annual rate card fees on municipal advisors for covered professionals under Rule A-11(b) (the “Municipal Advisor Professional Fee”); and (ii) Supplementary Material .01 to Rule A-13 to modify the rate of assessments for the annual rate card fees on brokers, dealers, and municipal securities dealers (collectively, “dealers”) for certain underwriting fees under Rule A-13(b), transaction fees under Rule A-13(d)(i) and (ii), and trade count fees under Rule A-13(d)(iv)(a) and (b) (collectively, the “Market Activity Fees” and, together with the Municipal Advisor Professional Fee, the “Rate Card Fees”).<sup>8</sup>

In July 2023, the board of directors of the MSRB approved an annual expense budget of approximately \$47.4 million for Fiscal Year 2024, which represents a 4.8% increase over the prior fiscal year, and established the baseline revenue that the MSRB will need to operate (i.e., the “Operational Funding Level”).<sup>9</sup> To achieve this Operational Funding Level, the MSRB proposed Rate Card Fees in its proposed rule change allocated based on the following

---

<sup>7</sup> See Notice 88 FR at 86188. See also Exchange Act Release No. 95417 (Aug. 3, 2022), 87 FR 48530 (Aug. 9, 2022), File No. SR-MSRB-2022-06 (establishing the MSRB’s Annual Rate Card Process with respect to the setting of certain fee rates each calendar year (an “Annual Rate Card”) and setting the initial Rate Card Fees through December 31, 2023) (the “Annual Rate Card Process Notice”).

<sup>8</sup> See Notice 88 FR at 86188. The proposed amendments to Supplementary Material .01 to Rule A-11 and Supplementary Material .01 to Rule A-13 collectively make up the “proposed rule change.”

<sup>9</sup> See Notice 88 FR at 86188; MSRB Fiscal Year 2024 Budget, available at <https://www.msrb.org/sites/default/files/2023-09/MSRB-FY-2024-Budget-Summary.pdf>.

contribution targets: underwriting fee at 30%; transaction fee at 41%; trade count fee at 21%; and Municipal Advisor Professional Fee at 8%.<sup>10</sup> This resulted in Proportional Contribution Amounts as follows for Fiscal Year 2024: underwriting fee of \$12.15 million; transaction fee of \$16.61 million; trade count fee of \$8.51 million; and Municipal Advisor Professional Fee of \$3.24 million.<sup>11</sup> The proposed rule change would establish the Municipal Advisor Professional Fee specified in Rule A-11 and the Market Activity Fees specified in Rule A-13 in accordance with the chart below.<sup>12</sup>

	Basis	Current Rate for 2023	Proposed Rate for 2024
Underwriting Fee	Per \$1,000 Par Underwritten	\$0.0297	\$0.0371
Transaction Fee	Per \$1,000 Par Transacted	\$0.0107	\$0.0091
Trade Count Fee	Per Trade	\$1.10	\$0.57
Municipal Advisor Professional Fee	Per Covered Professional	\$1,060	\$1,160

<sup>10</sup> See Notice 88 FR at 86189.

<sup>11</sup> *Id.* According to the MSRB, these contribution targets were determined by averaging the distribution of revenue assessed for Rate Card Fees over the past two fiscal years (Fiscal Year 2022 and Fiscal Year 2023) and the distribution of revenue assessed for Rate Card Fees over the past five fiscal years (Fiscal Year 2019 through Fiscal Year 2023). These two periods of time were used to reflect a balance of current market conditions and a longer-term historical precedent. To make the data comparable across fiscal years, the calculations were completed using the Market Activity Fee rates that were in place prior to the 2023 Rate Card, excluding the impact of the temporary fee reductions, and calculated as if the Municipal Advisor Professional Fee rate of \$1,000 per covered professional that was in place for Fiscal Years 2021 and 2022 had been in place for all Fiscal Years used in the calculations. Resulting contribution targets were rounded to the nearest whole percent. See also MSRB Fiscal Year 2024 Budget, available at <https://www.msrb.org/sites/default/files/2023-09/MSRB-FY-2024-Budget-Summary.pdf>.

