MSRB
Municipal Securities Rulemaking Board

September 23, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Response to Comments on File No. SR-MSRB-2010-08

Dear Ms. Murphy:

On August 27, 2010, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change to Rule A-3, on membership on the Board, in order to facilitate the change in composition of the Board to comply with the provisions of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Commission published notice of the above-referenced rule filing[1] and, in response, received letters from American Governmental Financial Services ("AGFS"), Bond Dealers of America ("BDA"), Fieldman Rolapp & Associates ("Fieldman Rolapp"), Government Finance Officers Association ("GFOA"), National Association of Independent Public Finance Advisors ("NAIPFA"), Mr. Kevin Olson, Securities Industry and Financial Markets Association ("SIFMA"), Swap Financial Group LLC ("Swap Financial") and WM Financial Strategies ("WM Financial").

The Commission has requested that the MSRB provide its responses to these letters. The comments included in these letters are described below, together with the MSRB's responses.

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[1] Exchange Act Release No. 34-62827 (September 1, 2010); 75 FR 54673 (September 8, 2010).

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The MSRB appreciates input from these municipal market participants and has given their comments careful consideration.

Comments on Board Composition

While generally supportive of the MSRB's regulation of municipal advisors, Swap Financial expresses concern about "inadequate representation" of municipal advisors on the MSRB and "would take much greater comfort if there were 4 advisors out of the 10 regulated members." Swap Financial argues:

> [I]t is during the transition period when the voices of advisors are most needed, as the largest new task facing the Board will be the inaugural formulation of a vast new array of rules affecting advisors. If anything, this is the time to bend over backward to make sure that there is a good, diversified group of advisors on the Board.

Although Swap Financial recommends the Board have four, rather than three municipal advisor representatives during this period of transition, it does support, after the transitional period, a Board in which municipal advisors who are not dually registered as dealers and municipal advisors make up 30% of the regulated representatives on the Board. Swap Financial and AGFS also state that the Board should ensure diversity of representation of municipal advisors, taking into account their size, client-base and specific role as municipal advisor in the marketplace.

WM Financial, AGFS and NAIPFA also view three municipal advisor representatives as inadequate. While AGFS and NAIPFA do not suggest a particular number of municipal advisor representatives that, in their view, would constitute fair representation, WM Financial does suggest that five would be fair, provided that four are "independent." NAIPFA also states that "[m]unicipal advisors affiliated with broker-dealers or bank dealers must not be appointed to the Board as municipal advisor representatives." Fieldman Rolapp agrees with NAIPFA's position.

SIFMA supports the proposed amendments to Rule A-3 and says that a Board consisting of 21 members with at least 30% of the regulated entity positions being municipal advisors is reasonable during this transitional period, recognizing "the need for a significant number of municipal advisor representatives during the period when the MSRB is focused on significant, new rulemaking for advisors." Fieldman Rolapp also endorses the concept that the representatives on the Board of regulated entities would consist of seven broker-dealer and bank dealer members and three municipal advisor members "if, in the actual nomination and selection of municipal advisor members, those seats are filled by professionals representing regulated entities independent of broker-dealer and bank dealer affiliations."

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BDA, on the other hand, contends that providing non-dealer municipal advisors with at least 30% of the regulated entity membership positions goes beyond the requirements of the Dodd-Frank Act and provides municipal advisors with disproportionate representation on the Board, arguing that the MSRB has a broad mission requiring it to focus on the functioning of the municipal market as a whole. SIFMA suggests that the Board consider reducing its size to 15 members after the initial transition period and that municipal advisor representation not be permanently kept at a 30% minimum, which does not have a similar counterpart in MSRB rules for broker-dealers or bank dealers. Further, SIFMA and BDA point out that many dealers provide municipal advisory services and representatives of these firms should be considered for the municipal advisory positions on the Board equally with non-dealer municipal advisors.

Mr. Olson notes that he has long held the view that the Board should be comprised of five investors, five issuers, and five vendors. He suggests that, now that the Board is to be composed of a majority of public members, issuers should not be treated as public members, and that a better formulation would be eight public representatives (including investors) and seven vendor/issuer representatives.

