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Stakeholders

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Notice Type

Request for Information

Comment Deadline

January 28, 2025

Category

Administration

Request for Information on the MSRB's Rate Card Process

Overview

The Securities Exchange Act of 1934, as amended (the "Exchange Act"), authorizes the Municipal Securities Rulemaking Board (the "MSRB") to assess brokers, dealers and municipal securities dealers (collectively, "dealers") and municipal advisors (together with dealers, "regulated entities") reasonable fees and charges necessary or appropriate to defray the costs and expenses of operating and administering the organization. As a self-regulatory organization, the MSRB recognizes that it serves in a position of public trust that requires responsible stewardship of these resources.

The MSRB instituted a new rate-setting process (the "Rate Card Process") for certain fees and charges (the "Rate Card Fees") in 2022. As discussed below, earlier this year, stakeholders raised concerns with the Rate Card Process in response to the MSRB's fees for 2024. The Securities and Exchange Commission (the "Commission") subsequently suspended, and the MSRB withdrew, its fee filing for 2024 in order to meaningfully engage with stakeholders to better understand their concerns and to embark on a retrospective review of the Rate Card Process.

The MSRB is publishing this Request for Information ("RFI") to solicit input from regulated entities and the general public on specific topics related to the Rate Card Process. The MSRB looks forward to utilizing responses to the questions posed herein to responsibly fund the future of regulation while advancing the MSRB's Congressional mandate.

Responses to this RFI should be submitted by January 28, 2025, in either paper form or [electronically by clicking here](#). Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite



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1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.¹

Background

The MSRB established the Rate Card Process in response to feedback from stakeholders.² The Rate Card Process applies to the establishment of the municipal advisor professional fee under MSRB Rule A-11 and the underwriting, transaction, and trade count fees for dealers under MSRB Rule A-13, with such Rate Card Fees anticipated to be set generally on an annual basis. The primary objectives of the Rate Card Process included, among other things, increased transparency, maintaining an equitable balance of fees among regulated entities, mitigating the impact of market volatility on the MSRB's revenues, and enabling the MSRB to reduce excess reserves. Pursuant to this Rate Card Process, on November 30, 2023, the MSRB filed with the Commission proposed amendments to MSRB Rules A-11 and A-13 to institute its Rate Card Fees for calendar year 2024 (the "2024 Rate Card Filing").³ The 2024 Rate Card Filing was the first time the MSRB proposed changes to its Rate Card Fees under the Rate Card Process since the establishment of the initial set of Rate Card Fees in 2022.

On January 2, 2024, stakeholders submitted to the Commission four comment letters⁴ in response to the 2024 Rate Card Filing. These stakeholders initially raised several concerns related to the Rate Card Process, including, among other things, fee volatility, budget transparency, and the distribution of fees between municipal advisors and dealers. Subsequently, two of the four original commenters submitted a joint comment letter on January 24, 2024, stating that they supported the 2024 Rate Card Fees and urged the Commission to allow them to remain in effect without changes while the stakeholders continued discussing their concerns

¹ Responses generally are posted on the MSRB's website without change. Personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, responders should submit only information they wish to make publicly available.

² See [SR-MSRB-2022-06](#), the MSRB's filing establishing the annual Rate Card Process. Exchange Act Release No. 95417 (Aug. 3, 2022), 87 FR 48530 (Aug. 9, 2022).

³ See [SR-MSRB-2023-06](#), Exchange Act Release No. 99096 (Dec. 6, 2023), 88 FR 86188 (Dec. 12, 2023). See also MSRB Notice 2023-10 (November 30, 2023).