<sup>12</sup> See Notice 88 FR at 86190.

The MSRB designated the proposed rule change for immediate effectiveness.<sup>13</sup> The new Rate Card Fees reflected in the proposed rule change became effective as of January 1, 2024.<sup>14</sup>

### III. Summary of Comments Received to the Proposed Rule Change

The Commission received four comment letters<sup>15</sup> on the proposed rule change during the comment period. The Commission’s Office of Municipal Securities also held a meeting with representatives of the American Securities Association (“ASA”), Bond Dealers of America (“BDA”), National Association of Municipal Advisors (“NAMA”), and the Securities Industry and Financial Markets Association (“SIFMA” and, collectively with ASA, BDA, and NAMA, the “Joint Commenters”).<sup>16</sup> The Commission received an additional, supplemental comment

---

<sup>13</sup> *Id.* at 86188.

<sup>14</sup> *Id.*

<sup>15</sup> *See* Letter from Leslie M. Norwood, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated January 2, 2024 (“SIFMA Letter”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated January 2, 2024 (“NAMA Letter”); Letter from Michael Decker, Senior Vice President, Research and Public Policy, Bond Dealers of America, dated January 2, 2024 (“BDA Letter”); Letter from Jessica Giroux, General Counsel and Head of Fixed Income Policy, American Securities Association; Michael Decker, Senior Vice President for Research and Public Policy, Bond Dealers of America; Susan Gaffney, Executive Director, National Association of Municipal Advisors; and Leslie Norwood, Managing Director, Associate General Counsel, and Head of Municipal Securities, Securities and Financial Markets Association, dated January 2, 2024 (“Joint Letter”).

<sup>16</sup> *See* Memorandum from the Office of Municipal Securities regarding a December 11, 2023 meeting with representatives of the American Securities Association (ASA), Bond Dealers of America (BDA), National Association of Municipal Advisors (NAMA), and Securities Industry and Financial Markets Association (SIFMA), dated December 11, 2023 (“OMS Memo”).

letter from SIFMA and BDA after the comment period had ended.<sup>17</sup> On January 26, 2024, the MSRB responded to the comment letters.<sup>18</sup>

The Joint Commenters expressed concern with the proposed rule change.<sup>19</sup> Among other things, the Joint Commenters expressed concern “about the lack of transparency in the Municipal Securities Rulemaking Board's budget and its budgeting process, and the need for MSRB’s resources to be directed toward areas within its statutory authority.”<sup>20</sup> The Joint Commenters described the MSRB’s budgeting and rate-setting strategy as “alarmingly opaque and troubling” and lacking detail, particularly in instances where expenses are not directly tied to projects aligned with its congressional mandate.<sup>21</sup> For example, the Joint Commenters cited a portion of the MSRB’s budget that highlights technology initiatives, but that lacks specificity regarding those initiatives, including their costs and their alignment with the MSRB’s role as a repository for disclosure documents.<sup>22</sup> Without such information, it is difficult, the Joint Commenters believe, for regulated entities to assess whether the fees assessed in the proposed rule change are “reasonable” as required under the Exchange Act.<sup>23</sup>

BDA expressed concern over the MSRB’s approach to fee setting, and believes that the Board’s budget process is opaque with little to no outside oversight over the MSRB’s

---

<sup>17</sup> See Letter from Michael Decker, Senior Vice President, Bond Dealers of America and Leslie Norwood, Managing Director and Associate General Counsel, Securities and Financial Markets Association, dated January 24, 2024 (“Supplemental Letter”).

<sup>18</sup> See Letter from Ernesto A. Lanza, Chief Regulatory and Policy Officer, Municipal Securities Rulemaking Board, dated January 26, 2024 (“MSRB Letter”).

<sup>19</sup> Joint Letter at 1-2.

