through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by August 15, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12848 Filed 6–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–332, OMB Control No. 3235–0378]

Proposed Collection; Comment Request: Extension; Form F–8

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. We estimate that Form F–8 takes approximately one hour per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of one hour (15 minutes/60 minutes per response × 5 responses = 1.25 hours rounded to the nearest whole number one hour).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by August 15, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95075; File No. SR–MSRB–2022–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend Certain Rates of Assessment for Rate Card Fees Under MSRB Rules A–11 and A–13, Institute an Annual Rate Card Process for Future Rate Amendments, and Provide for Certain Technical Amendments to MSRB Rules A–11, A–12, and A–13

June 9, 2022.

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 June 2, 2022 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:

(i) Rule A–11, on assessments for municipal advisor professionals, to modify the rate of assessment for the annual professional fee for each person associated with a municipal advisory firm who is qualified as a municipal advisor representative in accordance with Rule G–3, on professional qualification requirements, and for whom the municipal advisory firm has an active Form MA–I on file with the Commission as of January 31st of each year (each individual being a ''covered professional'' and such fee amount on each covered professional the ''Municipal Advisor Professional Fee''); [3]

(ii) Rule A–13, on underwriting and transaction assessments for brokers, dealers, and municipal securities dealers (collectively, ''dealers''), to modify the rate of assessments on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Form MA–I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities,'' is an SEC form that must be completed and filed by a municipal advisory firm with respect to each natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf, including employees of the firm. Independent contractors are included in the definition of ''employee'' for these purposes. A natural person doing business as a sole proprietor must complete and file Form MA–I in addition to Form MA. Form MA–I is also used to amend a previously submitted form, including in such cases where an individual is no longer an associated person of the municipal advisory firm or no longer engages in municipal advisory activities on the firm's behalf. *See* ''Instructions for the Form MA Series,'' available at *https://www.sec.gov/about/forms/formmadata.pdf.* For purposes of Rule A–11 and the calculation of the Municipal Advisor Professional Fee, if a firm has filed an amendment to indicate that an individual is no longer an associated person of the municipal advisory firm or no longer engages in municipal advisory activities on its behalf, then that individual's Form MA–I would not be deemed as active for purposes of the Municipal Advisor Professional Fee and would not be counted in the January 31st calculation regarding the assessment of the Municipal Advisor Professional Fee.

dealers for certain underwriting, transaction, and trade count fees [4] (collectively, the ''Market Activity Fees'' and, such Market Activity Fees together with the Municipal Advisor Professional Fee, the ''Rate Card Fees''); [5] and

(iii) Rule A–11, Rule A–12, on registration, and Rule A–13 to provide greater regulatory clarity for the assessment of fees on municipal securities brokers, municipal securities dealers, and municipal advisors (collectively, ''MSRB regulated entities'') under these rules.

The proposed amendments to the rates of assessment of the Rate Card Fees are referred to as the ''Rate Card Amendments.'' The Rate Card Amendments would effectuate the Rate Card Fees in accordance with the following table.

	Basis	Proposed rate
Underwriting Fee	Per $1,000 Par Underwritten	$0.0297
Transaction Fee	Per $1,000 Par Transacted	0.0107
Trade Count Fee	Per Trade	1.10
Municipal Advisor Professional Fee	Per Covered Professional	1,060

The proposed technical amendments to Rule A–11, Rule A–12, and Rule A–13 are referred to as the ''Technical Amendments.'' The Rate Card Amendments and the Technical Amendments together are referred to as the ''proposed rule change.''

The MSRB has designated the proposed rule change for immediate effectiveness.[6] The Rate Card Amendments and the Technical Amendments are designated to have an operative date of October 1, 2022. The Board currently anticipates the amended Rate Card Fees proposed by the Rate Card Amendments to be operative for a period of fifteen months from October 1, 2022 to December 31, 2023 and an amended set of Rate Card Fees to become operative on January 1, 2024 in accordance with a subsequent proposed rule change and the internal rate setting process described herein.[7]

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2022-Filings.aspx,* 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

The purpose of the Rate Card Amendments is to amend the rate of assessment for the Board's Rate Card Fees effective on October 1, 2022. The description of the Rate Card Amendments also provides transparency regarding the internal process for how the Board intends to amend such fees on an annual basis going forward. Specifically, subsequent to this proposed rule change, and commencing with the filing of a proposed rule change prior to or in the last quarter of calendar year 2023, the Board anticipates filing a proposed rule change with the Commission each year to effectuate an ''Annual Rate Card'' that would revise the Rate Card Fees as necessary or appropriate to defray the costs and expenses of operating and administering the Board.[8] The MSRB anticipates filing such proposed rule changes to be effective as of January 1 each calendar year and operative until December 31 for that year.[9] In addition to the proposed Rate Card Amendments, the proposed rule change also proposes the Technical Amendments to Rule A–11, Rule A–12, and Rule A–13 to provide greater regulatory clarity for the assessment of fees on MSRB regulated entities under these rules.

Purpose and Description of the Rate Card Amendments

As a self-regulatory organization, the Board discharges its statutory mandate under the Exchange Act by establishing rules for regulated entities, enhancing the transparency of the municipal securities market through technology systems, and publicly disseminating data about the municipal securities market. The Board funds its activities primarily through the assessment of fees and charges on regulated entities as is necessary or appropriate to defray the costs and expenses of operating and administering the Board.[10] The Board independently manages and monitors its financial position on an ongoing basis to ensure that the organization has sufficient revenue and organizational reserves to maintain its operations in accordance with the Act,[11] without interruption, even in economic downturns and other unforeseen circumstances.

Current Fee Structure

The Board has previously established, and currently applies, the following fee

[4] As further described herein, the proposed rule change would provide a technical amendment to Rule A–13 to change the terminology for this fee from ''technology fee'' to ''trade count fee.'' To avoid confusion, the proposed rule change utilizes the amended name except as context requires for clarity, such as describing this specific technical amendment and providing certain historical revenue data in Exhibit 3. *See* discussion *infra* entitled ''Technical Amendments to Rule A–13 and Related Cross-References.''

[5] Underwriting assessments charged pursuant to Rule A–13(c)(ii) to certain dealers acting as underwriters of municipal fund securities are not included in the Market Activity Fees that would be amended by this proposed rule change.

[6] The MSRB has designated the Rate Card Amendments as establishing or changing a due, fee, or other change under Section 19(b)(3)(A)(ii) of the Act (15 U.S.C. 78s(b)(3)(A)(ii)) and Rule 19b–4(f)(2) (17 CFR 240.19b–4(f)(2)) thereunder. The MSRB has designated the Technical Amendments as being immediately effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)(iii)) and Rule 19b–(f)(6) (17 CFR 240.19b–4(f)(6)) thereunder.

[7] *See* discussion *infra* under ''Proposed Annual Rate Card Approach.'' As further described therein, the Board presently anticipates filing proposed rule changes with the Commission to amend the rates of assessment of the Rate Card Fees on an annual basis going forward, as applicable, with the first set of such amendments filed with the Commission prior to or in the last quarter of calendar year 2023 to become operative on January 1, 2024.

[8] *See* Section 15B(b)(2)(J) of the Act (15 U.S.C. 78*o*–4(b)(2)(J)).

[9] Unlike these anticipated future amendments, the Rate Card Amendments for Fiscal Year 2023 are expected to be effective for a 15-month period from October 1, 2022 to December 31, 2023.

[10] *See* Section 15B(b)(2)(J) of the Act (15 U.S.C. 78*o*–4(b)(2)(J)).

[11] *Id.*

assessments on regulated entities to ensure the MSRB's ongoing operations (the ''current fee structure''): [12]

(i) *Municipal Advisor Professional Fee:* A fee of $1,000 for each covered professional as of January 31 of each year; [13]

(ii) *Initial Registration Fee:* A $1,000 one-time registration fee to be paid by each dealer to register with the MSRB before engaging in municipal securities activities and by each municipal advisor to register with the MSRB before engaging in municipal advisory activities; [14]

(iii) *Annual Registration Fee:* A $1,000 annual fee to be paid by each dealer and municipal advisor registered with the MSRB; [15]

(iv) *Late Fee:* A $25 monthly late fee and a late fee on the overdue balance (computed according to the prime rate) until paid on balances not paid within 30 days of the invoice date by the dealer or municipal advisor; [16]

(v) *Underwriting Fee:* A fee amount of $.0275 per $1,000 of the par value paid by a dealer on all municipal securities purchased from an issuer by or through such dealer, whether acting as principal or agent as part of a primary offering (the ''Underwriting Fee''); [17]

(vi) *Municipal Funds Underwriting Fee:* A fee amount of $.005 per $1,000 of the total aggregate assets for the reporting period (*i.e.,* the 529 savings plan fee on underwriters), in the case of an underwriter (as defined in Rule G–45) of a primary offering of certain municipal fund securities; [18]

(vii) *Transaction Fee:* A fee amount of .001% ($.01 per $1,000) of the total par value to be paid by a dealer, except in limited circumstances, for inter-dealer sales and customer sales reported to the MSRB pursuant to Rule G–14(b), on transaction reporting requirements (the ''Transaction Fee''); [19]

(viii) *Technology Fee:* [20] A fee of $1.00 paid per transaction by a dealer for each inter-dealer sale and for each sale to customers reported to the MSRB pursuant to Rule G–14(b) (the ''Trade Count Fee''); [21] and

(ix) *Examination Fee:* A $150 test development fee assessed per candidate for each MSRB examination.[22]

In addition to these fees assessed on regulated entities, the Board also receives revenues from certain other sources, such as investment income, regulatory fine sharing,[23] and MSRB data subscription fees.[24] These revenue sources contribute a much smaller portion to the overall MSRB funding.[25]

Board Review of the Current Fee Structure

Early in Fiscal Year 2021, the Board determined that it should review the current fee structure in relation to the MSRB's long term financial position and near-term anticipated funding needs (the ''Fee Review''). Through its Fee Review, the Board sought to identify potential improvements to the MSRB's current fee structure that would: (i) maintain a fair and equitable balance of reasonable fees and charges among regulated entities; [26] (ii) mitigate the

[12] The Market Activity Fees listed do not indicate the current temporary fee reductions that expire on September 30, 2022. *See* Rule A–13(h) (specifying a temporary underwriting assessment of .00165% ($0.0165 per $1,000) of the par value; a temporary transaction assessment of .0006% ($0.006 per $1,000) of the par value; and a temporary technology assessment of $0.60 per transaction); *see also* Exchange Act Release No. 91247 (Mar. 3, 2021), 86 FR 13593 (Mar. 9, 2021) File No. SR–MSRB–2021–02 (hereinafter, ''2021 Temporary Fee Reduction''). Consistent with the language of the 2021 Temporary Fee Reduction, these reduced fee rates will expire on September 30, 2022; and the related rule text would be deleted effective as of October 1, 2022 by operation of the Technical Amendments proposed herein.

[13] Current Rule A–11(a)(i).

[14] Rule A–12(b). Initial registration assessments charged pursuant to Rule A–12(b) are not included in the Rate Card Fees that would be amended by this proposed rule change. Given that the amount of the initial registration fee historically has been set with the intention of defraying a significant portion of the administrative and operational costs associated with the processing of a regulated entity's initial registration, the Board determined that, at this time, it was not beneficial or necessary to incrementally adjust such fees each year through an annual rate setting process. *See* Exchange Act Release No. 75751 (Aug. 24, 2015), 80 FR 52352 (Aug. 28, 2015) File No. SR–MSRB–2015–08 (stating the initial registration fee is to help defray a significant portion of the administrative and operational costs associated with processing an initial registration). *See also* discussion *infra* under ''Board Review of the Current Fee Structure'' and ''Proposed Annual Rate Card Approach.''

