



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99096; File No. SR-MSRB-2023-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of 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

December 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 30, 2023, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend, consistent with the MSRB’s annual rate-setting process (“Annual Rate Card Process”):³ (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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See 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”).

(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”). 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”.

The MSRB has designated the proposed rule change for immediate effectiveness.⁴ The new Rate Card Fees reflected in the proposed rule change will become effective as of January 1, 2024.⁵

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2023-SEC-Filings>, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

⁴ The MSRB has designated the proposed rule change as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)(ii) and Rule 19b-4(f)(2) (17 CFR 240.19b-4(f)(2)) thereunder.

⁵ Rate Card Fees for activities occurring prior to the January 1, 2024 effectiveness of the new rates will continue to accrue at the rates in effect prior to that date.

The purpose of the proposed rule change is to amend the rate of assessments for the MSRB's Rate Card Fees under its Annual Rate Card Process. The Annual Rate Card Process was established in 2022 to create a process by which the four individual Rate Card Fees would be adjusted on an annual basis under a single rate setting process.⁶ In conjunction with the establishment of the Annual Rate Card Process, the MSRB established its initial Annual Rate Card to implement Rate Card Fees intended to remain in effect through calendar year 2023 (the "2023 Rate Card"), with new Rate Card Fees expected to be established for subsequent calendar years. Pursuant to this process and consistent with the MSRB's funding policy (the "MSRB Funding Policy"),⁷ the MSRB has conducted its annual review of the Rate Card Fees and has determined that an adjustment is necessary and appropriate to defray the costs and expenses of operating and administering the MSRB.⁸ Accordingly, the proposed rule change would effectuate a new Annual Rate Card (the "2024 Rate Card") which will remain in effect until a subsequent proposed rule change amending the Rate Card Fees becomes effective.⁹

MSRB Review of the Proposed Rate Card Fees for Fiscal Year 2024

The MSRB undertook the Annual Rate Card Process as described in the MSRB Funding Policy to establish the proposed Rate Card Fees for 2024. The Annual Rate Card Process is intended to establish a fee structure that is more transparent and predictable for the MSRB's stakeholders while also retaining the MSRB's flexibility to react to changing market or budgetary circumstances when establishing reasonable fees to be paid by regulated entities. The

⁶ See supra note 3.

⁷ Available at <https://www.msrb.org/MSRB-Funding-Policy-0>. The board of directors of the MSRB approved its current Funding Policy on July 28, 2022 with an effective date of October 1, 2022.

⁸ See Section 15B(b)(2)(J) of the Exchange Act (15 U.S.C. 78o-4(b)(2)(J)).

⁹ The MSRB anticipates amending the rates of assessment for the Rate Card Fees specified in the 2024 Rate Card with a subsequent rule filing with the Commission that would become effective as of January 1, 2025 for the calendar year 2025.

Annual Rate Card Process consists of: (i) developing the fiscal year operational funding level for the upcoming fiscal year, (ii) reconciling any material reserves variances, (iii) incorporating other anticipated revenue for the upcoming fiscal year, (iv) validating contribution targets and reconciling any rate card fee variances from the prior fiscal year, and (v) setting rates of assessment for the Annual Rate Card based on forecasted volume of activity for the coming fiscal year.

Development of the Fiscal Year Operational Funding Level. 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 thereby established the baseline revenue that the organization will need to operate (i.e., the “Operational Funding Level”).¹⁰

Reconciliation of Any Material Reserves Variances. Material reserves variances versus the MSRB’s reserves target at the end of the prior fiscal year are also considered and may be added to or subtracted from the Operational Funding Level to develop a final “Budgeted Revenue Target” for a given fiscal year. For the 2024 Rate Card, based on the current reserves target and reserves philosophy, there were no resulting adjustments to the Operational Funding Level; therefore, the Budgeted Revenue Target is equal to the Operational Funding Level of approximately \$47.4 million.¹¹

Incorporation of Other Anticipated Revenue. Forecasted revenue for Fiscal Year 2024 from sources other than the Rate Card Fees (e.g., annual and initial fees, data subscriptions, municipal fund underwriting fees and fine revenue) was established as part of the annual budget approved by the board of directors in July 2023, and that estimate was subtracted from the Budgeted Revenue Target to determine the total amount of funding needed to be generated from

¹⁰ See MSRB Fiscal Year 2024 Budget, available at <https://www.msrb.org/sites/default/files/2023-09/MSRB-FY-2024-Budget-Summary.pdf>.