<sup>20</sup> *Id.* at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

spending.<sup>24</sup> BDA stated that it would like to see the MSRB provide more transparency into its budgeting process and setting budget priorities, particularly regarding the MSRB’s focus on IT development and maintenance, which comprises 56 percent of the MSRB budget.<sup>25</sup> BDA is also concerned that the MSRB has provided no justification in its proposed rule change for imposing fee increases that BDA believes impose a “heavy” burden on dealers.<sup>26</sup>

NAMA expressed concern with the MSRB’s approach to budgeting and rate setting to accommodate its budget.<sup>27</sup> In particular, NAMA noted that “it is difficult to know if MSRB fees are set at a reasonable rate (a MSRB responsibility within SEC Rule 15B) when the MSRB’s budget is so opaque.”<sup>28</sup> As one example, NAMA cited the lack of cost information and sufficient detail in the MSRB’s budget to demonstrate whether its emphasis on technology systems supports its congressional mandate.<sup>29</sup> NAMA believes there is “insufficient detail within the budget to allow regulated parties (who pay for these activities) the opportunity to appropriately evaluate, address or question the fees assessed to meet the MSRB’s budget needs.”<sup>30</sup>

SIFMA expressed concern that the proposed rule change does not provide adequate transparency on the MSRB’s rate setting process, reflects significant fee volatility, and fails to address flaws in the rate setting process that could create market harms.<sup>31</sup> Regarding fee volatility, SIFMA noted that the underwriting fee has been increased 25% and the trade count fee

---

<sup>24</sup> BDA Letter at 1.

<sup>25</sup> *Id.* at 2-3.

<sup>26</sup> *Id.* at 1-2.

<sup>27</sup> NAMA Letter at 1-2.

<sup>28</sup> *Id.* at 1.

<sup>29</sup> *Id.* at 1-2.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> SIFMA Letter at 1.

reduced by 48%, yet the MSRB failed to explain why it believes this volatility in fee rates will not be repeated in subsequent years.<sup>32</sup> Regarding transparency, SIFMA expressed concern that the MSRB’s proposed rule change includes “significant and material changes” to its fee structure, yet the MSRB gave regulated entities its first official description of the amount of those changes a mere three weeks before they became effective.<sup>33</sup> Regarding market harms, SIFMA noted that the MSRB is proposing to increase underwriting fees even as new issuance has decreased this past year, which could hurt the viability of the municipal marketplace.<sup>34</sup>

In their Supplemental Letter, SIFMA and BDA argued that although they have raised concerns about the MSRB’s budgeting and fee setting processes, the Commission should allow the proposed rule change to take effect without any changes.<sup>35</sup> SIFMA and BDA expressed concern that suspending the proposed rule change could be “operationally disruptive” for dealers and would leave transactional fees “in limbo” until a 2024 Rate Card is approved.<sup>36</sup> SIFMA and BDA noted that they have had preliminary conversations with the MSRB about its budget and fee setting processes and will continue to press the MSRB as it works on its 2025 Budget.<sup>37</sup>

The MSRB argued that its 2024 Budget “provides sufficient basis to evaluate the reasonableness of the 2024 Rate Card Fees” and urged the Commission not to suspend the proposed rule change.<sup>38</sup> The MSRB also outlined its plan for an ongoing process of

---

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 4.

<sup>35</sup> Supplemental Letter at 1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> MSRB Letter at 10.

“engagement” which would include: (i) a retrospective review of the Rate Card Process; (ii) instituting certain financial transparency enhancements, including more granular details regarding key technology services and initiatives; and (iii) developing avenues to provide municipal market participants an opportunity to offer input to the MSRB in advance of finalization of annual budgets.<sup>39</sup>

The MSRB stated that its retrospective review of the Rate Card Process will consider the appropriateness of instituting caps on fee changes more broadly or other means to limit the magnitude of year-to-year fee changes.<sup>40</sup> The retrospective review also “could reconsider” a revenue-based or transaction volume-based fee assessment model.<sup>41</sup>

Regarding financial transparency, the MSRB cited Section IV of its 2024 Budget Summary as an example of its “granular breakdown” of program expenditures and stated that it will seek feedback on whether this “additional information” is responsive to commenters’ requests for greater detail about the MSRB’s budget areas and initiatives.<sup>42</sup> The MSRB stated that it would develop “reasonable allocation assumptions” to aid in the understanding of its technology system-related expenses.<sup>43</sup> The MSRB also stated that it will “explore other possible avenues” for improving the transparency of its technology initiatives and priorities and believes that all such expenditures are within the MSRB’s legal authority.<sup>44</sup>

---

<sup>39</sup> *Id.* at 1-2.