⁴ All comment letters submitted related to the 2024 Rate Card Filing, including the MSRB Response Letter, are available at <https://www.sec.gov/comments/sr-msrb-2023-06/srmsrb202306.htm>.

with the MSRB. On January 26, 2024, the MSRB submitted a response letter to the Commission (the “MSRB Response Letter”) that outlined undertakings the MSRB intends to take in three areas to address the concerns expressed by commenters, including a retrospective review of the Rate Card Process, increased transparency, and more meaningful stakeholder engagement in the MSRB’s budgeting process. Subsequently, the Commission suspended the MSRB’s 2024 Rate Card Filing⁵ on January 29, 2024. Because the statutory timeframe for completing the rulemaking process in light of the suspension would not provide sufficient time for the MSRB to meaningfully engage with stakeholders and review the Rate Card Process, the MSRB then withdrew the 2024 Rate Card Filing on February 21, 2024.⁶

Since withdrawing the 2024 Rate Card Filing, the MSRB conducted extensive outreach to stakeholders to better understand the core issues and concerns underlying the comments made in response to the 2024 Rate Card Filing. These outreach efforts have helped the MSRB enhance and refine its understanding of stakeholders’ concerns.⁷ With respect to the MSRB’s retrospective review of the Rate Card Process, outreach participants have greatly assisted the MSRB in identifying specific areas of focus, which are discussed below. This RFI seeks further input from regulated entities and the general public to better inform the MSRB’s retrospective review of the Rate Card Process. While the MSRB will not be filing a new set of Rate Card Fees in 2024, the MSRB expects to use the input from this RFI to determine whether any modifications to the Rate Card Process are warranted so that, through further rulemaking, any such changes can be instituted and, if necessary or appropriate, new Rate Card Fees can be established for calendar year 2026.

Request for Information

The MSRB seeks input from regulated entities and the general public on the following topics and questions. Commenters are invited to respond to any or

⁵ Exchange Act Release No. 99444 (Jan. 29, 2024), 89 FR 7424 (Feb. 2, 2024) (the “[Suspension Order](#)”). The 2024 Rate Card Fees applied to activity occurring during the period of January 1, 2024 through January 28, 2024, after which the fees reverted to the fees previously in effect during 2023. *See also* [MSRB Notice 2024-02](#).

⁶ *See* [MSRB press release](#) of February 16, 2024. *See also* Exchange Act Release No. 99577 (Feb. 21, 2024), 89 FR 14552 (Feb. 27, 2024), available at <https://www.sec.gov/files/rules/sro/msrb/2024/34-99577.pdf>.

⁷ Separate from the retrospective review of the Rate Card Process, this outreach has been critical to the MSRB addressing the concerns regarding transparency and the MSRB budget process, with respect to which the MSRB will continue its engagement with stakeholders outside of this RFI.

all of the following questions and to provide additional input for the MSRB to consider in its retrospective review of its Rate Card Process. To assist the MSRB in its review and to the extent possible, please provide data or evidence to support your views along with any other information you believe would be useful to the MSRB.

The questions included in this RFI are meant to inform the MSRB to the broadest extent possible and should not be construed as a determination by the MSRB to adopt any specific rulemaking proposal. Any rulemaking initiatives arising from feedback to this RFI would be subject to the MSRB's rulemaking process, including the filing of any such rule proposal with the Commission as required under the Exchange Act.

A. Rate-Setting Process for Dealers

Stakeholders expressed concerns regarding year-to-year fee volatility resulting from the annual Rate Card Process. The existing process for fee setting is driven by current and projected future market activity volume. Stakeholders particularly raised concerns with respect to the use of market activity projections in establishing Rate Card Fees and the resulting impact of fee volatility on specific business lines.

When reconciling actual market activity volume and previously projected market activity volume for the prior year to determine the Rate Card Fees for the following year, the MSRB observed that the annual adjustments inherently create volatility in resulting fee rates. The MSRB further observed that this effect is compounded when actual market activity departs significantly from projections in one year, which will result in a significant impact on fees not only the following year but also in the subsequent year if market activity returns to historical averages. The MSRB is interested in understanding stakeholder perspectives on the value of rate stability as compared to rate fluctuations and the related costs or burdens. Commenters may wish to consider the following questions in their response:

Market Projections

As noted above, the MSRB currently uses projected market activity to assist in setting fees to generate budgeted revenue. The Rate Card Process reconciles differences between projected and actual market activity through adjusting the following year's fees to return any excess revenue or recoup any revenue shortfall in the subsequent year. This automatic reconciliation process inherently generates and may further exacerbate volatility in fees.