¹¹ See MSRB Funding Policy, *supra* note 7.

the Rate Card Fees established in the 2024 Rate Card (the “Rate Card Funding Amount”). For Fiscal Year 2024, approximately \$6.9 million is expected from other revenue sources, which reduced the Rate Card Funding Amount for 2024 to approximately \$40.5 million.¹²

Validation of Contribution Targets and Reconciliation of Any Rate Card Fee Variances from the Prior Fiscal Year. Each of the four Rate Card Fees are responsible for a proportionate amount of the overall Rate Card Funding Amount (each a “Proportional Contribution Amount”). The MSRB maintains a fair and equitable balance of the Proportional Contribution Amounts by calculating contribution targets in line with recent historical precedents. The MSRB intends to maintain fairness and equity in fees through relatively stable contribution targets. Annually, the MSRB considers the historical revenue performance of each fee over time to assess whether there is a durable, material shift in market structure or circumstances that would indicate that the expectations for the relative contributions from one or more fees are no longer reasonable or appropriate. For the initial Rate Card Fees established in 2022 under the Annual Rate Card Process for 2023, the MSRB established contribution targets based on the distribution of revenue assessed over the prior two completed fiscal years (Fiscal Year 2020 and Fiscal Year 2021).¹³ Since that time, material changes in the municipal market and broader macroeconomic conditions, including significantly higher interest rates, have materially shifted the balance of market activity. Specifically, primary market activity has been significantly lower and secondary market activity has been significantly higher. As a result, the MSRB determined that a durable, material shift in market structure or circumstances warranted adjustments to the contribution targets. For the Rate Card Fees proposed in this filing intended to be effective beginning on January 1, 2024, the Rate Card Funding Amount was allocated to the Rate Card Fees based on

¹² See MSRB Fiscal Year 2024 Budget, supra note 10.

¹³ Contribution targets used for the 2023 Rate Card Fees were: underwriting fee 37%, transaction fee 39%, trade count fee 16%, Municipal Advisor Professional Fee 8%. See the Annual Rate Card Process Notice, supra note 3.

the following contribution targets: underwriting fee at 30%; transaction fee at 41%; trade count fee at 21%; and Municipal Advisor Professional Fee at 8%.¹⁴ 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.

Rate Card Fee variances between the budget and actual results of the Rate Card Fees for Fiscal Year 2023 were added to or subtracted from the respective Proportional Contribution Amount for each fee (“Final Contribution Amount”).¹⁵

Forecast of Expected Activity and Setting the Annual Rate Card. The MSRB used historical and current data to inform the expectations for volume of activity for the coming fiscal year. Based on the anticipated volume of activity, the MSRB calculated rates of assessment for each of the Rate Card Fees to generate their respective Final Contribution Amounts for Fiscal

¹⁴ 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 MSRB Fiscal Year 2024 Budget, supra note 10.

¹⁵ In Fiscal Year 2023, the underwriting fee had a shortfall of \$3.37 million versus budget. This shortfall was added to the Proportional Contribution Amount for the underwriting fee of \$12.15 million to determine the Final Contribution Amount of \$15.52 million. The transaction fee and trade count fee had surpluses versus budget of \$2.73 million and \$4.35 million, respectively. These surpluses were subtracted from the Proportional Contribution Amounts to determine the Final Contribution Amounts of \$13.88 million for the transaction fee and \$4.16 million for the trade count fee. Finally, the Municipal Advisor Professional Fee had a shortfall \$0.04 million versus budget in FY 2023. This amount was added to the Proportion Contribution Target for the Municipal Advisor Professional Fee to determine the Final Contribution Amount of \$3.28 million. See MSRB Fiscal Year 2024 Budget, supra note 10. See also MSRB Funding Policy, supra note 7.