GFOA comments that issuers should have greater representation on the Board than the minimum of at least one issuer established by the Dodd-Frank Act, providing as an example a breakdown of public members consisting of 4 issuer members, 4 investor members and 3 general public members. GFOA further suggests that this ratio be maintained if the size of the Board is later reduced and that "the issuer positions be filled by qualified representatives of various-sized state and local governments to ensure balanced representation of the issuer community." GFOA also states that "the fairest way to ensure representation of independent financial advisors would be to only allow those financial advisors who are truly independent and unaffiliated with banks and broker/dealer firms to serve on the Board in that capacity."

MSRB Response Regarding Board Composition

The MSRB has carefully considered the interests of municipal advisors and dealers as regulated entities, the MSRB's obligation to write rules that protect investors and municipal entities, and the statutory mandate that there be fair representation on the Board of broker-dealers, bank dealers, municipal advisors, and the public. While the statute requires that there be at least one municipal advisor representative on the Board, it is the view of the Board that, during this period of transition, no less than 30% of the members representing regulated entities should be municipal advisors and therefore the MSRB does not agree with the contention that this level of representation of municipal advisors is disproportionately large. Rather, while there may be additional representation of the interests of municipal advisors through dealer members who conduct municipal advisory business and will be subject to the same rules as non-dealer

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municipal advisors, the MSRB believes that allotting at least 30% of the regulated entity positions to municipal advisors – which are expected to be advisors that are not affiliated with broker-dealers or banks during this transition period – will ensure fair representation of such entities, will assist the Board in its rulemaking process with respect to municipal advisors, and will inform its decisions regarding other municipal advisory activities while not detracting from the Board's ability to continue its existing rulemaking duties with respect to broker-dealer and bank activity in the municipal securities market.

At the same time, the Board is confident that establishing the minimum representation of municipal advisors at 30% is not too low of a threshold to ensure the implementation of a fair and effective regulatory regime for municipal advisors. In reaching this conclusion, the MSRB considered its existing rulemaking process and its plans for putting in place additional structures to maximize municipal advisor participation in that process. The MSRB believes that, through having at least 30% municipal advisor representation on the Board, the establishment of a new advisory council to help address municipal advisor issues, the MSRB's formal rulemaking process that includes significant opportunity for formal public comment, and SEC oversight over final rulemaking decisions by the Board, abundant assurances will exist with regard to the fair undertaking of rulemaking and other MSRB activities relating to municipal advisors. The MSRB is aware that municipal advisors are not homogeneous and is committed to seeking out diversity in its membership across all categories of members based on various criteria, including criteria such as those outlined by AGFS and Swap Financial in their comment letters.

The MSRB has further reviewed the representation provisions for specific classes of regulated entities and related composition requirements of other self-regulatory organizations ("SROs"). Having done so, it is comfortable that the proposed size and composition of the MSRB represents best practices in SRO governance and will be effective in meeting the full range of obligations that the MSRB will be undertaking beginning on October 1, 2010. For example, the Financial Industry Regulatory Authority ("FINRA") has a 21 member Board of Governors, in addition to its CEO. Small and large broker-dealers have the largest number of representatives on the FINRA Board of Governors with three representatives in each category, being approximately 30% of the regulated representatives. Municipal advisors will have no less representation on the MSRB Board. Given FINRA's ability to operate effectively with a Board of comparable size, the MSRB believes that it will be able to fulfill its statutory mandate with 21 members, including 11 public members, seven dealer members, and three municipal advisor members.

With regard to the level of representation of municipal entities on the Board, the MSRB is comfortable that the expanded number of public representatives will provide ample opportunity for municipal entity representation on the Board at levels above those that have historically occurred under the prior Board composition formulation that limited public

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representation to only five members. Just as with municipal advisors, the MSRB is aware that municipal entities are not homogeneous and is committed to seeking out diversity in its membership across all categories of members based on various criteria, including criteria such as those outlined by GFOA. Further, the MSRB expects to establish a new municipal entity advisory council to provide further input to the Board in connection with municipal entity protection issues.