[15] Rule A–12(c). Annual registration assessments charged pursuant to Rule A–12(c) are not included in the Rate Card Fees that would be amended by this proposed rule change. Given that the rate of assessment for the annual registration fee is intended to serve as a fixed, baseline contribution from all registered regulated entities, irrespective of a regulated entity's actual total market activities, the Board determined that, at this time, it was not beneficial or appropriate to incrementally adjust such fees each year through an annual rate setting process. *See also* discussion *infra* under ''Board Review of the Current Fee Structure'' and ''Proposed Annual Rate Card Approach.''

[16] Rule A–11(b) and Rule A–12(d). As discussed herein, the Technical Amendments would remove the current reference in Rule A–12(d) to late fees for payments due pursuant to Rule A–13 and incorporate this concept into Rule A–13. *See* Rule A–12(d) (''Any broker, dealer, municipal securities dealer or municipal advisor that fails to pay any fee assessed under this rule *or Rule A–13* within 30 days of the invoice date shall pay a monthly late fee of $25 and a late fee on the overdue balance, computed according to the Prime Rate, as provided for in the MSRB Registration Manual, until paid.'' (emphasis added)).

[17] Current Rule A–13(c)(i).

[18] Current Rule A–13(c)(ii). Assessments charged pursuant to Rule A–13(c)(ii) related to certain municipal fund securities are not included in the Rate Card Fees that would be amended by this proposed rule change. The basis upon which the municipal funds underwriting fee is assessed (*i.e.,* the total aggregate assets for the reporting period) is not subject to the same type of volatility as the Market Activity Fees, but instead is expected to generally continue to grow over time. For example, municipal funds underwriting fee revenue amounted to approximately $1,332,000 in Fiscal Year 2021, approximately $1,167,000 in Fiscal Year 2020, and approximately $991,000 in Fiscal Year 2019. *See* MSRB 2021 Annual Report, available at *https://www.msrb.org/-/media/Files/Resources/MSRB-2021-Annual-Report.ashx*?. As a result, the Board determined that, at this time, it was not beneficial or necessary to incrementally adjust the rate of assessment each year through an annual rate setting process. *See* discussion *infra* under ''Board Review of the Current Fee Structure'' and ''Proposed Annual Rate Card Approach.''

[19] Rule A–13(d)(i) (transaction fee on inter-dealer sales) and Rule A–13(d)(ii) (transaction fee on customer sales).

[20] As further described herein, the proposed rule change would provide a technical amendment to this provision of Rule A–13 to rename this fee to the ''trade count fee.''

[21] Rule A–13(d)(vi).

[22] Rule A–16. Assessments charged pursuant to Rule A–16 related to such examination fees are not included in the Rate Card Fees that would be amended by this proposed rule change. Given that the rate of assessment for the examination fee historically has been set with the intention of defraying a portion of the overall costs of the MSRB's professional qualification and testing program, the Board determined that, at this time, it was not beneficial or necessary to incrementally adjust the rate of assessment of such fee each year through an annual rate setting process. *See* Exchange Act Release No. 85135 (Feb. 14, 2019), 84 FR 5513 (Feb. 21, 2019) File No. SR–MSRB–2019–02 (stating the examination fee is intended to partially offset the overall program costs to the MSRB of its professional qualification and testing program). *See also* discussion *infra* under ''Board Review of the Current Fee Structure'' and ''Proposed Annual Rate Card Approach.''

[23] Fine revenue became a revenue source as first provided in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). *See* 15 U.S.C. 78*o*–4(c)(9).

[24] The MSRB charges data subscription service fees for subscribers, including regulated entities and non-regulated entities, seeking direct electronic delivery of municipal trade data and disclosure documents associated with municipal bond issues. This information is also available without direct electronic delivery on the EMMA website without charge.

[25] For example, fine-sharing revenue amounted to approximately 0.9% of the MSRB's overall revenue in Fiscal Year 2021 (or approximately $322,000), 3.3% in Fiscal Year 2020 (or approximately $1.5 million), and 0.4% (or approximately $151,000) in Fiscal Year 2019. *See* MSRB 2021 Annual Report, available at *https://www.msrb.org/-/media/Files/Resources/MSRB-2021-Annual-Report.ashx*?. Given that this revenue is collected by FINRA and the SEC for violations of MSRB rules and the fact that the Board does not set the rates of assessment for the collection of such fines, the Board does not believe that it is appropriate to separately consider fine-sharing revenue for potential rebates to regulated entities by operation of the proposed Annual Rate Cards and the annual rate setting process.

[26] While engaging in the Fee Review, and consistent with the MSRB Funding Policy, the Board considered how potential modifications to

impact of market volatility on the amount of fee revenue actually paid each year[27] and, correspondingly, facilitate the Board's ability to manage the amount held by the MSRB in organizational reserves year-to-year;[28] and (iii) prudently fund the MSRB's anticipated near-term operating expenses.[29]

Maintaining a Fair and Equitable Balance of Fees. As part of its Fee Review, the Board evaluated the MSRB's current fee structure to determine whether the fees and charges assessed upon regulated entities remain reasonable, fair, and equitable. Among other factors considered during the Fee Review, the Board: (i) analyzed publicly available data on the revenue models of dealers and municipal advisors across geographic areas;[30] (ii) examined MSRB expense allocations to inform its understanding of how much of the MSRB's expense budget relates to various activities;[31] (iii) evaluated historical budgeted revenue versus actual revenues generated for the existing fee categories;[32] (iv) gauged the MSRB's fee distribution across varying business models of dealer and municipal advisory firms;[33] and (v) deliberated upon feedback from stakeholder discussions and prior written comments on the topic of the MSRB's fees and expenses.[34]

Based on these factors considered, the Board found that the current fee structure—including the basis on which fees are assessed and the relative contribution of revenue from each of the current fees assessed on regulated entities—overall remains reasonable, fair, and equitable. However, as further discussed below, the Board also determined that the current fee structure could be improved with certain process changes and targeted rule amendments to address the challenges associated with (i) the revenue impact of market volatility and (ii) the MSRB's anticipated near-term funding needs.

Mitigating the Impact of Market Volatility. As part of the Fee Review, the Board analyzed the historical revenue generated under the MSRB's current fee structure as compared to the historical amounts budgeted over the same fiscal years.[35] While the various fees actually paid by regulated entities have, in some recent fiscal years, marginally exceeded or underperformed their budgeted amounts, the Board found that the amount of the three Market Activity Fees actually collected have often exceeded their annual budget targets by more than marginal amounts.[36] The Board also found that the recurring variances between budgeted amounts and actual amounts of Market Activity Fees collected directly contributed to the periodic build-up of excess reserves and, consequently, precipitated the need for the MSRB to use rebates or temporary fee reductions as a mechanism to rightsize organizational reserve positions back to the Board's target.[37] Based on these causal links between fluctuations in market activity year-to-year, variances in the amount of Market Activity Fees actually collected versus budgeted amounts, and the need for rebates or temporary fee reductions to rightsize organizational reserves, the Board prioritized the identification of alternative fee approaches that would better mitigate the impact of the inevitable, year-to-year fluctuations in activity in the municipal securities market.

After considering alternatives, the Board first determined that the Municipal Advisor Professional Fee and the current set of Market Activity Fees—*i.e.,* Underwriting Fees, Transaction Fees, and Trade Count Fees—remain the most reasonable and practical mechanisms for assessing fees on regulated entities and so should not be replaced with alternative fee

the current fee structure would impact the diversity of the MSRB's funding sources. *See* MSRB Funding Policy, available at *https://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Funding-Policy* (hereinafter, the ''MSRB Funding Policy'') (stating that the ''MSRB strives to diversify funding sources among regulated entities and other entities that fund MSRB services in a manner that ensures long-term sustainability, seeking to achieve an equitable balance among regulated entities and a fair allocation of the costs of systems and services among other users and regulated entities to the extent allowed by law.'')

[27] Market Activity Fees are driven by market dynamics and are inherently unpredictable. Because of this unpredictability, the amount of Market Activity Fees collected by the MSRB has often exceeded the amount budgeted in recent fiscal years. The MSRB's Financial Statements for recent fiscal years are available at *http://msrb.org/About-MSRB/Financial-and-Other-Information/Annual-Reports.aspx. See* ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees'' and ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual.''

[28] The Board established a reserves target to ensure that the organization maintains a prudent level of financial resources to fund operations and ensure the long-term financial sustainability of the organization, taking into consideration a range of reasonably foreseeable market conditions and expected expenditures over a three-year time horizon. The reserves target is determined after conducting a detailed and comprehensive analysis of the liquidity needs in four categories: (1) working capital, (2) risk reserves, (3) strategic investment reserves, and (4) regulatory reserves. *See* MSRB Funding Policy (link at note 26 *supra*) (these four categories are identified in the discussion under ''Reserve Considerations''). The Board reviews and adjusts the reserves target on an annual basis to ensure that it remains appropriately aligned with the organization's needs. *See* MSRB Fiscal Year 2022 Budget for a further discussion of the MSRB's budget and reserves, available at *https://www.msrb.org/-/media/Files/Resources/MSRB-FY-2022-Budget-Summary.ashx?.*

[29] *See, e.g.,* Exhibit 3, ''Chart 8—Historical Actual Expenses,'' ''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses,'' ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses.''

[30] The Board considered market data from various external and internal sources, such as the Texas Bond Review Board State and Local Annual Reports (*http://www.brb.state.tx.us/publications.aspx*), the California State Treasurer's Office—California Debt and Investment Advisory Commission (CDIAC) (*https://data.debtwatch.treasurer.ca.gov/Government/CDA-All-Data/yng6-vaxy*), primary market data included in official statements and other offering documents, and trading and other secondary market data. *See also, e.g.,* the MSRB's published Fact Books, which provide various historical data sets related to market activities, such as the distribution of municipal trades by dealers, available at *https://www.msrb.org/Market-Transparency/Market-Data-Publications/MSRB-Fact-Book.aspx.*

[31] *See, e.g.,* Exhibit 3, ''Chart 9—Historical Budgeted Expense by Function.''

[32] *See* Exhibit 3, ''Chart 1—Historical Revenue Variances: Budget vs. Actual'' and ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees.''

[33] As non-exhaustive examples, the Board considered fee distribution 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. *See also* Exhibit 3, ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model (Exclusive of Late Fees and Examination Fees).''

[34] *See, e.g.,* MSRB Notice 2020–19: ''MSRB Requests Input on Strategic Goals and Priorities'' (Dec. 7, 2020), available at *https://msrb.org/-/media/Files/Regulatory-Notices/RFCs/2020-19.ashx??n=1,* and related stakeholder comments (hereinafter, the ''Stakeholder Comments to the MSRB's Strategic Priorities''), available at *https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2020/2020-19?c=1. See also, e.g.,* comments provided on Exchange Act Release No. 87075 (Sep. 24, 2019), 84 FR 51698 (Sep. 30, 2019) File No. SR–MSRB–2019–11, available at *https://www.sec.gov/comments/sr-msrb-2019-11/srmsrb201911.htm,* and comments provided on Exchange Act Release No. 81264 (July 31, 2017), 82 FR 36472 (Aug. 4, 2017) File No. SR–MSRB–2017–05, available at *https://www.sec.gov/comments/sr-msrb-2017-05/msrb201705.htm.*

[35] *See, e.g.,* Exhibit 3, ''Chart 1—Historical Revenue Variances: Budget vs. Actual'' and ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees.''

[36] *See* Exhibit 3, ''Chart 1—Historical Revenue Variances: Budget vs. Actual,'' ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' and ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual.'' Relatedly, the Board determined that such recurring variances could not be fully addressed with further refinements to the MSRB's budgeting process; rather, the variances were inherent to the imprecision associated with budgeting future market volumes related to underwriting and trading activity that exists within the overall dynamic of the municipal securities market.