<sup>40</sup> *Id.* at 3-4.

<sup>41</sup> *Id.* at 4-5.

<sup>42</sup> *Id.* at 5-6.

<sup>43</sup> *Id.* at 6-7.

<sup>44</sup> *Id.* at 7-8.

Regarding input from market participants, the MSRB stated that it “looks to provide” opportunities for market participants to provide input and “could consider” a more formalized survey of market participants during the rate setting process.<sup>45</sup>

#### IV. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>46</sup> at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>47</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As described below, the Commission believes a temporary suspension of the proposed rule change is necessary or appropriate to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

When SROs file their proposed rule changes with the Commission, including fee filings like the MSRB’s present proposed rule change, they are required to provide a statement supporting the proposed rule change’s basis under the Act and the rules and regulations thereunder applicable to the SRO.<sup>48</sup> The instructions to Form 19b-4, on which SROs file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.”<sup>49</sup>

---

<sup>45</sup> *Id.* at 8-9.

<sup>46</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>47</sup> 15 U.S.C. 78s(b)(1).

<sup>48</sup> *See* 17 CFR 240.19b-4 (Item 3 entitled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

<sup>49</sup> *See id.*

Among other things, the MSRB’s proposed rule change is subject to Section 15B(b)(2)(J) of the Exchange Act,<sup>50</sup> which states that the MSRB’s rules shall provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the MSRB such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB.<sup>51</sup> Such rules must specify the amount of such fees and charges, which may include charges for failure to submit to the MSRB, or to any information system operated by the MSRB, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the MSRB.<sup>52</sup> The MSRB’s proposed rule change also is subject to Section 15B(b)(2)(C) of the Exchange Act,<sup>53</sup> which states, among other things, that the MSRB’s rules shall be designed, in general, to protect investors, municipal entities, obligated persons, and the public interest.

In support of its proposed rule change, the MSRB stated that the proposed rule change satisfies the requirements of Section 15B(b)(2)(J) “through a reasonable fee structure that ensures (i) an equitable balance of necessary and appropriate fees among regulated entities and (ii) a fair allocation of the burden of defraying the costs and expenses of the MSRB.”<sup>54</sup> Specifically, the MSRB believes that the 2024 Rate Card “will achieve reasonable fees to be paid by regulated entities that (i) are necessary and appropriate to sustain the operation and administration of the MSRB by defraying the MSRB’s anticipated Fiscal Year 2024 operating and administrative expenses; (ii) reasonably and appropriately allocate fees among firms by

---

<sup>50</sup> 15 U.S.C. 78o-4(b)(2)(J).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>54</sup> Notice 88 FR at 86191.

equitably distributing fees in accordance with each individual firm’s overall market activities; and (iii) reasonably and appropriately adjust for the annual fluctuations in the volume of market activity as compared to budget expectation by incorporating the actual amounts of Market Activity Fees and Municipal Advisor Professional Fees collected as compared to budget into this and future rate-setting processes.”<sup>55</sup> The MSRB provided additional support for the reasonableness of the proposed rule change in the MSRB Letter.<sup>56</sup> However, due to the date of receipt of the MSRB Letter (i.e., late afternoon one business day before the suspension deadline), the Commission has not had sufficient time to evaluate the material included therein. Temporary suspension will allow for additional analysis of whether the MSRB Fiscal Year 2024 Budget is reasonable and whether the proposed rule change provides for reasonable fees and charges that satisfy the standards under the Act and the rules thereunder.