Year 2024.¹⁶ To the extent that the volume of activity for Fiscal Year 2024 varies from the expectations used to calculate the rates of assessment, the resulting Rate Card Fee Variances in Fiscal Year 2024 will be incorporated into the next Annual Rate Card using the same process as described in the prior paragraph. The rates of assessment are subject to the limitations described below as applicable.

Limitations on Rate Changes to Promote Predictability and Stability

The MSRB included in the Annual Rate Card Process limitations on fee increases from year-to-year to promote greater predictability and stability.¹⁷ This included a 25% cap on the maximum increase in the assessment rate for an individual Rate Card Fee based on the highest assessment rate in the previous two annual rate cards. This cap is intended to limit large increases in rates of assessment for the Rate Card Fees in instances where expected volume decreases significantly from the prior year.¹⁸ For the 2024 Rate Card, the initial calculation for

¹⁶ Consistent with the MSRB Funding Policy (see supra note 7), the assumptions used for expected volume of activity in Fiscal Year 2024 are as follows: underwriting fee of \$400 billion in par underwritten; transaction fee of \$1.527 trillion in par transacted (five-year average volume); trade count fee of 7.34 million trades (five-year average volume); Municipal Advisor Professional Fee of 2,830 municipal advisor professionals. The board of directors of the MSRB uses the best available information and business judgment to set expected volumes of activity for the coming fiscal year, which consists of an evaluation of and reliance on historical volume and averages, as well as observable trends and patterns. See also MSRB Fiscal Year 2024 Budget, supra note 10.

¹⁷ If the full amount of a negative Rate Card Fee variance cannot be recaptured in a single year due to these limitations, the remaining amount of such variance will carry over into the calculation of the Rate Card Funding Amount for the following fiscal year(s) and, all else being equal, increase the rate of assessment for such Rate Card Fee. Conversely, there are no limits on potential decreases to the rates of assessment for the Rate Card Fees that may result from Positive Rate Card Fee Variances and, if warranted, Positive Reserves Variances. See the Annual Rate Card Process Notice, supra note 3. See also MSRB Funding Policy, supra note 7.

¹⁸ There is an additional limitation of a 10% cap on the maximum increase in the targeted revenue for an individual Rate Card Fee based on the highest amount of such targeted revenue in the previous two Annual Rate Cards. This cap is intended to limit large increases in the rate of assessment for the Rate Card Fees to ensure that fee increases remain incremental and, accordingly, regulated entities have the time to operationalize such increases into their business models. In Fiscal Year 2024, no targeted revenue exceeded the 10% cap. Because the rates of assessment for Rate Card Fees are based on both the targeted revenue for the Rate Card Fee and the underlying volume or activity

the underwriting fee resulted in a rate of assessment that exceeded 25% over the underwriting fee rate in the 2023 Rate Card. As a result, the underwriting fee rate for 2024 was capped at a 25% increase over the 2023 rate. Due to this limitation, the MSRB anticipates that the full amount of the negative Rate Card Fee variance for the underwriting fee in 2023 will not be fully recaptured in 2024 and the remaining shortfall will carry over into the calculation for the next Annual Rate Card.

Proposed 2024 Rate Card. The MSRB uses adjustments to the Annual Rate Card to set and revise the Rate Card Fees in the 2024 Rate Card to levels that it anticipates will be sufficient to: (i) cover anticipated expenses for the related fiscal year, (ii) maintain target contribution balances between fees on regulated entities, (iii) address any prior-year variance between the amounts of each of the Rate Card Fees actually collected versus budget, and (iv) address any variance between the amount of the MSRB’s organizational reserves versus the MSRB’s reserves target.

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.