[37] *Compare, e.g.,* Exhibit 3, ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' Chart 5—Historical Effective Fee Rate Changes'' and ''Chart 12—Total Reserves vs. Target: Historical and Projected without Rate Card Model.''

mechanisms. The Board came to this determination primarily because it continues to believe that the respective mechanisms for assessing the Municipal Advisor Professional Fee and the Market Activity Fees remain superior to potential alternatives—some of which may require significantly more burdensome firm reporting to achieve comparatively greater precision in the alignment of the total amount of the fees assessed on a given firm with such firm's total regulated activities;[38] and, therefore, these fee mechanisms remain the best option among alternatives to ensure that the amount of the Municipal Advisor Professional Fees and Market Activity Fees paid by a given firm is both (i) appropriately balanced to the burdens and benefits of the MSRB's regulatory and transparency activities, and also (ii) generally proportional to the differing resources devoted to the regulation of firms with different business models and differing degrees of complexity.[39] These existing fee methods also have the advantage of being established mechanisms for assessing fees on regulated entities; and, in this regard, the Board believes that maintaining this current set of fee methods is more advantageous than other alternatives because firms already understand and have embedded such assessments into their business operations.

While the Board determined that the mechanisms for assessing the Municipal Advisor Professional Fee and the Market Activity Fees should not be replaced, the Board also determined it would be beneficial to refine its approach to review and amend these fee rates for each calendar year on an annual basis going forward. Specifically, to avoid the MSRB accumulating excess reserves through the collection of fee revenue above budgeted amounts over multiple fiscal years and then utilizing short-term fee reductions to return the excess revenues to the regulated entities who paid the fees, the Board is proposing to review and incrementally refine the rates of assessment for each of these fees each year. This revised approach would more closely align the rates of assessment for the Municipal Advisor Professional Fee and the Market Activity Fees to the MSRB's annual revenue requirements, including by factoring revenue surpluses and shortfalls against budgeted amounts for each of these fees from the prior year directly into the annual rate calculation process. As further described in the section below entitled ''Proposed Annual Rate Card Approach,'' the Board's proposed approach would (i) better mitigate the impact of market volatility on the MSRB's revenue structure (and, consequently, also better mitigate the impact of market volatility on the MSRB's organizational reserves), and (ii) maintain rates within a reasonably predictable range that, while subject to more incremental changes each year, would be comparably more stable over the long term than the MSRB's current fee structure.[40]

Funding the MSRB's Anticipated Near-Term Operating Expenses. In addition to analyzing the impact of variable market activity as part of its Fee Review, the Board also analyzed the MSRB's current budget projections for Fiscal Year 2023 and the anticipated funding needs in the near term beyond Fiscal Year 2023.[41] Specific to the projections for Fiscal Year 2023, the MSRB's pro forma estimate currently anticipates an operating deficit for the twelve-month period, based on preliminary projected expenses and projected revenue under the current fee structure (and without the Rate Card Amendments). Beyond Fiscal Year 2023, the Board assumed at least modest expense growth in the near-term fiscal years in line with the MSRB's ten-year compound annual growth rate,[42] particularly in consideration of the current impacts of inflation and other key expenses associated with modernizing and operating the MSRB's technology systems. Based on these budgetary expectations, the Board analyzed options for how expense control and additional revenue generation could address both the projected operating deficit for Fiscal Year 2023 and the likelihood of expense growth in future near-term fiscal years.

In terms of expense control, the MSRB remains committed to responsibly managing expenses and aligning its resources to the fulfillment of the Board's statutory mandate.[43] Accordingly, the Board reviewed anticipated expenses against various factors, including (i) the MSRB's ''Strategic Plan—Fiscal Years 2022–2025;''[44] (ii) actual historical expenses versus budgeted expenses for certain activities;[45] and (iii) stakeholder feedback and comments.[46] Based on these and other aspects of its Fee Review, the Board determined that the MSRB's Strategic Plan should serve as the main budgetary guidepost for how the MSRB allocates its limited resources and resolves competing fiscal priorities, particularly because various stakeholders provided significant written input regarding the Strategic Plan.[47] Consequently, the Board determined that the MSRB's expenditures in Fiscal Year 2023 and future near-term fiscal years generally should align with the expenses necessary to discharge its statutory mandate in accordance with the Strategic Plan.[48] As a result, at least modest expense growth, in line with the MSRB's ten-year compound annual growth rate,[49] is assumed given various

[38] *See also* related discussion *infra* under ''Self-Regulatory Organization's Statement on Burden on Competition—Baseline and Reasonable Alternative Approaches.''

[39] The Board considers the distribution of its fees among regulated entities of differing sizes, complexities, and business models and strives for proportionality in the distribution of fees as much as feasible within the broader set of considerations described in the MSRB Funding Policy. *See, e.g.,* related discussion *supra* under ''Board Review of the Current Fee Structure—Maintaining a Fair and Equitable Balance of Fees'' and Exhibit 3, ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model (Exclusive of Late Fees and Examination Fees).'' *See also* Release No. 34–87075 (Sep. 24, 2019), 84 FR 51698 (Sep. 30, 2019) File No. SR–MSRB–2019–11 (providing for increases to the Municipal Advisor Professional Fee and discussing the superiority of maintaining the Municipal Advisor Professional Fee in light of possible alternatives that would require creating a novel and, therefore, likely more burdensome reporting requirement).

[40] *See* related discussion *infra* under ''Proposed Annual Rate Card Approach—Limitations on Rate Changes to Promote Predictability and Stability'' (discussing various limitations on future increases of the Rate Card Fees). *See also* Exhibit 3, ''Chart 5—Historical Effective Fee Rate Changes.''

[41] Specific to the scope of the Board's near-term funding analysis, the Board considered various funding scenarios for Fiscal Year 2023 through Fiscal Year 2025. *See, e.g.,* Exhibit 3, ''Chart 8—Historical Actual Expenses'' (showing a ten-year historical compound annual growth rate of 4.2%), ''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses,'' ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses.''

[42] *See* Exhibit 3, ''Chart 8—Historical Actual Expenses.''

[43] *See, e.g.,* ''Controlling Expenses'' in MSRB Fiscal Year 2022 Budget at page 12 and related discussion, available at *https://msrb.org/-/media/Files/Resources/MSRB-FY-2022-Budget-Summary.ashx*?. *See also* Exhibit 3, ''Chart 6—Historical Expense Variances: Budget vs. Actual.''

[44] The MSRB's Strategic Plan—Fiscal Years 2022–25 is available at *https://msrb.org/-/media/Files/Resources/MSRB-Strategic-Plan-2022-2025.ashx*? (the ''Strategic Plan'').

[45] *See* Exhibit 3, ''Chart 6—Historical Expense Variances: Budget vs. Actual'' and ''Chart 9—Historical Budgeted Expense by Function.''

[46] *See, e.g.,* Stakeholder Comments to the MSRB's Strategic Priorities (link at note 34 *supra*).

[47] *Id.*

[48] The MSRB notes that its anticipated expenditures for the near-term fiscal years beyond Fiscal Year 2023 are subject to greater uncertainty caused by the higher potential for changing circumstances and, correspondingly, its budgetary assumptions for these years are also less certain.

[49] *See* Exhibit 3, ''Chart 8—Historical Actual Expenses.''

considerations, including the current Strategic Plan's emphasis on the modernization of the MSRB's technology systems and the MSRB's ongoing efforts to advance the quality, accessibility, security, and value of the MSRB's market data for all participants in the municipal securities market. The Board will continue to actively monitor and manage its financial position to ensure prudent expense alignment to the MSRB's statutory mandate and the corresponding objectives of the MSRB's Strategic Plan.

In terms of revenue, the Board determined that the current fee structure should be amended to increase total revenue and, thereby, reduce the likelihood of a near-term operating deficit for Fiscal Year 2023.[50] The Board is proposing to raise this additional revenue in accordance with a new rate setting approach as described in the following section entitled ''Proposed Annual Rate Card Approach.'' The Board considered comments from regulated entities about the consequences associated with the MSRB collecting more fee revenue than needed and with the MSRB maintaining organizational reserves in excess of what is required.[51] In response to such concerns, the Board has undertaken significant efforts to determine the level of organizational reserves needed and, correspondingly, refined and reduced its organizational reserves target.[52] To bring the MSRB's excess organizational reserves in-line with this refined target, the Board has intentionally budgeted operating deficits in recent fiscal years, primarily by temporarily reducing certain fees on regulated entities and, thereby, collecting less revenue as a result of those fee reductions.[53] At the same time, the Board has designated funds from the MSRB's organizational reserves for necessary multiyear systems modernization initiatives, which has further aligned organizational reserves to target.[54] As a result of these efforts, the MSRB's organizational reserves presently are on track to be aligned with the Board's reserves target for Fiscal Year 2023.[55] In this way, while the Board determined that additional funding is needed for Fiscal Year 2023, the Board also determined that such funding would be best obtained through an increase in fees as opposed to the further drawing down of organizational reserves below target.[56]

Proposed Annual Rate Card Approach

Consistent with the Board's analysis and conclusions discussed above, the Board proposes to amend the Municipal Advisor Professional Fee assessed pursuant to Rule A–11 and the Market Activity Fees assessed pursuant to Rule A–13 (*i.e.,* the Rate Card Fees). Underlying the proposed textual amendments to Rule A–11 and Rule A–13 is a revised fee approach, whereby the Board anticipates reviewing the Rate Card Fees each year and modifying them through the filing of a proposed rule change with the Commission. In this way, the MSRB's Annual Rate Cards will propose amended rates of assessment for each of the four fees on regulated entities that make up the Rate Card Fees (*i.e.,* Underwriting Fees, Transaction Fees, Trade Count Fees, and Municipal Advisor Professional Fees). Subsequent to the Annual Rate Card described in this proposed rule change,[57] the Board anticipates filing such proposed rule changes enumerating the Annual Rate Cards to be effective as of January 1st of each calendar year beginning with January 1, 2024.[58]

The Annual Rate Card approach is expected to ensure the MSRB's financial model remains sustainable, while (i) adequately funding future MSRB expenses and also (ii) providing a greater degree of flexibility than the MSRB's current fee structure to mitigate the impact of market volatility (and effectively manage organizational reserve levels). The Annual Rate Card approach differs from the MSRB's current approach by instituting a framework of more frequent, but also more incremental adjustments, to the four fees that generate the vast majority of the MSRB's annual revenue. The increased frequency of the MSRB's amendments to the Rate Card Fees is meant to avoid the accumulation of excess reserves resulting from additional revenue collected due to market volatility as compared to budget expectations and, thereby, the need for rate amendments in the form of more significant, ad hoc temporary fee reductions or rebates.[59] To ensure that

[50] *See* Exhibit 3, ''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses'' and ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses.''

[51] *See, e.g.,* letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (''BDA''), (Jan. 11, 2021) (hereinafter, the ''BDA Comment Letter'') (responding to the MSRB's Request for Input on Strategic Goals and Priorities and stating ''[w]e strongly urge the Board to take a comprehensive look at its finances with the goal of once and for all establishing a funding mechanism that fairly allocates the MSRB's expenses among regulated entities and does not assess the industry for more money than the MSRB needs''), available at *https://www.msrb.org/rfc/2020-19/Dbamerica.pdf.*

[52] *See* Exhibit 3, ''Chart 12—Total Reserves vs. Target: Historical and Projected without Rate Card Model'' and ''Chart 13—Total Reserves vs. Target: Historical and Projected with Rate Card Model.''

[53] See the 2021 Temporary Fee Reduction (citation and link at note 12 supra); Release No. 34–85400 (Mar. 22, 2019), 84 FR 11841 (Mar. 28, 2019) File No. SR–MSRB–2019–06 (providing for a temporary fee reduction); and Release No. 34–83713 (July 26, 2018), 83 FR 37538 (Aug. 1, 2018) File No. SR–MSRB–2018–06 (providing for a temporary fee reduction). *See also* Exhibit 3, ''Chart 1—Historical Revenue Variances: Budget vs. Actual,'' ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' ''Chart 5—Historical Effective Fee Rate Changes,'' and ''Chart 7—Historical Budgeted Revenue and Budgeted Expense.''

