



**National Association of Independent
Public Finance Advisors**

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VIA ELECTRONIC MAIL

rule-comments@sec.gov

September 22, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number SR-MSRB-2010-08

Dear Ms. Murphy:

The National Association of Independent Public Finance Advisors (“NAIPFA”) welcomes the opportunity to respond to Municipal Securities Rulemaking Board (“MSRB”) proposed rule change filed with the Securities and Exchange Commission (“SEC”) consisting of amendments to Rule A-3. Catalyst for the amendments are provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) mandating a revised composition of the Board of the MSRB. Proposed A-3 amendments focus on increasing the number of Board members, insuring that public members exceed the number of regulated Board members and providing that newly appointed Board members are independent and requiring fair representation of participant groups.

NAIPFA Background

NAIPFA members represent municipal securities issuers throughout the country as financial advisors. The organization’s historic practices and standards are consistent with the provisions of the Act related to municipal advisors. NAIPFA has over twenty years experience in testing, certifying and providing continuing education to municipal advisors. It has also developed and promoted competency and ethical standards for municipal advisors. As such, NAIPFA is the most experienced entity in the country with provisions of the Act focusing on municipal advisors.

NAIPFA Comments

The next several years are critical to the development and successful implementation of processes mandated by the Act. Regulatory actions will include registration, significant rule-making, certification, and testing of newly regulated municipal advisors. Hundreds of important decisions will be made during the implementation period, including critical decisions regarding application of fiduciary duty for municipal advisors. The new MSRB Board will be instrumental in setting long term direction for the municipal securities market and market participants. Therefore, it is imperative that both process and its implementation be right.

The Act requires that the MSRB “*establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nomination and election of public representatives, broker dealer representatives, bank representatives, and advisor representative.*” This means that all regulated representatives should have parity in Board membership. The proposal of seven broker/dealer and bank/dealer members compared to three municipal advisor members does not constitute *fair representation*. A larger number of municipal advisor participants is required. NAIPFA also believes and finds it consistent with the amendments to A-3 that municipal advisor Board members be independent, as defined, and not be broker-dealer or bank dealer municipal advisors. Municipal advisors affiliated with broker-dealers or bank dealers must not be appointed to the Board as municipal advisor representatives. Broker-dealer and bank dealer municipal advisors are already represented by the broker-dealer and bank dealer members. Fair representation also means that the issuers of municipal securities are appropriately represented.

The Act provides that “*the number of public representatives of the Board shall at all-time exceed the total number of regulated representatives.*” It seems clear that the Act’s goals for the reconstituted Board include a new majority and different perspective. In July the prior out-going Board, without benefit of majority public representation or other new members, determined MSRB Board leadership for the next year. This is contrary to the goals of the Act. The Chairperson and Vice Chairperson will set the agenda and provide initial direction and perspective for a new Board. Without representation of the new constituencies, the old Board has elected leadership for the coming year. This action is incongruous with the intent of the Act for majority public representation. This action disenfranchises the new Board and undermines the goals of the Act. These July actions also point out that the process of leadership elections and selection to the Board has little transparency. As a self-regulatory organization, created by Congress and empowered to make law, MSRB processes, communication and decision making must be transparent and open. Congress has given the MSRB a new mission and scope. It appears, based on this July action, that the MSRB has not yet adapted.

More important than the actual number of Board members are the perspective, experience and knowledge of the new Board members when determining the incoming MSRB Board composition. Public representatives must be independent allowing them to represent the true public interest in the municipal market. They also must be open to new perspectives and different agendas than that of the historic majority. Also, new municipal advisor representatives must also be truly independent and not affiliated with any broker-dealer or bank.

The August 27, 2010 press release announcing that the MSRB had filed proposed A-3 amendments with the Securities Exchange Commission stated “This is an historic change for the MSRB. The proposal creates an MSRB governing board with a majority of independent public members and one that fairly represents all regulated members.” Clearly the proposed amendments to A-3 put into motion steps for a majority public board and representation of newly regulated parties. It is too soon to tell, however, if all regulated members will truly be represented.

NAIPFA believes that as the MSRB moves forward in its evolving role the successful implementation of its new mission and consistency with the Act depend upon openness of



current members to change, integration and acceptance of new Board representation, transparency in actions, equity in decisions and fulfillment of the mandate of fair representation.

Sincerely,

A handwritten signature in black ink that reads "Steve Apfelbacher". The signature is fluid and cursive, with the first name "Steve" and last name "Apfelbacher" clearly legible.

Steve Apfelbacher, CIPFA
President