1. Are there reasonable tolerances or limits for year-to-year fee fluctuations? What is a reasonable basis for determining such limits? If thresholds or limits are established, should they be the same for both fee increases and fee decreases?
2. What types or sources of data should the MSRB consider when determining projections for market activity levels on which to base the fee rates? Should the Rate Card Process rely solely on historical market activity averages (e.g., 3-year; 5-year; 10-year averages) to project future market activity?
3. How should differences between projected and actual market activity levels be reconciled, if at all, through the fee-setting process?

Market Activity Fees

Dealers are currently subject to three market activity fees (i.e., transaction fee, underwriting fee, and trade count fee). The contribution of each fee toward the total revenue generated in a given year may vary significantly depending on actual market activity.

1. What is a reasonable basis for determining each fee's relative share of the total revenue collected from market activity fees? Are there additional or alternative market activities that currently are not subject to assessment that would be appropriate as a basis for determining more fair and equitable fees? What data should the MSRB consider when determining the appropriate allocation of total revenue to collect from each of the market activity fees?
2. To reduce fee volatility, should the MSRB consider using an alternative model to assess fees that are not tied to market activity (e.g., fixed fees)? If so, what is a reasonable basis for determining what portion of MSRB fees should be assessed using an alternative model?
3. Would a flat or single fee for dealers be fairer and more equitable than distinct market activity fees? If so, what would be a reasonable basis on which to base and determine a flat or single firm fee?

B. Rate-Setting Process for Municipal Advisors

The MSRB currently establishes a fixed rate professional fee for municipal advisors. In the comment letters to the 2024 Rate Card Filing and subsequent meetings with stakeholders, concerns were raised relating to the fairness and

reasonableness of the professional fee for municipal advisors. Commenters may wish to consider the following questions in their response:

1. Municipal advisors are currently subject to an annual assessment for each of their covered professionals. Is this fee structure fair, appropriate, and sustainable?
2. Municipal advisors may provide advice in different contexts such as transaction-related advice on a new issuance of municipal securities or a transaction in a municipal financial product, or advice from time-to-time or on an on-going basis relating to existing or anticipated issuances of municipal securities or municipal financial products currently held by a client. Municipal advisors also may engage in paid solicitation activities. Should the MSRB consider assessing fees based on some or all of these activities? If so, what would be a reasonable basis for measuring activities in each of these areas so as to produce a fair and appropriate fee obligation?
3. Should the MSRB consider using an alternative model to assess municipal advisor fees based on metrics other than the number of covered professionals or the municipal advisor activities described in Question B.2 above? If so, what would be a reasonable basis for determining fees under such an alternative model?

C. Fee Distribution Across Regulated Entities

During the formulation of the Rate Card Process in 2022, the MSRB engaged in analysis and research to determine a fair and equitable balance of fees across regulated entities.⁸ Among other factors considered, the MSRB: (i) analyzed currently available data on the revenue models of dealers and municipal advisors across geographic areas; (ii) examined MSRB expense allocations to understand how much of the MSRB's expense budget relates to various activities; (iii) evaluated historical budgeted revenue versus actual revenues generated for the existing fee categories; and (iv) gauged the MSRB's fee distribution across varying business models of dealer and municipal advisor firms, including dually registered entities.⁹

⁸ See [SR-MSRB-2022-06](#), *supra* n.2, at p. 11.

⁹ For example, the MSRB considered fee distributions across the business models of: (i) small, medium, and large firms, (ii) dually registered firms versus firms registered only as dealers or municipal advisors, and (iii) firms that engage in underwriting activities versus secondary market activities.