[54] *See* the MSRB's Fiscal Year 2022 Budget, at page 13 (discussing the MSRB's system modernizations investments), available at *https://msrb.org/-/media/Files/Resources/MSRB-FY-2022-Budget-Summary.ashx*?. *See also, e.g.,* the MSRB's 2021 Annual Report, at page 2 (link at note 25 *supra*); the MSRB's 2020 Annual Report, at page 35 (discussing certain modernization investment efforts), available at *https://msrb.org/-/media/Files/Resources/MSRB-2020-Annual-Report.ashx*?; and the MSRB's 2019 Annual Report, at page 11 (discussing the MSRB's cloud investments), available at *https://msrb.org/-/media/Files/Resources/MSRB-2019-Annual-Report.ashx*?.

[55] *See* Exhibit 3, ''Chart 13—Total Reserves vs. Target: Historical and Projected with Rate Card Model.''

[56] *See* Exhibit 3, ''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses,'' ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses,'' and ''Chart 12—Total Reserves vs. Target: Historical and Projected without Rate Card Model,'' and ''Chart 13—Total Reserves vs. Target: Historical and Projected with Rate Card Model.''

[57] Because of the expiration of the 2021 Temporary Fee Reduction on September 30, 2022, the proposed rule change's Annual Rate Card for Fiscal Year 2023 and the first quarter of Fiscal Year 2024 will become effective on October 1, 2022, and, in this way, is intended to be operative for a fifteen-month period running from October 1, 2022, to December 31, 2023.

[58] As the proposed rule change is structured, a given Annual Rate Card would remain effective and operative until a subsequent proposed rule change amending such rates is filed, effective, and operative. As stated, the MSRB anticipates that subsequent Annual Rate Cards for future years will be filed with the Commission through a proposed rule change and the MSRB would seek to have such rates operative for twelve months running from January 1 to December 31 (*i.e.,* a calendar-year basis). In order to execute the Annual Rate Card Process, the MSRB determined to establish the Annual Rate Card on a calendar-year basis. This allows the MSRB to determine any prior fiscal year variances and return excess revenue or assess revenue shortfalls through the new Rate Card Fees. Nevertheless, as changing fiscal circumstances may warrant, the MSRB will retain the flexibility to amend the rates of assessment specified by a given Annual Rate Card under this modified approach in accordance with applicable statutory requirements governing any such proposed rule change.

[59] The proposed rule change would not amend the underlying activities that are the subject of such assessments. In other words, the respective volumes of underwriting and transaction activities of a dealer firm would continue to serve as the basis upon which Market Activity Fees are assessed under Rule A–13; and the number of covered professionals associated with a municipal advisory firm would continue to serve as the basis upon

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the Board's adjustments to the Annual Rate Card will remain incremental, the Board is proposing certain maximum caps on the amount of such year-to-year increases, as discussed below under the section entitled ''Limitations on Rate Changes to Promote Predictability and Stability.'' [60]

Objectives of the Annual Rate Card. Adjustments to the Annual Rate Card will be used to revise the Rate Card Fees to annual levels that the MSRB anticipates will be sufficient to: (i) cover anticipated expenses for the related fiscal year; [61] (ii) maintain target contribution balances between fees on regulated entities in line with recent historical precedents; [62] (iii) address any prior-year variance between the amounts of each of the Rate Card Fees actually collected versus budget (*i.e.,* ''Rate Card Fee Variances''); [63] and (iv) address any variance between the amount of the Board's organizational reserves versus the Board's target (*i.e.,* ''Reserves Variances'').[64] Fee rates may increase year-to-year, subject to certain limitations discussed in additional detail below, or decrease from year-to-year, as needed to meet these objectives.

Process for Setting the Annual Rate Card. The Board will develop an Annual Rate Card for future fiscal years through a uniform process consistent with the objectives discussed above (the ''Annual Rate Card Process'').[65] The Annual Rate Card Process is intended to establish a fee framework that is more transparent and predictable for the MSRB's stakeholders while also retaining the Board's ability to flexibly react to changing circumstances when establishing reasonable fees on regulated entities. The Annual Rate Card Process will consist of the activities below.

Development of the Fiscal Year Operational Funding Level. Consistent with its existing budgeting process, the Board will approve the annual expense budget and, thereby, establish the baseline revenue that the organization will need to operate for that fiscal year (*i.e.,* the ''Operational Funding Level''). As previously discussed, the MSRB anticipates the Operational Funding Level in the near-term fiscal years to align with the discharge of the Board's statutory mandate and corresponding initiatives outlined in the MSRB's current Strategic Plan. Once the Board sets the Operational Funding Level, any Reserves Variances may further adjust the amount of the Operational Funding Level, as discussed below.

Reconciliation of Any Material Reserves Variances. While the Board currently projects that the MSRB's reserves will be at their target level at the end of Fiscal Year 2022, based on current circumstances, if there are material Reserves Variances in future fiscal years, the amount of such Reserves Variances will be added to or subtracted from the Operational Funding Level to develop a final ''Budgeted Revenue Target'' for a given fiscal year. For example, if there is a Negative Reserves Variance, the Board may determine, in accordance with the MSRB Funding Policy, that some or all of the reserves shortfall will be incorporated into the total revenue that needs to be collected for that fiscal year.[66] Conversely, if there is a material Positive Reserves Variance, the Board may determine, in accordance with the MSRB Funding Policy, that some or all of the excess will offset an amount of the total revenue that needs to be collected for that fiscal year.[67]

which the rate of the Municipal Advisor Professional Fee is assessed under Rule A–11. Other fees assessed on regulated entities—specifically, the initial registration fee, annual registration fee, late fee, municipal funds underwriting fee, and examination fees—will be unchanged.

[60] If the proposed rule change becomes operative, the MSRB Funding Policy will be updated as of such operative date to reflect this Annual Rate Card approach, including with respect to certain maximum caps incorporated into the Annual Rate Card Process (as defined *infra*) regarding (i) a maximum cap on targeted revenue, which would generally cap a year-over-year increase in the total targeted revenue for a Rate Card Fee at 10% when applicable, and (ii) a maximum cap on assessment rate increases, which would generally cap the maximum year-over-year increase in the assessment rate for a Rate Card Fee at 25% when applicable. See related discussion infra under ''Limitations on Rate Changes to Promote Predictability and Stability.'' The current MSRB Funding Policy is publicly available, presently at *https://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Funding-Policy.*

[61] As noted, the MSRB anticipates that, subsequent to the Annual Rate Card proposed herein and currently anticipated to be operative for the fifteen months from October 1, 2022 to December 31, 2023, future Annual Rate Cards would become effective on January 1, while the MSRB fiscal year would start on the prior October 1. *See also* Exhibit 3, ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses.''

[62] That is, this factor is intended to maintain a proportionate percentage amount of the MSRB's anticipated expenses for the fiscal year among each of the Market Activity Fees and the Municipal Advisor Professional Fee. *See, e.g.,* Exhibit 3, ''Chart 3—Historical Actual Revenue for the Rate Card Fees as a Percentage of the Total Rate Card Fee Revenue'' and ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model (Exclusive of Late Fees and Examination Fees)'' (reflecting that the distribution of registrants by range of total fees assessed under the current fee structure are currently anticipated to be relatively stable if the proposed Rate Card Amendments are implemented).

[63] A positive variance may occur, for example, when the actual revenue from Rate Card Fees collected for a fiscal year exceeds budgeted amounts (a ''Positive Rate Card Fee Variance''). *See, e.g.,* Exhibit 3, ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' at Fiscal Year 2020 (reflecting the actual revenue generated from the Underwriting Fee and Transaction Fee exceeding budget). A negative variance may occur, for example, when the actual revenue from Rate Card Fees collected for a fiscal year is below budgeted amounts (a ''Negative Rate Card Fee Variance''). *See, e.g.,* Exhibit 3, ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' at Fiscal Year 2020 (reflecting the actual revenue generated from the Technology Fee below budget).

[64] A positive variance above the reserves target may occur, for example, due to actual expense savings, actual revenue above budget from sources other than Rate Card Fees, or the Board's determination to decrease the reserves target in light of revised organizational needs (a ''Positive Reserves Variance''). *See, e.g.,* Exhibit 3, ''Chart 12—Total Reserves vs. Target: Historical and Projected without Rate Card Model,'' at Fiscal Year 2021 (reflecting actual reserves exceeding target). A negative variance below the reserves target may occur, for example, due to an increase in actual expenses, shortfall in revenue from sources other than Rate Card Fees, or the Board's determination to increase the reserves target in light of revised organizational needs (a ''Negative Reserves Variance''). *See, e.g.,* Exhibit 3, ''Chart 12—Total Reserves vs. Target: Historical and Projected without Rate Card Model,'' at Fiscal Year 2011 (reflecting actual reserves below target).

[65] The amended Annual Rate Cards resulting from the Annual Rate Card Process will be filed with the Commission as proposed rule changes consistent with the Act.

[66] Stated differently, the Board may decide that some or all of such a Negative Reserves Variance amount will be added to that fiscal year's Operational Funding Level when determining the cumulative Budgeted Revenue Target for that fiscal year. Notably, the Board would have the flexibility to close the Negative Reserves Variance (*i.e.,* increase reserves funding to reach the target) over a period of multiple fiscal years, rather than all in one fiscal year, and so could determine to only address some of the Negative Reserves Variance in a given fiscal year. For example, if the Operational Funding Level was determined to be $45 million and there was a Negative Reserves Variance of $1 million (*i.e.,* actual reserves were under target by $1 million), then the Board could seek to resolve that difference by increasing the target amount of revenue to be generated from the applicable Annual Rate Card by $1 million and set a final Budgeted Revenue Target of $46 million. Alternatively, the Board may determine to seek to resolve the $1 million difference over the course of two Annual Rate Cards and set the final Budgeted Revenue Target for the first of those two Annual Rate Cards at, for example, $45.5 million.

[67] Stated differently, the Board may decide that some or all of such a Positive Reserves Variance amount will be subtracted from that fiscal year's Operational Funding Level to determine the Budgeted Revenue Target for that fiscal year. As discussed in the immediately prior footnote, the Board would have the flexibility to close the Positive Reserves Variance (*i.e.,* decrease reserves funding to target) over a period of multiple fiscal years, rather than all in one fiscal year, and so could determine to only address some of the Positive Reserves Variance in a given fiscal year. For example, if the Operational Funding Level was determined to be $45 million and there was a Positive Reserves Variance of $1 million (*i.e.,* actual reserves were over target by $1 million), then the Board could seek to resolve that variance by decreasing the target amount of revenue to be generated from the applicable Annual Rate Card by $1 million and set a final Budgeted Revenue Target of $44 million. Alternatively, the Board may determine to seek to resolve the $1 million variance

Incorporation of Other Anticipated Revenue. Revenue from sources other than the Rate Card Fees will be forecasted, and that estimate will be credited against the Budgeted Revenue Target. The amount remaining after these revenue estimates are incorporated will be the remaining revenue amount that will determine the total amount of funding needed to be generated from the Rate Card Fees (the ''Rate Card Funding Amount'').

Reconciliation of Any Rate Card Fee Variances from the Prior Fiscal Year. Each of the four Rate Card Fees will be responsible for a proportionate amount of the overall Rate Card Funding Amount (each a ''Proportional Contribution Amount''). The MSRB will maintain a fair and equitable balance of the Proportional Contribution Amounts in line with recent historical precedents.[68] Beginning with the Annual Rate Card for Fiscal Year 2024, any Rate Card Fee Variances between the budget and actual results of the Rate Card Fees for the prior fiscal year will be added to (or subtracted from) the Proportional Contribution Amount (''Final Contribution Amount'').[69] For example, if new issuance underwriting volume were to exceed the budgeted amount in Fiscal Year 2023, resulting in a Positive Rate Card Fee Variance for that fee, the Proportional Contribution Amount for the Underwriting Fee would be adjusted downward sufficient to offset the excess Underwriting Fee revenue collected (and *vice versa*). In this way, Rate Card Fee Variances related to a specific Rate Card Fee will only impact the Proportional Contribution Amount for that specific fee.

