STERN
BROTHERS

February 26, 2024

To: Municipal Securities Rulemaking Board

RE: MSRB Notice 2023-11 Request for Information on Impacts of MSRB Rules on Small Firms

Stern Brothers & Co appreciates the opportunity to respond to Notice 2023-11 (the "MSRB Notice") issued by the Municipal Securities Rulemaking Board ("MSRB").

Stern Brothers is a woman owned investment bank. Among the MWBE firms participating in the municipal market, Stern consistently ranks in the top 7 MWBE municipal underwriters. We are well capitalized and have continued to reinvest in the firm.

Q: What factors make a regulated entity a small, mid-sized or large regulated entity: revenue; level of business activity; number of associated persons; type of regulated entity; or other factors?

Stern Brothers believes a firm's revenue and capital should be the main factors in determining whether a firm is classified as a small, mid-sized or a large, regulated entity. Capital is the key factor in determining how much leverage a firm may have in what municipal issues they would be financially qualified to be a lead or co-senior manager.

Available capital also determines the resources that firm can use to promote and add staff, add new technology systems, or outsource services that may be needed to support existing or new business lines and address regulatory changes.

We have found that many municipal issuers define small firms in an RFP and RFI in line with the revenue limits definitions of the Small Business Administration (SBA).

We recommend that the MSRB should define small, mid-sized or large regulated entities in terms that are commonly used by municipal issuers and rightsized for the municipal market

Q: What, if any, MSRB rules or other MSRB activity, and what market practices impacted by MSRB rules or activities, have an unintended negative impact on or unfairly burden smaller regulated entities?

Some MSRB Rules and other MSRB activities force small firms, in particular, to outsource the work that is required as opposed to training in-house personnel or hiring additional personnel.

Sometimes third-party vendors have a minimum level of service that has to be met for any contract or service offering. This can result in a significant negative fiscal impact when entering a new business or adjusting to a rule change or initiation.

Q: Are there circumstances where the application of an MSRB rule has led to an unintended disproportionate impact on the growth of smaller regulated entities?

Two circumstances come to mind where the application of MSRB rules combined with other regulatory requirements led to reduced growth in certain business lines and led to the exiting of certain business lines.

Stern Brothers withdrew as a Municipal Advisor in 2020 after determining that the combined regulatory requirements and associated costs could not be sustained.

Regulation Best Interest is a second example where the requirements of Reg BI combined with the MSRB's regulations protecting retail investors became too onerous to maintain. This became a factor in our firm's decision to exit the retail business. This was a painful decision resulting in the layoff of a highly talented and valuable employee.

We would like to note that when regulations become too onerous it becomes very difficult to remain in business and serves as a barrier to new entrants in the marketplace, including MWBE entrants.

The implementation of 1 minute reporting will cause Stern to withdraw from the Market Access Diversity Dealer Platform. The cost to implement the Market Access direct order entry system on a monthly basis is prohibitive for Stern. However, Market Access allows us to participate using manual entry for orders. Given the order process for these types of trades, it is impossible to meet the 1-minute reporting requirement. As a result, we will be forced to resign from a program specifically designed to help MWBE dealers.

Q: Are there circumstances where the application of an MSRB rule has led to an unintended disproportionate impact on the ability of smaller regulated entities to obtain or retain talent?

As noted above the decision to exit a business line due to regulatory burdens can and does result in layoffs and the ability to retain talent.

Our decision to exit the retail business resulted in a layoff and exiting the Municipal Advisor space also resulted in layoffs.

Q: Are there circumstances where the application of an MSRB rule has required smaller regulated entities to spend resources or retain the services of third-party vendors at costs that have a disproportionate impact on smaller regulated entities?

The move to one minute trade reporting and T+1 settlement requires many small firms to spend resources and retain the services of third-party vendors at costs that have a disproportionate impact on smaller entities.

In order to be able to meet T+1, our firm was required to engage and use DTCC's Central Trade Matching (CTM) for allocations. This was an additional service that comes at a significant additional cost and also comes at a great cost of personnel time and effort to implement. Even with upgrading to CTM, small firms continue to need large institutional customers to provide timely allocations, over which the firms themselves have no control.

Another service we found is needed in order to be able to satisfy 1- minute reporting is the use of Bloomberg's Trade Order Management Solutions (TOMs), which has a significant cost; not all small firms can manage this increased cost. We were fortunate in having the ability to invest in TOMs. We believe if we had not done this, we would not be in a position to meet the 1-minute reporting requirement and would have needed to exit trading in the secondary markets. Trading in the secondary markets is a key driver to earning business in multiple areas of the municipal space. For example, municipal issuers will rarely, if ever, select a senior manager for an issuance if that firm does not or has not traded in the issuer's bonds.

Q: Are there changes the MSRB can make to any of its own processes that could address specific challenges faced by smaller regulated entities?

We applaud the MSRB's past roundtables discussions with representatives from minority and woman-owned business enterprises (MWBE) and veteran-owned small business (VOSB) firms. We encourage the MSRB to continue these roundtables. We would also urge the MSRB to continue and increase more direct engagement with small firms. This enables the MSRB to hear directly from small firms regarding the issues facing them as a result of certain proposed regulatory changes.

Q: **Are there compliance resources or guidance the MSRB could produce that would be useful if tailored for different-sized regulated entities?**

We recognize the importance and appreciate the value of guidance and FAQ's that have been issued by the MSRB. When possible, the MSRB should issue guidance earlier in the process. In many cases we have found that in order to meet expected deadlines we have had to engage outsourced services prior to understanding the full expectations of the regulators which become clarified in guidance that is issued at or shortly after the effectiveness of a new or amended rule.