In Fiscal Year 2023, 538 registered dealers engaging in activities during that year subject to the Rate Card Fees under Rule A-13 collectively paid market activity fees totaling approximately \$39.1 million or 80% of the MSRB's total revenues of \$49.1 million. Additionally, 427 municipal advisor firms collectively paid professional fees for 2,839 registered professionals in Fiscal Year 2023 totaling approximately \$3.0 million or 6% of the MSRB's total revenues. The MSRB considered these fee burdens reasonable based on the factors listed above. Additionally, given the differences in business models between dealers and municipal advisors, the MSRB weighed the potential burdens associated with any new reporting, books and records, and data collection requirements that would likely be necessary to support any alternative fee assessments. However, in the comment letters to the 2024 Rate Card Filing and subsequent meetings with stakeholders, concerns were raised regarding the fairness and equity of the relative share of fees paid by dealers and municipal advisors.

As required under the Exchange Act, the MSRB must also consider the burdens and impacts of regulation (including fees) on small municipal advisor firms. While the Exchange Act does not establish a definition for what constitutes a small municipal advisor firm, the MSRB observes that, of the 427 registered municipal advisor firms who paid professional fees in 2023, approximately 72% have fewer than 5 registered municipal advisor professionals.

The MSRB is seeking additional information, data and perspectives that can best inform its further examination of the concerns related to a fair and equitable distribution of fees across regulated entities. Commenters may wish to consider the following questions in their response:

1. What methodologies are most appropriate for determining the fair and reasonable distribution of fees among regulated entities? In describing an alternative methodology, please include consideration of the practical implications of establishing and maintaining such a methodology.
2. What, if any, other regulatory burdens or unintended consequences could be anticipated from a change in the relative share of fees between municipal advisors and dealers?

D. Management of Organizational Reserves

In 2019, the MSRB engaged in an analysis of its organizational reserves and established a target reserve level based on a number of factors, including operating risk, capital initiatives and unfunded regulatory mandates. Since

then, the MSRB has taken several steps to proactively manage its reserves level, including temporary fee reductions, funding investments in technology including a cloud migration and system modernization project, and the establishment of the Rate Card Process in 2022. Collectively, these actions were projected to reduce the MSRB's organizational reserves by approximately \$32 million by the end of 2024 from \$67 million in 2018 and achieve its target reserve level of \$35 million, which represents approximately 9 months of operating expense.

The Rate Card Process was designed to assist in managing organizational reserves by automatically returning excess revenue to and recouping revenue shortfalls from regulated entities through the annual fee setting process. The MSRB seeks information and perspectives to inform potential modifications to its reserves management process to reduce the volatility resulting from the annual Rate Card Process. Commenters may wish to consider the following questions in their response:

1. In lieu of annual adjustments to fees, should the MSRB consider alternative methods to return surplus revenue to regulated entities arising from differences between the revenue generated from projected versus actual market activity (e.g., temporary fee reductions; cash rebates; fee credits)?
2. Please comment on the value of establishing a multi-year rate card model to provide stability in fees over a longer period in time while using organizational reserves to address any revenue shortfalls. Please discuss any alternative methods or models the MSRB should consider for providing stable and consistent fees while managing its reserves to target levels.
3. Please comment on the value of establishing a "rate stabilization fund" within the MSRB's organizational reserves dedicated to stabilizing fees. Using 5-year historical market activity averages¹⁰, a 1% increase in each of the three market activity fees would equate to approximately \$0.4 million annually. What would be an appropriate size for such a rate stabilization fund? Would this be a reasonable approach to mitigating fee volatility while avoiding excess reserves?

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¹⁰ Fiscal Years 2019-2023.

Questions concerning this filing may be directed to Ernesto Lanza, Chief Regulatory and Policy Officer, Omer Ahmed, Chief Financial Officer, or Billy Otto, Assistant Director, Market Regulation, at (202) 838-1500.

October 30, 2024