Forecast of Expected Activity and Setting the Annual Rate Card. The MSRB will use the best available information to set expected volume of activity for the coming fiscal year. Based on the anticipated volume of activity, the MSRB will calculate rates of assessment for each of the Rate Card Fees to generate their respective Final Contribution Amounts.

Limitations on Rate Changes to Promote Predictability and Stability. To alleviate the potential for greater uncertainty among regulated entities regarding the variability of the Rate Card Fees under this revised approach, the Board has also established certain limitations on fee increases from year-to-year to promote greater predictability and stability.[70]

10% Maximum Cap on Targeted Revenue. The first limitation is a 10% cap on the maximum year-over-year increase in the targeted revenue for a Rate Card Fee.[71] This maximum 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.

25% Maximum Cap on Assessment Rate Increases. The second limitation is a 25% cap on the maximum year-over-year increase in the assessment rate for a Rate Card Fee.[72] The secondary 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.

If the proposed rule change becomes operative, the MSRB Funding Policy will be updated as of such operative date to reflect the Annual Rate Card Process, including the Maximum Cap on Targeted Revenue and the Maximum Cap on Assessment Rate Increases. It should be noted that, pursuant to its terms, the principles described in the MSRB Funding Policy do not bind individual Board decisions but instead generally are intended as a guide to provide continuity in funding decisions and to help align strategic, operational, and financial planning.[73] If the Annual Rate Card Process becomes operative and a future proposed amendment to the rates of assessment for the Rate Card Fees would exceed the Maximum Cap on Targeted Revenue or the Maximum Cap on Assessment Rate Increases, as applicable, then such future amendment would address any such deviation in the corresponding proposed rule change.

Proposed Rate Card Amendments

The proposed Rate Card Amendments are designed to promote the collection of reasonable fees and charges from MSRB regulated entities as are necessary or appropriate to defray the costs and expenses of operating and administering the Board.[74] The Board believes that the Annual Rate Card Process enables it to consider the necessary factors and to sufficiently deliberate on those factors in order to arrive at reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Accordingly, among the other reasons discussed herein, the Board believes that the proposed rule change achieves reasonable fees and charges consistent with the Act because the Rate Card Amendments adhered to the Annual Rate Card Process. Specifically, the Board (i) developed the Operational Funding Level for Fiscal Year 2023 based on existing pro forma estimates; (ii) incorporated other anticipated revenue into its funding analysis; and (iii) forecasted expected volume activity to appropriately set the rates of assessment for each of the Rate Card Fees, all as further described above.[75]

over the course of two Annual Rate Cards and set the final Budgeted Revenue Target for the first of those two Annual Rate Cards at, for example $44.5 million.

[68] The Board will consider whether contribution targets should be revisited when setting rates each year. However, to maintain fairness and equity in fees, the Board intends contribution targets to be relatively stable over time, unless 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. *See* Exhibit 3, ''Chart 3—Historical Actual Revenue for the Rate Card Fees as a Percentage of the Total Rate Card Fee Revenue'' and also ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model.''

[69] More specifically, a Negative Rate Card Fee Variance will increase the rate of assessment for a Rate Card Fee by increasing its Final Contribution Amount. A Positive Rate Card Fee Variance will reduce the rate of assessment for a Rate Card Fee by reducing its Final Contribution Amount. *See* note 63 *supra* and related discussion regarding Rate Card Fee Variances.

[70] 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 as described above. 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.

[71] Note that the 10% revenue cap is based on targeted revenue dollars. The underlying market activity volume will likely vary based on projected market conditions for the respective fiscal year. For illustrative purposes only, if the target revenue for one of the Rate Card Fees in Year 1 is $13,000,000, the maximum target revenue in Year 2 would be $14,300,000. In addition, if target revenue decreased in Year 2—such as to return excess revenue collected in Year 1—then the cap for Year 3 would be calculated based on the higher revenue target in the year prior to the decrease (*i.e.,* the higher prior revenue level in Year 1, which is $13,000,000 in this example).

[72] For illustrative purposes only, if the Trade Count Fee is set at $1.10 in Year 1, the maximum rate in Year 2 would be $1.38 under the 25% maximum cap on assessment rate increases. In addition, if the assessment rate decreased in Year 2—such as to return excess revenue collected in Year 1—then the cap for Year 3 would be calculated based on the higher assessment rate in the year prior to the decrease.

[73] *See* MSRB Funding Policy (link at note 26 *supra*).

[74] *See* Section 15B(b)(2)(J) of the Act. 15 U.S.C. 78*o*–4(b)(2)(J).

[75] The Board did not engage in the reconciliation of any material reserves variances because the Board anticipates that organizational reserves would be at or near target on the proposed effective date of October 1, 2022. Nor did the Board engage

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Proposed Annual Rate Card. The Rate Card Amendments 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 [76]	Proposed rate
Underwriting Fee	Per $1,000 Par Underwritten	$0.0275	$0.0297
Transaction Fee	Per $1,000 Par Transacted	0.0100	0.0107
Trade Count Fee	Per Trade	1.00	1.10
Municipal Advisor Professional Fee	Per Covered Professional	1,000	1,060

These revised rates would become effective on October 1, 2022 and are expected to apply to activities occurring through December 31, 2023. The Board 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, 2024.[77]

Purpose and Description of the Technical Amendments

Consistent with the Board's Fee Review, the MSRB identified instances across Rule A–11, Rule A–12, and Rule A–13 where amendments would improve the clarity of application of these MSRB rules. Specifically, the MSRB determined that Rule A–11, Rule A–12, and Rule A–13 could benefit from: (i) the creation of defined terms for existing concepts that would help streamline the rule text and improve readability; (ii) the clarification of existing terms and concepts through the consolidation of previously published regulatory guidance into the proposed rule change and the direct incorporation of cross-referenced definitions from other MSRB rules into the proposed rule change; and (iii) the deletion of obsolete rule language to streamline the rule text and avoid the potential for regulatory confusion as to why such obsolete language continues to be incorporated into MSRB rules. Accordingly, the proposed rule change would also amend Rule A–11, Rule A–12, and Rule A–13 with certain technical, non-substantive amendments.

Technical Amendments to Rule A–11

The proposed Technical Amendments would amend Rule A–11 to (i) create a separately defined term for the concept of a ''covered professional;'' (ii) reformat the applicable subsections of Rule A–11 with the appropriate subsection designations and update the applicable cross-references in the rule text; and (iii) directly incorporate the definition for ''Prime Rate'' into the text of the rule. Importantly, the proposed definition for the new term ''covered professional'' is intended to be non-substantive and to match the existing rule text and understanding of the descriptive phrase in Rule A–11 regarding a ''person associated with the municipal advisor who is qualified as a municipal advisor representative in accordance with Rule G–3 and for whom the municipal advisor has on file with the Commission a Form MA–I as of January 31 of each year.'' The proposed amendment would also incorporate the concept of an ''active'' Form MA–I to make expressly clear the existing application of Rule A–11 that, if a firm has filed an amendment to indicate that an individual is no longer an associated person of the municipal advisory firm or no longer engages in municipal advisory activities on its behalf, then that individual's Form MA–I would not be deemed as active for purposes of the Municipal Advisor Professional Fee and would not be counted in the January 31st calculation regarding the assessment of the Municipal Advisor Professional Fee. In this way, the proposed amendments are intended to define the same category of associated persons as the existing text of the rule and, all else being equal, would not capture any greater or fewer individuals in its scope. Consequently, the proposed defined term for a covered professional would not change the MSRB's current method for calculating and applying the amount of the Municipal Advisor Professional Fee under Rule A–11. The proposed amendment is merely intended to provide greater regulatory clarity for the application of Rule A–11. Therefore, the MSRB believes it is a technical, clarifying amendment to the rule text that would improve its readability and would not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations.

Consistent with separately defining the term ''covered professional,'' the proposed rule change would also reformat the applicable subsections of Rule A–11 with the appropriate subsection designations and update the applicable cross-references in the rule text. These related amendments are merely intended to provide internal consistency to Rule A–11 in light of the other amendments and, therefore, the MSRB believes they are technical, non-substantive amendments.

Lastly, the proposed Technical Amendments to Rule A–11 would strike the current reference to the MSRB Registration Manual from current subsection (b) and directly incorporate the definition for ''Prime Rate'' in Supplementary Material .02. The new definition provided in Supplementary Material .02 would match the existing definition provided in the MSRB Registration Manual, stating that ''. . . the Prime Rate is the annual rate of the commercial prime rate of interest as last published in The Wall Street Journal prior to the date such charge is computed.'' Given that this proposed definition is the same as the one currently provided in the MSRB Registration Manual, the MSRB believes this amendment is a technical, clarifying amendment to the rule text that would improve regulatory understanding of Rule A–11 and would not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations. Moreover, the MSRB believes that moving this language directly into Rule A–11 consolidates the operative regulatory text and, thereby, is likely to lead to less regulatory confusion for regulated entities, who would no longer

in the reconciliation of any Rate Card Fee Variances because, as noted, this is the first use of the Annual Rate Card approach, so no such Rate Card Fee Variances yet exist.

[76] The Rate Card Fees listed do not indicate the current temporary fee reductions for the Market Activity Fees that expire on September 30, 2022. *See* Rule A–13(h) and the 2021 Temporary Fee Reduction (citation and description at note 12 *supra*).

[77] The Rate Card Amendments are intended to revise the rates of assessment for the Market Activity Fees prior to the expiration of the 2021 Temporary Fee Reduction on October 1, 2022. As a result, the Board notes that its fifteen-month budgetary and rate assumptions are subject to a greater degree of uncertainty than would be expected in future years, which would only have twelve-month budgetary and rate assumptions. Consequently, there is an increased risk that the Board may need to exercise its flexibility to revise this rate card prior to its implementation on October 1, 2022 in accordance with the totality of the circumstances and as prudence necessitates. However, that is not the current expectation.

have to separately reference Rule A–11 and the MSRB Registration Manual.

Technical Amendments to Rule A–12

The proposed Technical Amendments would amend Rule A–12 to (i) eliminate its existing reference to Rule A–13 regarding the imposition of late fees under Rule A–13; (ii) delete the now obsolete language in Supplementary Material .01 regarding the temporary suspension of late fees from March 1, 2020 to July 1, 2020; and (iii) directly incorporate the definition for ''Prime Rate'' into the text of the rule. In terms of deleting the reference to the imposition of late fees owed pursuant to Rule A–13, the MSRB believes that regulatory clarity would be improved if this fee concept was deleted from Rule A–12 and incorporated directly into Rule A–13. The proposed amendment to Rule A–13 that would incorporate this concept in an amendment to that rule text and, thereby, retain this fee concept in the MSRB's fee structure is discussed in the following section. Notably, the deletion of this fee concept in Rule A–12 and its incorporation in Rule A–13 would not change the MSRB's current method for calculating and applying the amount of such late fees; and, therefore, the MSRB believes it is a technical, clarifying amendment to the rule text that improves its readability and does not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations.

In terms of deleting the language in Supplementary Material .01 of Rule A–12, the language is no longer operative at this time and, therefore, the MSRB believes that deleting it from the rule text would improve the clarity of the application of Rule A–12. Specifically, the deletion of the text of Supplementary Material .01 from Rule A–12 would help streamline the rule text and reduce the potential for regulatory confusion as to why it continues to be included in the text of the rule.

In addition, the proposed Technical Amendments to Rule A–12 would strike the reference to the MSRB Registration Manual from subsection (d) and directly incorporate the definition for ''Prime Rate'' in Supplementary Material .01. The new definition provided in Supplementary Material .01 would match the existing definition provided for in the MSRB Registration Manual, stating that ''. . . the Prime Rate is the annual rate of the commercial prime rate of interest as last published in The Wall Street Journal prior to the date such charge is computed.'' Given that this proposed definition is the same as the one currently provided in the MSRB Registration Manual, the MSRB believes this amendment is a technical, clarifying amendment to the rule text that would improve regulatory understanding of Rule A–12 and would not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations. Moreover, the MSRB believes that moving this language directly into Rule A–12 consolidates the operative regulatory text and, thereby, is likely to lead to less regulatory confusion for regulated entities, who would no longer have to separately reference Rule A–12 and the MSRB Registration Manual.