Mr. Olson's Board composition formulation is not possible under the Dodd-Frank Act, which mandates that, for the public members, at least one be representative of institutional or retail investors in municipal securities, at least one be representative of municipal entities, and at least one be a member of the public with knowledge of or experience in the municipal industry. Moreover, all of the members, including the public representatives, must be knowledgeable of matters relating to the municipal securities markets. In short, the suggestion that the Board have eight non-industry public representatives and seven vendor/issuer representatives would not comply with the statutorily mandated composition of the Board and would not provide fair representation of broker-dealers, bank dealers, municipal advisors, and the public.

Finally, the MSRB is taking under advisement the various comments regarding how the Board should be composed after the initial transition period. The proposed rule change would establish the Board composition only for the two year transitional period beginning on October 1, 2010, and the MSRB will be obliged to undertake further rulemaking by the end of that two year period to establish its long-term composition. At that time, with nearly two years of experience under its newly expanded Congressional mandate, the MSRB will be better positioned to make such long-term decisions regarding representation, size and related matters.

Definition of Independence

Regarding the definition of independence in proposed Rule A-3(h), WM Financial believes that the proposed two year cooling off period is insufficient and that individuals associated with regulated entities can never be independent because they "are likely to view their decisions through the lens of their former employers and what would be in their former employers' best interest." WM Financial also identifies other collateral relationships that could continue to "taint" former employees even after the termination of a formal relationship. AGFS has similar concerns and proposes a five year cooling off period.

MSRB Response Regarding Independence

The MSRB believes that the two year proposed cooling off period is appropriate as a standard for independence. Notably, other self-regulatory organizations with independence standards have only a one year cooling off period for public members who may have previously

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had a formal relationship with a regulated entity or other interested party. The standard proposed by the MSRB is twice as stringent. The MSRB believes that the two year period strikes the right conservative balance of ensuring sufficient independence while not permanently restricting individuals who are knowledgeable about the market – a requirement for all members of the Board under the Dodd-Frank Act – from ever serving on the Board. Furthermore, the definition of independent is not limited merely to a two year cooling off period, but also more broadly means that an individual has "no material business relationship" with any broker-dealer, bank dealer or municipal advisor, including no relationship with a broker-dealer, bank dealer or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. Finally the Board or its Nominating Committee could, either as a general matter or on a case-by-case basis, determine whether other circumstances involving the individual would constitute a material business relationship that would cause such person to be viewed as not being independent. Accordingly, the MSRB believes that no change in the independence standard included in the proposed rule change is warranted.

Other Comments

GFOA, NAIPFA and Fieldman Rolapp raise concerns regarding the Board's election of its officers for the next fiscal year beginning on October 1, 2010. GFOA suggests that the Board consider restarting the leadership selection process. Fieldman Rolapp also suggests "reversing the July election and allowing the reconstituted public majority Board to determine its leadership." The MSRB notes that officer elections are governed under MSRB Rule A-5(b), which was not part of the proposed rule change. Under that existing provision, Board officer elections are required to occur at a meeting of the Board held prior to October 1 of each year, and the Board followed this long-standing process again this year to select its leadership and to announce such selection prior to the start of the following fiscal year. Among other things, this process allows for Board leadership to be in place at the start of the new year to ensure an appropriate transition to each year's newly composed Board. Although this comment is beyond the scope of the proposed rule change, the MSRB will take such comment under advisement as its new Board is seated on October 1, 2010 and takes on its rulemaking and other responsibilities.

Finally, AGFS, NAIPFA and Fieldman Rolapp provide comments about the transparency of the Board's governance process and certain activities related to the passage and implementation of the Dodd-Frank Act provisions relating to the regulation of municipal advisors. The provisions of the proposed rule change do not relate to these matters. The Board does believe that the existing rulemaking process provides considerable opportunities for full public involvement and comment on regulatory initiatives, and the Board is careful to consider all feedback regarding potential improvements to its governance processes. Although these comments are beyond the scope of the proposed rule change, the MSRB appreciates these

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comments as transparency is an important priority of the Board. The MSRB will take the comments under advisement as its new Board is seated on October 1, 2010 and takes on its rulemaking and other responsibilities.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Lawrence P. Sandor

Lawrence P. Sandor
Senior Associate General Counsel

cc: Martha Mahan Haines, Chief,
Office of Municipal Securities, SEC

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