	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

level on which the Rate Card Fee is assessed, the rates themselves are subject to a potentially higher level of variability than the underlying targeted revenue intended to be generated by each Rate Card Fee. As the Annual Rate Card Process returns any Positive Rate Card Fee Variances in the subsequent year, outperforming volume in one year cannot be used to buffer under-performing volume in another year. The 10% maximum cap on targeted revenue is intended to be the primary limitation on revenue increases. The 25% maximum cap on assessment rate increases is intended to be a supplemental limitation that balances the potential impact of rate changes driven by underlying volume changes while retaining the MSRB's ability to assess and collect sufficient revenue to fund the organization's expenses. See the Annual Rate Card Process Notice, supra note 3. See also MSRB Funding Policy, supra note 7.

Municipal Advisor Professional Fee	Per Covered Professional	\$1,060	\$1,160
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Consistent with the MSRB Funding Policy, the proposed Rate Card Fees in the 2024 Rate Card reflect the formulaic results of executing the Annual Rate Card Process as detailed above.¹⁹

In order to effect these changes and set the Rate Card Fees in the 2024 Rate Card, the MSRB proposes to amend Supplementary Material .01, on Annual Rate Card Fee, to MSRB Rule A-11 to modify the 2023 rate contained therein for the Municipal Advisor Professional Fee to the proposed rate for 2024 identified in the chart above and to clarify that the calculation of the Municipal Advisor Professional Fee is based on the number of covered professionals as of January 31, 2024, rather than 2023, and as of January 31 of each subsequent, applicable year thereafter.²⁰ The MSRB also proposes to amend the second sentence of Supplementary Material .01, on Annual Rate Card Fee, to MSRB Rule A-11 to replace the initial word “The” with “Any” to clarify the process for future Annual Rate Card Fee amendments. In addition, the MSRB proposes to amend Supplementary Material .01, on Annual Rate Card Fees, to MSRB Rule A-13 to modify the 2023 rates contained therein for the underwriting fee, transaction fee and trade count fee to the respective proposed rates for 2024 identified in the chart above. The MSRB also proposes to amend Supplementary Material .01, on Annual Rate Card Fees, to MSRB Rule A-13 to change the month that rates of assessment become effective, from “October” to “January” as the reference to “October” was applicable only to establish the first Annual Rate Card, as discussed in the Annual Rate Card Process Notice. Lastly, the MSRB proposes to amend the first word of the last paragraph of Supplementary Material .01, on Annual Rate Card Fees, to MSRB

¹⁹ See MSRB Funding Policy, *supra* note 7.

²⁰ While the MSRB anticipates amending the rates of assessment for the Rate Card Fees specified in the 2024 Rate Card with a subsequent rule filing with the Commission that would become effective as of January 1, 2025 for the calendar year 2025, if the MSRB does not make such anticipated change, the Municipal Advisor Professional Fee for 2025 would be based on the number of covered professionals as of January 31, 2025.

Rule A-13 to replace the word “The” with “Any” to clarify the process for future Annual Rate Card Fee amendments.

These revised rates would become effective on January 1, 2024 and are expected to apply to activities occurring until a subsequent proposed rule change amending the Rate Card Fees becomes effective. The MSRB anticipates amending the rates of assessment specified in this proposed Annual Rate Card with a subsequent rule filing with the Commission that would become effective as of January 1, 2025.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Exchange Act,²¹ 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.²² 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.²³

The MSRB believes that the 2024 Rate Card provides for reasonable fees and charges to be paid by regulated entities. Moreover, the MSRB believes that the Rate Card Fees established in the 2024 Rate Card are necessary and appropriate to fund the operation and administration of the MSRB and, thereby, satisfy the requirements of Section 15B(b)(2)(J)²⁴ through a reasonable fee structure that ensures (i) an equitable balance of necessary and appropriate fees among

²¹ 15 U.S.C. 78o-4(b)(2)(J).

²² Id. See also MSRB Fiscal Year 2024 Budget, supra note 10.

²³ 15 U.S.C. 78o-4(b)(2)(J).