Technical Amendments to Rule A–13

The proposed Technical Amendments would amend Rule A–13 to: (i) reformat and clarify the definition of ''primary offering'' consistent with the historical understanding and current application of Rule A–13; (ii) further clarify that certain transactions in municipal securities must meet the definition of a ''variable rate demand obligation'' or ''VRDO'' under Rule G–34, on CUSIP numbers, new issue, and market information requirements, in order to be exempt from Transaction Fees pursuant to Rule A–13(d)(iii)(c)'s subsection identifying ''Transactions Not Subject to Transaction Fee;''[78] (iii) uniformly revise Rule A–13's references to the term ''technology fee'' to ''trade count fee;'' (iv) incorporate the existing concept regarding the imposition of late fees into the rule text (which concept currently exists in Rule A–12, but is being deleted from Rule A–12 as part of the proposed amendments, as discussed above); (v) delete the language that would become obsolete on September 30, 2022 regarding the temporary fee reduction of the Market Activity Fees for activities occurring between April 1, 2021 through September 30, 2022; (vi) delete the now obsolete language in Supplementary .01 regarding the waiving of certain assessments for transactions with the Municipal Liquidity Facility established by the Federal Reserve Board of Governors; and (vii) directly incorporate the definition for ''Prime Rate'' into the text of the rule.

The proposed Technical Amendments regarding the definition of primary offering for purposes of Rule A–13 would reformat the existing definition to the first subsection of the rule, as well as incorporate clarifying revisions expressly codifying the existing application of Rule A–13 to private placements.[79] Specifically, the proposed amendment would incorporate text expressly stating that, consistent with the definition for the same term found in Rule 15c2–12(f)(7) under the Act,[80] certain circumstances where a dealer acts as an agent for an issuer to arrange the placement of a new issue of municipal securities would be included in the definitional scope of a ''primary offering'' under Rule A–13. Accordingly, the MSRB believes that these amendments are technical, clarifying modifications to the rule text that (i) would improve the readability of Rule A–13 and facilitate greater regulatory clarity regarding the current application of the Underwriting Fee and (ii) would not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations.

In addition, the proposed Technical Amendments to Rule A–13 would clarify that only transactions in municipal securities that meet the definition of a ''variable rate demand obligation'' under Rule G–34 are exempt from Transaction Fees pursuant to Rule A–13's language regarding ''Transactions Not Subject to Transaction Fee.'' Specifically, the current definitional language in that subsection of Rule A–13 does not precisely match the corresponding definition in Rule G–34.[81] Yet, the MSRB's internal billing process currently relies on reports made

[78] This language is currently found in subsection (d)(iii)(c) of Rule A–13 and the proposed rule change would not amend its location.

[79] Since the inception of the Underwriting Fee, the application of Rule A–13 has encompassed those primary offerings where a municipal securities dealer acts agent for the issuer arranging the direct placement of new issue municipal securities with institutional customers or individuals. *See* ''Underwriting assessment: application to private placements'' (Feb. 22, 1982), available at *https://msrb.org/Rules-and-Interpretations/MSRB-Rules/Administrative/Rule-A-13?tab=2*. Given this amendment to Rule A–13, the February 22, 1982 guidance will be removed from the MSRB rule book as of the operative date of the Technical Amendments and will be archived by relocating it to a dedicated MSRB Archived Interpretive Guidance page at: *www.msrb.org/Rules-andInterpretations/Archived-Guidance-Rule-Book-Review.aspx*. The guidance will be clearly labeled with its date of archival and can be accessed for its historical value.

[80] 17 CFR 240.15c2–12(f)(7) (stating that the term ''primary offering'' means ''an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities'').

[81] *See* Rule G–34(e)(viii) (''The term 'variable rate demand obligation' shall mean securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, where an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically within a notification period, and a broker, dealer or municipal securities dealer acts as a remarketing agent responsible for reselling to new investors securities that have been tendered for purchase by a holder.'')

pursuant to Rule G–34's Short-term Obligation Rate Transparency System and, thereby, Rule G–34's variable rate demand obligation definition, to identify such transactions that should not be billed under Rule A–13. To avoid the possibility of any potential unintended consequences resulting from the differences between the definition currently stated in Rule A–13 versus the variable rate demand obligation definition in Rule G–34 that is currently utilized for purposes of the MSRB's internal billing logic, the proposed rule change would amend Rule A–13 to expressly cross-reference Rule G–34(e)(viii) and expressly restate the variable rate demand obligation definition directly in the text of Rule A–13. The MSRB believes that the proposed amendments to expressly incorporate Rule G–34's variable rate demand obligation definition into Rule A–13 will improve regulatory clarity for regulated entities regarding the MSRB's billing process and which transactions are exempt from certain fees. In this way, the proposed definition is intended to define the same category of activity and instruments as the existing text of the rule and, all else being equal, would not capture any greater or fewer transactions than the current application of the Rule A–13.

As previously mentioned above, the proposed Technical Amendments would uniformly revise Rule A–13's references to the term ''technology fee'' to the term ''trade count fee.'' The MSRB believes that this non-substantive change is warranted because the use of the phrase ''technology fee'' is outdated. The MSRB believes ''trade count'' fee is a better descriptor because the revenue generated from this fee is not strictly used for technology expenses but is aggregated with the other fee revenue the MSRB collects and utilized for the most appropriate organizational uses.[82] Accordingly, the MSRB believes that the term ''trade count fee'' is a more accurate descriptor and, thereby, less likely to lead to regulatory confusion about this fee.

Consistent with Technical Amendments to Rule A–11 and Rule A–12, the proposed Technical Amendments to Rule A–13 would also copy language into new Rule A–13(g) incorporating the existing concept currently articulated in current Rule A–12(d) regarding the imposition of late fees on the fees assessed pursuant to Rule A–13. As noted above, currently, the operative rule text for this late fee concept is provided for in Rule A–12(d), and the proposed rule change would delete this language from Rule A–12(d) specific to Rule A–13's fees. Importantly, the incorporation of this language directly into new Rule A–13(g) would not change the MSRB's current method for calculating and applying the amount of such late fees; and, therefore, the MSRB believes it is a technical, clarifying amendment to the rule text that improves the readability of both Rule A–12 and also Rule A–13 and would not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations. The MSRB believes that moving this language into Rule A–13 consolidates the operative regulatory text and, thereby, is likely to lead to less regulatory confusion for regulated entities, who would no longer have to separately reference Rule A–12 to identify that such late fees were applicable to the fees assessed pursuant to Rule A–13.

Relatedly, and similar to the proposed amendments to Rule A–11 and Rule A–12 on the same topic of late fees, the proposed Technical Amendments to Rule A–13 would also directly incorporate the definition for ''Prime Rate'' in new Supplementary Material .02. This definition provided in Supplementary Material .02 would match the current definition provided in the MSRB Registration Manual, stating that ''. . . the Prime Rate is the annual rate of the commercial prime rate of interest as last published in The Wall Street Journal prior to the date such charge is computed.'' Given that this proposed definition is the same as the one currently provided for in the MSRB Registration Manual, the MSRB believes this amendment is a technical, clarifying amendment to the rule text that would improve regulatory understanding of Rule A–13 and would not modify any existing regulatory burdens or obligations, nor create any new regulatory burdens or obligations.

In addition, the proposed Technical Amendments to Rule A–13 would delete the language that would become obsolete on September 30, 2022, regarding the temporary fee reduction of the Market Activity Fees for those activities occurring between April 1, 2021 through September 30, 2022. Given the MSRB's proposed effective date for this proposed rule change, the MSRB believes that this deletion would improve regulatory clarity for regulated entities because this language would no longer be operative as of October 1, 2022, and, therefore, its continued inclusion in the rule text may cause regulatory confusion. Similarly, the proposed Technical Amendments would delete the now obsolete language in Supplementary .01 of Rule A–13 regarding the waiving of certain assessments for transactions with the Municipal Liquidity Facility (the ''MLF'') established by the Federal Reserve Board of Governors. Given that the MLF and the language used to reference it here is no longer operative, the MSRB believes that this deletion would improve regulatory clarity for regulated entities.

Lastly, consistent with all the other proposed Technical Amendments to Rule A–13, the proposed rule change would also reformat the applicable subsections of Rule A–13 with the appropriate subsection designation and update the applicable cross-references in the rule text. These related amendments are merely intended to provide internal consistency to Rule A–13 in light of the other amendments and, therefore, the MSRB believes they are technical, non-substantive amendments.

2. Statutory Basis

Statutory Basis for the Rate Card Amendments

The MSRB believes that the proposed Rate Card Amendments are consistent with Section 15B(b)(2)(J) of the Act,[83] which states that the MSRB's rules shall provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.[84] Such rules must specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.[85]

The MSRB believes that the Rate Card Amendments provide for reasonable fees and charges to be paid by regulated entities. Moreover, the MSRB believes that the Rate Card Amendments are necessary and appropriate to fund the operation and administration of the Board and, thereby, satisfy the requirements of Section 15B(b)(2)(J)[86] through the achievement of a reasonable

[82] *See* Exchange Act Release No. 75751 (Aug. 24, 2015), 80 FR 52352 (Aug. 28, 2015) File No. SR–MSRB–2015–08, at 52355 (discussing the fact that the revenue from the technology fee will no longer be designated exclusively for capitalized hardware and software expense).

[83] 15 U.S.C. 78*o*–4(b)(2)(J).

[84] *Id.*

[85] *Id.*

[86] *Id.*

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.[87] Specifically, the Board believes that the Rate Card Amendments will achieve reasonable fees on regulated entities [88] that (i) are necessary and appropriate to sustain the operation and administration of the Board by defraying the MSRB's anticipated Fiscal Year 2023 operating and administrative expenses; [89] (ii) reasonably and appropriately allocate fees among firms by equitably distributing fees in accordance with each individual firm's overall market activities; [90] 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 collected as compared to budget into this and future rate-setting processes.[91] As a result, the MSRB believes that the proposed rule change satisfies the applicable requirements of Section 15B(b)(2)(J) of the Act,[92] and the Board has developed a reasonable and appropriate fee mechanism that will sufficiently fund future expenses and better manage reserves at appropriate levels.[93]

Statutory Basis for the Technical Amendments

The MSRB believes that the proposed Technical Amendments are consistent with Section 15B(b)(2)(C) of the Act,[94] which states that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[95]

The MSRB believes that the Technical Amendments would promote just and equitable principles of trade by ensuring that existing rule provisions are accurate and understandable by: (i) creating newly defined terms for existing concepts that will help streamline the rule text and improve its readability; (ii) clarifying the application of existing terms and concepts through the consolidation of previously published regulatory guidance into the proposed rule change and the direct incorporation of cross-referenced definitions from other MSRB rules into the proposed rule change; and (iii) deleting obsolete rule language to streamline the rule text and avoid the potential for regulatory confusion as to why such language continues to be incorporated into MSRB rules. While the Technical Amendments would affect rules applicable to MSRB regulated entities, the amendments are meant to clarify Rule A–11, Rule A–12, and Rule A–13, respectively, and would not (i) modify any existing regulatory burdens or obligations, (ii) create any new regulatory burdens or obligations, or (iii) affect the registration status of any persons under MSRB rules.