In temporarily suspending the MSRB’s proposed rule change, the Commission intends to further consider whether the proposed fees and charges are consistent with the statutory requirements applicable to the MSRB under the Act. Among other things, the Commission will consider whether the proposed rule change provides for reasonable fees and charges that satisfy the standards under the Act and the rules thereunder.<sup>57</sup> The Commission will also consider whether the fees and charges in the proposed rule change are necessary or appropriate to defray the costs and expenses of operating and administering the MSRB,<sup>58</sup> including whether such costs and expenses, as set forth in the MSRB’s Fiscal Year 2024 Budget, are themselves reasonable.

---

<sup>55</sup> *Id.*

<sup>56</sup> MSRB Letter.

<sup>57</sup> 15 U.S.C. 78o-4(b)(2)(J).

<sup>58</sup> *Id.*

Additionally, the Commission will consider whether the fees and charges in the proposed rule change are in the public interest.<sup>59</sup>

Therefore, the Commission finds that it is necessary or appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.<sup>60</sup>

V. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)<sup>61</sup> and 19(b)(2)(B)<sup>62</sup> of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

---

<sup>59</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>60</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>61</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>62</sup> 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Act,<sup>63</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the MSRB has sufficiently demonstrated how the proposed rule change is consistent with Sections 15B(b)(2)(J) and 15B(b)(2)(C) of the Act.<sup>64</sup> Section 15B(b)(2)(J) of the Act states<sup>65</sup> that the MSRB's rules shall provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the MSRB such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB.<sup>65</sup> Such rules must specify the amount of such fees and charges, which may include charges for failure to submit to the MSRB, or to any information system operated by the MSRB, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the MSRB.<sup>66</sup> Section 15B(b)(2)(C) of the Exchange Act<sup>67</sup> states, among other things, that the MSRB's rules shall be designed, in general, to protect investors, municipal entities, obligated persons, and the public interest.

As discussed in Section IV above, the Notice, and the MSRB Letter, the MSRB has made various arguments in support of the proposals, and the Commission received comment letters

---

<sup>63</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the SRO consents to the longer period. *See id.*

<sup>64</sup> 15 U.S.C. 78o-4(b)(2)(J).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 15 U.S.C. 78o-4(b)(2)(C).

disputing the MSRB’s arguments and expressing concerns regarding the proposals.<sup>68</sup> In particular, commenters argued that the MSRB did not provide sufficient information to establish that the proposed fees and charges are consistent with the Act and the rules thereunder.<sup>69</sup>

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”<sup>70</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>71</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>72</sup> Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.<sup>73</sup>

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees and charges are consistent with the Act, any potential comments or supplemental information

---

<sup>68</sup> See *supra* note 15.

<sup>69</sup> See discussion *supra* Section III.

<sup>70</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 446-47 (D.C. Cir. 2017) (rejecting the Commission’s reliance on an SRO’s own determinations without sufficient evidence of the basis for such determinations).

provided by the MSRB, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns and issues identified above, as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 15B(b)(2)(J), Section 15B(b)(2)(C), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the MSRB's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. The Commission also invites the written views of interested persons on: (i) what process the MSRB should undertake to ensure that the fees assessed in its Rate Card filing and underlying Budget are both reasonable and capable of meaningful evaluation by the public, market participants, and the Commission; (ii) what specific data and information the MSRB should publicly disclose (that it does not currently publicly disclose); (iii) when the MSRB should file its Rate Card each year; (iv) whether the MSRB's representations about the cost, functionality, and evolution of the EMMA system have been consistent with actual practice in the years since EMMA was adopted; and (v) what general steps could be taken in the future to minimize the potential operational disruption caused by either the Commission suspending a Rate Card filing or a Rate Card otherwise not being effective on January 1 of the calendar year. Although there do not appear to be any issues relevant to approval or disapproval that would be

facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>74</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2023-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2023-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies

---

<sup>74</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2023-06 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,<sup>75</sup> that File No. SR-MSRB-2023-06 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, pursuant to delegated authority.<sup>76</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>75</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>76</sup> 17 CFR 200.30-3(a)(11) and (12).