²⁴ Id.

regulated entities and (ii) a fair allocation of the burden of defraying the costs and expenses of the MSRB. 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 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.²⁵ As a result, the MSRB believes that the proposed rule change satisfies the applicable requirements of Section 15B(b)(2)(J) of the Exchange Act.²⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act²⁷ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change to Rule A-11 and Rule A-13.²⁸ The MSRB believes that the proposed Rate Card Fees established in the 2024 Rate Card for the calendar year of 2024 equitably and non-discriminatorily distribute

²⁵ See the Annual Rate Card Process Notice, *supra* note 3.

²⁶ 15 U.S.C. 78o-4(b)(2)(J).

²⁷ 15 U.S.C. 78o-4(b)(2)(C).

²⁸ See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>. In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities.

the fee burden across all MSRB regulated entities who participate in the municipal securities market. In the 2024 Rate Card, the MSRB has proposed a rate increase for the underwriting fee, which would apply to all dealers who conduct underwriting activity, and for the Municipal Advisor Professional Fee, which would apply to all municipal advisor firms. In addition, the MSRB has proposed a rate decrease for the transaction fee and the trade count fee, which would apply to all dealers who conduct trading activities. While some firms may pay a higher (lower) share of fees than other firms when compared to Fiscal Year 2023,²⁹ the increases (decreases) are the result of the MSRB's reconciliation of Rate Card Fee variances from Fiscal Year 2023 and changes in contribution targets for the various fee categories, as well as the expected market activities for Fiscal Year 2024. As intended under the Annual Rate Card Process, no firm would be unduly burdened when compared to another firm over the course of multiple years; the MSRB therefore does not believe the proposed rule change would create any burden on competition for regulated entities, as the projected fee proportions for 2024 are in line with the targeted contribution balance previously set in connection with the 2023 Rate Card. Finally, the MSRB believes the proposed Rate Card Fees under the 2024 Rate Card would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As a background to this analysis, the adoption by the MSRB in 2022 of its Annual Rate Card Process and the 2023 Rate Card introduced a new fee structure that would (i) maintain a fair and equitable balance of fees; (ii) better mitigate the impact of market volatility on the MSRB's revenue and reserve structure; and (iii) maintain rates within a reasonably predictable

²⁹ Because of the timing of the adoption of the Annual Rate Card Process, the 2023 Rate Card's effective date was October 1, 2022, and the Rate Card Fees thereunder remain effective until this proposed rule change amending those rates is filed and becomes effective as of January 1, 2024. Thereafter, the Rate Card Fees under the 2024 Rate Card would be effective for calendar year 2024 and would remain effective until a subsequent proposed rule change amending such Rate Card Fees is filed and becomes effective.

range.³⁰ The MSRB determined it was necessary and appropriate to devise a methodology that reasonably and appropriately defrays the costs and expenses of operating and administering the MSRB, with a goal of arriving at a long-term solution for the MSRB's revenue generation process and ensuring a sustainable financial position.³¹ In addition, the MSRB believes the Rate Card Fee framework is more transparent and predictable for the MSRB's stakeholders in a manner that would reduce year-to-year variability in the MSRB's total fee assessments while also retaining the MSRB's ability to react to changing circumstances when establishing reasonable fees.³²

The MSRB's Annual Rate Card Process devised an annual rate-setting method to recalculate fee rates every year for the underwriting fee, transaction fee, trade count fee, and Municipal Advisor Professional Fee.³³ The Annual Rate Card Process was designed to have more frequent but smaller downward and upward adjustments to keep budgeted revenues more closely aligned with budgeted expenses. It allows the MSRB to review a change in budgeted revenues and expenses relative to the prior year and any change in the actual reserves relative to the targeted reserves, assess the projected market activities for each category of fees in the upcoming year and incorporate any needed adjustments directly into the Annual Rate Card Process. Any over/under assessment in the prior year within each class of fee payer would be

³⁰ See Annual Rate Card Process Notice, *supra* note 3.

³¹ See *id.*

³² See *id.* The MSRB adopted the new approach to reduce the variability in fee assessments from the impact of market volatility by adjusting for budget surpluses or shortfalls annually, therefore providing a better mechanism for effectively managing fee rates and reserve levels.