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

Section 15B(b)(2)(C) of the Exchange Act 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.[96] The MSRB has considered the economic impact of the proposed rule change, including a comparison to reasonable alternative regulatory approaches.[97]

The Annual Rate Card Process proposed by the Rate Card Amendments is intended to introduce a new fee structure that would (i) better mitigate the impact of market volatility on the MSRB's revenue structure (and, consequently, also better mitigate the impact of market volatility on the MSRB's organizational reserves), and (ii) maintain rates within a reasonably predictable range that, while subject to more incremental changes each year, would be comparably more stable over the long term than the MSRB's current fee structure.[98] Furthermore, the Annual Rate Card process applies equally to all those MSRB regulated entities who may pay dealer Market Activity Fees and/or the Municipal Advisor Professional Fees. Accordingly, the MSRB believes that the proposed Annual Rate Card Process would not have an impact on competition and, consequently, would not impose any burden on competition, relieve a burden on competition, nor promote competition. The MSRB therefore believes the Annual Rate Card Process would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The increase in the rates of assessment for the Rate Card Fees proposed by the Rate Card Amendments (*i.e.,* the Underwriting Fee, Transaction Fee, Trade Count Fee, and Municipal Advisor Professional Fee) are necessary and appropriate to cover the currently anticipated operating deficit for Fiscal Year 2023, which would have occurred even with the current fee structure, to ensure prudent funding for the operation and administration of the Board. Moreover, the Board's Rate Card Amendments apply equally to each MSRB regulated entity who may pay the Rate Card Fees and, thereby, equitably

[87] *See, e.g.,* Exhibit 3, ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model (Exclusive of Late Fees and Examination Fees).''

[88] In addition to the following citations within this sentence in support of the reasonability of the Rate Card Amendments, *see also* related discussion *supra* under ''Board Review of the Current Fee Structure—Maintaining a Fair and Equitable Balance of Fees,—Mitigating the Impact of Market Volatility, and—Funding the MSRB's Anticipated Near-Term Operating Expenses'' and ''Proposed Rate Card Amendments.'' *See also* related discussion *infra* under ''Self-Regulatory Organization's Statement on Burden on Competition.''

[89] *See* Exhibit 3, ''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses'' and ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses.''

[90] *See* related discussion *supra* under section entitled ''Board Review of the Current Fee Structure—Mitigating the Impact of Market Volatility.'' *See also* Exhibit 3, ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model (Exclusive of Late Fees and Examination Fees)'' (reflecting that the distribution of registrants by range of total fees assessed under the current fee structure are currently anticipated to be relatively stable if the proposed Rate Card Amendments are implemented).

[91] *See* related discussion *supra* under section entitled ''Board Review of the Current Fee Structure—Mitigating the Impact of Market Volatility.'' *See also* Exhibit 3, ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees'' and ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual.''

[92] 15 U.S.C. 78*o*–4(b)(2)(J).

[93] *See also* related discussion *supra* under ''Board Review of the Current Fee Structure—Maintaining a Fair and Equitable Balance of Fees,—Mitigating the Impact of Market Volatility, and—Funding the MSRB's Anticipated Near-Term Operating Expenses'' and ''Proposed Rate Card Amendments.'' *See also* related discussion *infra* under ''Self-Regulatory Organization's Statement on Burden on Competition.''

[94] 15 U.S.C. 78*o*–4(b)(2)(C).

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *See* related discussion *supra* under ''Board Review of the Current Fee Structure—Mitigating the Impact of Market Volatility'' and ''Proposed Annual Rate Card Approach—Limitations on Rate Changes to Promote Predictability and Stability'' (discussing various limitations on future increases of the Rate Card Fees). *See also* Exhibit 3, ''Chart 5—Historical Effective Fee Rate Changes.''

and non-discriminatorily distribute the fee burden across all MSRB regulated entities who participate in the municipal securities market. In this way, no firm would be unduly burdened as compared to another firm. In particular, smaller municipal advisory firms would continue to pay less Municipal Advisor Professional Fees than larger municipal advisory firms, and, therefore, the Rate Card Fees proposed by the Rate Card Amendments are not unduly burdensome, comparatively, between small municipal advisory firms and large municipal advisory firms. Because the Rate Card Fees proposed by the Rate Card Amendments would equitably and non-discriminately distribute the fee burden across all MSRB regulated entities, the MSRB believes that the Rate Card Fees proposed by the Rate Card Amendments would not have an impact on competition and, consequently, would not impose any burden on competition, relieve a burden on competition, nor promote competition. Accordingly, the MSRB believes the Rate Card Fees proposed by the Rate Card Amendments would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Board determined it was necessary and appropriate to conduct a comprehensive review of the MSRB's overall fee structure to devise a methodology that reasonably and appropriately defrays the costs and expenses associated with operating and administering the Board, with a goal of arriving at a longer-term solution for MSRB's revenue generation process that continues to ensure a sustainable financial position. The current fee structure has a semipermanent fixed rate of assessment for each of the above categories. Under the proposed Annual Rate Card Process, categories of fees assessed for regulated entities would remain the same. However, the Board proposes using an annual rate-setting method to recalculate fee rates every year for each category based on factors described herein.[99]

With the proposed Annual Rate Card Process, the Board is adopting a programmatic methodology for assessing the fees in each category. While the current categories of fees divided amongst regulated entities would not change (*i.e.,* the Underwriting Fee, Transaction Fee, Trade Count Fee, and Municipal Advisor Professional Fee) in the proposed Annual Rate Card Process, the proportional share of each category would vary less over the long term than under the current fee structure and would be consistent with the average shares paid by each category of fees in recent fiscal years.[100] The proposed Annual Rate Card Process allows the Board to review a change in budgeted expenses compared to the prior year and compare it to the projected market activities for each category of fees in the upcoming year. Any over/under assessment in the prior year within each class of fee payer would be factored into any change in the fee rate for the subsequent year. Fee rates would be established prior to or in the fourth quarter of each calendar year to be effective on the following January 1 and would last until December 31. However, for Fiscal Year 2023, the first year of adoption, the effective date would start from October 1, 2022 and end on December 31, 2023 for a fifteen-month period. Following the inaugural fifteen-month Annual Rate Card proposed by the Rate Card Amendments, in subsequent years, the fee rates for each category would be adjusted on a calendar year basis starting in January to compensate for any over/under assessment in the prior fiscal year, in addition to accommodating any change in other considerations (*e.g.,* change in annual expenses, change in projected market volume, prior year revenue variances as compared to budget, change in reserve target and certain limitations on fee increases).

For Fiscal Year 2023, the Board is also projecting a revenue/expense imbalance (*i.e.,* an operating deficit) without a change in the current fee structure.[101] In the past, excess organizational reserves buffered budget deficits (though the budgeted deficits were typically not realized due to excess revenue collected versus budget or expense savings, unless intended deficits due to rebates or temporary fee reductions); however, now that the excess reserves are being eliminated because of the Fiscal Year 2021 Temporary Fee Reduction, any deficit would require a fee increase in Fiscal Year 2023 to cover the gap and maintain a balance between revenues and expenses, regardless of the fee structure used. Therefore, the proposed rule change also includes a rate increase for the Underwriting Fee, Transaction Fee, Trade Count Fee, and Municipal Advisor Professional Fee for the Annual Rate Card proposed by the Rate Card Amendments. It should be noted that the Board last raised the rate for the Transaction Fee and technology fee in Fiscal Year 2011 when the technology fee was first imposed, and last raised the rate for the Underwriting Fee more than 20 years ago.[102]

Necessity of the Rate Card Amendments

The Board believes Rate Card Amendments are necessary and appropriate to:

(i) maintain a fair and equitable balance of reasonable fees and charges among regulated entities;[103]

(ii) better mitigate fee assessment volatility based on Market Activity Fees,[104] which has contributed to the growth of the MSRB's excess reserves;[105] and

(iii) ensure a prudent long-term approach to organizational funding that addresses projected structural operating deficits under the current fee structure in near-term fiscal years.[106]

[99] The SEC and FINRA use this approach for some fees. *See* SEC Section 31 rate fees: *https://www.sec.gov/divisions/marketreg/sec31feesbasicinfo.htm; see also* FINRA Trading Activity Fee (TAF) *https://www.finra.org/rules-guidance/guidance/trading-activity-fee.*

[100] *See* Exhibit 3, ''Chart 3—Historical Actual Revenue for the Rate Card Fees as a Percentage of the Total Rate Card Fee Revenue,'' ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual,'' ''Chart 5—Historical Effective Fee Rate Changes,'' and ''Chart 14—Distribution of Registrants by Range of Total Fees Assessed Under Current Fee Structure Compared to Projected Distribution Under the Rate Card Model (Exclusive of Late Fees and Examination Fees)'' (reflecting that the distribution of registrants by range of total fees assessed under the current fee structure are currently anticipated to be relatively stable if the proposed Rate Card Amendments are implemented). As to how the proportion was devised, in addition to the costs of regulatory activities, the cost of servicing each category of fees is also a consideration, as it costs the MSRB significantly more to collect and disseminate trading data for transparency purposes than municipal advisory firm professional data. It should be noted that all regulated entities benefit from this publicly available transparency information.

[101] *See* Exhibit 3, ''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses.''

[102] The Municipal advisory firm professional fee was raised three times since inception in Fiscal Year 2014 (Fiscal Year 2018, Fiscal Year 2020, and Fiscal Year 2021).

[103] *See* discussion *supra* under ''Statutory Basis for the Rate Card Amendments'' near notes 87 and 88.

[104] *See* related discussions *supra* under sections entitled ''Board Review of the Current Fee Structure—Mitigating the Impact of Market Volatility'' and ''Proposed Annual Rate Card Approach—Limitations on Rate Changes to Promote Predictability and Stability.'' *See also* Exhibit 3, ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual,'' and ''Chart 5—Historical Effective Fee Rate Changes.''

[105] *Id.*

[106] *See,* Exhibit 3, ''Chart 8—Historical Actual Expenses'' (showing a ten-year historical compound annual growth rate of 4.2%),''Chart 10—Historical and Projected Revenue without Rate Card Model Compared to Historical and Pro Forma Expenses,'' ''Chart 11—Historical and Projected Revenue with Rate Card Model Compared to Historical and Pro Forma Expenses,'' ''Chart 12—Total Reserves vs. Target: Historical and Projected without Rate Card Model,'' and ''Chart 13—Total Reserves vs. Target: Historical and Projected with Rate Card Model.''

Because market events, when combined with the current fee structure, partially contributed to the excess reserves in recent years, the Board believes it is reasonable and appropriate to adopt a new approach to reduce the variability over time in fee assessments and mitigate the impact of market volatility over time by adjusting for budget surpluses or shortfalls annually, therefore providing a better mechanism for effectively managing fee rates and reserve levels.[107] In the recent past, higher-than-expected new issue and secondary market volumes caused fees assessed from dealers to exceed budgets and, combined with lower-than-expected expenses, led to increases in reserves that necessitated rebates or temporary fee reductions to manage reserve levels. To reduce excess reserves, the Board instituted ad hoc rebates in Fiscal Year 2014 and Fiscal Year 2016 and temporary fee reductions via filings with the Commission for Fiscal Year 2019 and for Fiscal Year 2021 and Fiscal Year 2022 to reduce the excess reserves.[108] As a result, there has been volatility in fee collections (since these are market-based fees) and MSRB's reserve levels in recent years.[109] The same dynamics could also exist if actual new issue and secondary market activities fail to meet projected volumes, resulting in a revenue shortfall, which would prompt new filings to increase rate assessments to close the gap.

Without devising a new fee approach, it is likely the MSRB would again be forced to deal with large reserve excesses or shortfalls on an ad hoc basis in the future, which would not be a sustainable path going forward.[110] Specifically, the proposed Annual Rate Card Process would (i) better mitigate the impact of market volatility on the MSRB's revenue structure (and, consequently, also better mitigate the impact of market volatility on the MSRB's organizational reserves), and (ii) maintain rates within a reasonably predictable range that, while subject to more incremental changes each year, would be comparably more stable over the long term than the MSRB's current fee structure.[111] In this way, the Annual Rate Process is intended to establish a fee framework that is more transparent and predictable for the MSRB's stakeholders that would mitigate market volatility over time, while also retaining the Board's ability to flexibly react to changing circumstances year-to-year when establishing reasonable fees on regulated entities.[112]

Baseline and Reasonable Alternative Approaches

The current fee assessment structure is used as a baseline to evaluate the benefits, the costs, and the burden on competition of the proposed Annual Rate Card Process. Furthermore, the proposed rate increase for Market Activity Fees and Municipal Advisor Professional Fee for the Fiscal Year 2023 Annual Rate Card would have occurred regardless of which fee structure is adopted since excess reserves are being eliminated through the 2021 Temporary Fee Reduction and the need to cure the Fiscal Year 2023 structural budget deficit; therefore, the Board's assessment in this section focuses on the comparison of the two fee structures setting aside the increases to the rates of assessment for the Rate Card Fees proposed by the Rate Card Amendments for Fiscal Year 2023 extending to December 2023.

In addition to the proposed new fee rate setting approach, the MSRB also considered a few other fee assessment options but ultimately decided that the proposed Rate Card Fee structure is the best approach to ensure a stable revenue stream for the MSRB while reducing the volatility from Market Activity Fees assessed and the need for ad hoc fee filings with the Commission, without instituting a fundamental change in how the MSRB assesses fees that may disrupt regulated entities' financial expectations and operations.

For example, one alternative the MSRB reviewed was to include other sources of revenue in the Annual Rate Card Process. The MSRB evaluated whether to include in the variable rate card pool approach the municipal funds underwriting fees, annual fees, and initial fees. However, the MSRB ultimately decided not to include those fees for a variety of reasons, including the fact that each of those fees constitutes a much smaller proportion than the four categories in the proposed Annual Rate Card Process.[113]

Additionally, the Board also considered a different way to apportion fees within each class of fee payer but decided that the proposed Annual Rate Card Process is the best way to achieve proportionate revenue based on the MSRB's available information, *i.e.,* underwriters pay based on their volume underwritten, trading firms pay based on their trading activities (in par value and trade count), and municipal advisory firms pay based on the headcount of a firm.

A fee assessment method based on a percentage of each municipal advisory firm's revenue, for example, would not be feasible at this time as the MSRB does not currently require municipal advisory firms to report such information under existing rules; and, more importantly, many municipal advisory firms would likely have business activities not solely related to municipal advisory services. In addition, it would increase the burden on municipal advisory firms as municipal advisory firms would have the responsibility to collect the relevant information to be used for MSRB's fee assessment and also would then be required to report it. The MSRB believes at this time that the costs and burdens associated with collecting and reporting such information are not justified, and the Municipal Advisor Annual Professional Fee for each person associated with the firm who is qualified is a reasonable proxy for the size of relevant business activities conducted by each municipal advisory firm.

Benefits, Costs, and Burden on Competition

The proposed amendments to MSRB rules would result in a new fee

[107] *See* related discussion *supra* under section entitled ''Board Review of the Current Fee Structure—Mitigating the Impact of Market Volatility.'' *See* also Exhibit 3, ''Chart 1—Historical Revenue Variances: Budget vs. Actual,'' ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' and ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual.''

[108] The 2021 Temporary Fee Reduction is the MSRB's largest temporary fee reduction, which was initiated during Fiscal Year 2021 and is expected to last until September 30, 2022. Link to the 2021 Temporary Fee Reduction and related citations *supra* at note 12. The MSRB also filed for a separate temporary fee reduction during Fiscal Year 2019. *See* Exchange Act Release No. 85400 (Mar. 22, 2019), 84 FR 11841 (Mar., 28 2019) File No. SR–MSRB–2019–06.

[109] *See* Stakeholder Comments to the MSRB's Strategic Priorities (link at note 34 *supra*). Specifically, one commenter asked the MSRB to better address the volatility in revenues and the corresponding excess in MSRB organizational reserves. *See, e.g.,* BDA Comment Letter, at p. 3–4 (link and citation at note 51).

[110] *See* related discussion *supra* under section entitled ''Board Review of the Current Fee Structure—Mitigating the Impact of Market Volatility.'' *See* also Exhibit 3, ''Chart 1—Historical Revenue Variances: Budget vs. Actual,'' ''Chart 2—Historical Budget vs. Actual Revenue for the Rate Card Fees,'' and ''Chart 4—Rate Card Fees: Historical Activity Volume Variance Budget to Actual.''

[111] *See* related discussion *supra* under ''Proposed Annual Rate Card Approach—Limitations on Rate Changes to Promote Predictability and Stability'' (discussing various limitations on future increases of the Rate Card Fees). *See also* Exhibit 3, ''Chart 5—Historical Effective Fee Rate Changes.''

[112] *See* related discussion *supra* under ''Proposed Annual Rate Card Approach.''

[113] *See* notes 14, 15, 18, and 22 *supra* and related discussion for explanations of why the Board to determined not to include certain fees in the Rate Card Fees and the Annual Rate Card Process.

approach intended to align revenues and expenses more closely and to reduce the year-to-year volatility in the amount of fees assessed (and, as a result, reduce the likelihood of accumulating excess reserves) by targeting each fee category to a pre-determined proportion of the total revenue based on respective projected volumes.[114] The proposed Annual Rate Card Process would result in more frequent (annual), but smaller downward and upward, adjustments to keep revenues more closely aligned with budgeted expenses.

The proposed Annual Rate Card Process addresses the following goals and issues the Board identified before initiating the Fee Review and would therefore achieve the intended benefits:

- Continue to maintain a fair and equitable balance of fees among all regulated entities, as the MSRB's new fee approach proposal does not change the division of fees amongst regulated entities;
- Design a durable fee structure for MSRB's long-term needs;
- Ensure that excess reserves would not likely be built up at a high level again by reviewing the actual reserves compared to the targeted reserves annually and incorporating any needed adjustments directly into the Annual Rate Card Process;
- Mitigate the need for an ad hoc ''rebate'' process, as any excess revenue would be used to reduce future years' fees; and
- Lower year-to-year variability in fee assessments, which would smooth out regulated entities' budget outlays.

For the Annual Rate Card proposed by the Rate Card Amendments, the proposed rate increases for Market Activity Fees,[115] which would be applicable to all dealers who conduct municipal market business, and for Municipal Advisor Professional Fee, which would be applicable to all municipal advisory firms, are intended to pay for the expenses of operating and administering the Board, including execution of the MSRB's Strategic Plan for ongoing technology and data investments, and would occur regardless of which fee structure the MSRB would adopt. Aside from the proposed rate increases for this Annual Rate Card, the Board does not believe the proposed Annual Rate Card Process would create any additional costs for regulated entities when compared to the current fee structure, as the aggregate fees assessed using the proposed Annual Rate Card Process over the course of multiple years would be equivalent to the aggregate fees assessed using the current fee structure, except with less year-to-year fluctuation since over or under revenue assessments related to market volatility would be operationalized through the Rate Card Process.

The proposed Annual Rate Card Process would introduce a new fee structure to reduce year-to-year fluctuation in the amount of market-based fees paid by each regulated entity over time. The MSRB believes that the proposed Annual Rate Card Process would not have an impact on competition and, consequently, would not impose any burden on competition, relieve a burden on competition, nor promote competition. The MSRB believes the proposed rate increase for the Fiscal Year 2023 Annual Rate Card (extending to December 2023) is necessary and appropriate to ensure prudent funding for the Board and that such fee increases 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. As a result, the Board does not believe that the proposed rate increase would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it would be applicable to all regulated entities. The Board also believes that no firm would be unduly burdened as compared to another firm in terms of the proposed rate increase. Dealers with different levels of underwriting and trading activities as well as municipal advisory firms with a range of headcounts would all be impacted proportionately by the proposed Annual Rate Card Process, including the proposed increases for the rates of assessment for the Fiscal Year 2023 Annual Rate Card.

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

The Board did not solicit comment on the proposed rule change. Therefore, there are no comments on the proposed rule change received from members, participants, or others.

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

The foregoing rule change related to the Rate Card Amendments has become effective pursuant to Section 19(b)(3)(A) of the Act [116] and paragraph (f) of Rule 19b–4 [117] thereunder. Because the foregoing proposed rule change related to the Technical Amendments does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [118] and Rule 19b–4(f)(6) [119] thereunder.

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–2022–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MSRB–2022–03. 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/*

[114] *See, e.g.,* related discussion *supra* under ''Proposed Annual Rate Card Approach—Objectives of the Annual Rate Card'' and ''Proposed Annual Rate Card Approach—Process for Setting the Annual Rate Card.''

[115] These increases would be the first rate increases to any of the three Market Activity Fees since Fiscal Year 2011. As mentioned above, the Transaction Fee was last raised in Fiscal Year 2011 and the Trade Count Fee was initiated in Fiscal Year 2011 as the technology fee. The Underwriting Fee was not changed in Fiscal Year 2011 but was last changed in Fiscal Year 2016, when it was reduced. In addition, the annual and initial fees paid by both dealers and municipal advisory firms were last raised in Fiscal Year 2016.

[116] 15 U.S.C. 78s(b)(3)(A).

[117] 17 CFR 240.19b–4(f).

[118] 15 U.S.C. 78s(b)(3)(A).

[119] 17 CFR 240.19b–4(f)(6).

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 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2022–03 and should be submitted on or before July 6, 2022.

For the Commission, pursuant to delegated authority.[120]

J. Matthew DeLesDernier,

Assistant Secretary.

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[120] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95081; File No. SR–BOX–2022–20]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility

June 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2022, BOX Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2022. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

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 Exchange 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 Exchange 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

The Exchange recently adopted new data products known as the Liquidity Taker Event Report—Simple Orders (the ''Simple Order Report'') and the Liquidity Taker Event Report—Complex Orders (the ''Complex Order Report''), (collectively, the ''Reports'') which will be available for purchase by Exchange Participants[3] on a voluntary basis. The Exchange now proposes to adopt fees for the Reports.[4]

By way of background, the Reports are daily reports that provide a Participant (''Recipient Participant'') with its liquidity response time details for executions of an order resting on the BOX Book or Complex Order Book,[5] where that Recipient Participant attempted to execute against such resting order[6] within a certain timeframe. The purpose of the Reports is to provide Participants the necessary data in a standardized format on a T+1 basis to those that subscribe to the Simple Order Report and/or the Complex Order Report on an equal basis. These products are offered to Participants on a completely voluntary basis in that the Exchange is not required by any rule of regulation to make this data available and potential subscribers may purchase the Simple Order Report and/or the Complex Order Report only if they voluntarily choose to do so. It is a business decision of each Participant whether to subscribe to the Simple Order Report and/or the Complex Order Report or not.

First, the Exchange proposes to rename current Section III.C of the BOX Fee Schedule from ''Open-Close Data Report'' to ''Reports.'' Further, the Exchange proposes to move current Section III.C (Open-Close Data Report) to new Section III.C.1.[7] The Exchange believes that moving current Section III.C. to new Section III.C.1 and renaming Section III.C ''Reports'' will improve the overall readability of the BOX Fee Schedule and help prevent investor confusion because the fees for all market data reports will reside in one place in the BOX Fee Schedule.

Next, the Exchange proposes to adopt new Section III.C.2 (Liquidity Taker Event Reports) in the BOX Fee Schedule. Section III.C.2 will provide that Participants may purchase the Simple Order Report and/or the Complex Order Report on a monthly or annual (12 month) basis. The Exchange proposes to assess a fee of $4,000 per month and a fee of $24,000 per year for a 12 month subscription for the Simple Order Report. The Exchange also proposes to assess a fee of $4,000 per

[3] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. *See* BOX Rule 100(a)(41).

[4] The Exchange recently established these Reports as described under BOX Rule 7350(b) and (c). *See* Securities Exchange Act Release 34–94563 (March 31, 2022), 87 FR 19985 (April 6, 2022) (Notice of Filing of Immediate Effectiveness of SR–BOX–2022–10). *See* Securities Exchange Act Release 34–94920 (May 16, 2022), 87 FR 31013 (May 20, 2022) (Notice of Filing of Immediate Effectiveness of SR–BOX–2022–18).

[5] The term ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10). The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* BOX Rule 7240(a)(8).

[6] Only displayed orders will be included in the Simple Order Report. The Exchange notes that it does not currently offer any non-displayed order types on its options trading platform.

[7] The Exchange notes that no changes are being made to the Open-Close Data Report fees. The Exchange is simply rearranging the Fee Schedule to account for more market data products being offered by BOX.