³³ See *id.* Fees not included in the Annual Rate Card are Municipal Fund Securities Underwriting Fee, Annual Assessment, Initial Registration Fee, Professional Qualification Exam Fees, and Late Fees.

factored into any change in the fee rate for the subsequent year, in addition to accommodating any change in other considerations.³⁴

Effect on Competition

The Rate Card Fees under the 2024 Rate Card established pursuant to the proposed rule change represent the first calendar-year adjustments for Rate Card Fees since the adoption of the Annual Rate Card Process and the initial 2023 Rate Card. During Fiscal Year 2023, the MSRB collected below-the-projected amount from the underwriting fee and Municipal Advisor Professional Fee, but above-the-projected amount from the transaction fee and trade count fee. The results were largely driven by market activities that featured heavy secondary market trading but relatively light primary market issuance.³⁵ For the 2024 Rate Card, the MSRB has proposed a rate increase for the underwriting fee and the Municipal Advisor Professional Fee, and a rate decrease for the transaction fee and the trade count fee. These changes in rates are intended to reconcile with the Rate Card fee changes from Fiscal Year 2023 and are also based on the MSRB's Fiscal Year 2024 budget and projected revenues and expenses, reserve target, and projected activities in each category for calendar year 2024, to maintain in general the targeted contribution balance between fee categories.

The MSRB does not believe the proposed rule change would create any burden on competition for regulated entities, as the projected fee proportions for 2024 are in line with the targeted contribution balance previously set in connection with the 2023 Rate Card when the MSRB first adopted the Annual Rate Card Process. The MSRB believes the proposed rule

³⁴ For example, change in annual expenses, change in projected market volume, prior year revenue changes as compared to budget, change in reserve target and certain limitations on fee increases.

³⁵ For example, in 2022, the municipal securities market had the highest par value traded since 2008 and the highest number of trades since 2005, and the market continues to experience higher-than-normal trading activities in 2023. On the other hand, the underwriting volume was below the yearly average in recent years between October 2022 and September 2023.

change is necessary and appropriate to ensure prudent funding for the MSRB and that the changes to the Rate Card Fees are reasonably and fairly designed to be proportionately distributed across regulated entities in such a way that would not harm competition among regulated entities, nor otherwise harm the functioning of the municipal securities market. For example, while firms with underwriting activity may incur higher fees in 2024 than in Fiscal Year 2023 as a result of an increase in the underwriting fee, the transaction and trade count fees tied to their trading activity is expected to decrease assuming the same level of trading activity compared to the prior year. In addition, the increases and decreases are by design intended to reconcile with the changes year to year such that no firm would be unduly burdened as compared to another firm over the course of multiple years and the fee burden would be distributed equitably across all MSRB regulated entities.

Section 15B(b)(2)(L)(iv) of the Exchange Act³⁶ requires that MSRB rules 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 of investors against fraud. The MSRB believes that the increase for the Municipal Advisor Professional Fee would not impose an unnecessary or inappropriate regulatory burden on small municipal advisors. As the total amount of the assessment payable by each municipal advisory firm would continue to be proportional to the number of Forms MA-I filed by a firm and, therefore, would result in lower relative assessments for smaller firms. Based on the number of persons engaging in municipal advisory activities on behalf of a firm, the total fee would therefore bear a reasonable relationship to the level of regulated municipal advisory activities that are undertaken by each firm.

³⁶ 15 U.S.C. 78o-4(b)(2)(L)(iv).

For the reasons noted above, the MSRB believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁷

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁸ and paragraph (f) of Rule 19b-4 thereunder.³⁹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 email to 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,

³⁷ 15 U.S.C. 78o-4(b)(2)(C).

³⁸ 15 U.S.C. 78s(b)(3)(A).

³⁹ 17 CFR 240.19b-4(f).

100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2023-06. This file number should be included on the subject line if email 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 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 am and 3:00 pm. 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].

For the Commission, pursuant to delegated authority.⁴⁰

Sherry R. Haywood,

Assistant Secretary.

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⁴⁰ 17 CFR 200.30-3(a)(12).