



Americans for Financial Reform
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August 14, 2013

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

Re: File No. SR-MSRB-2013-06

Dear Ms. Murphy,

Americans for Financial Reform (“AFR”) appreciates this opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) in regard to SR-MSRB-2013-06 – Proposed Rule Change Consisting of Amendments to MSRB Rule A-3, on Membership on the Board, to Modify the Standard of Independence for Public Board Members (the “Notice”).¹ We wish to express our strong opposition to the changes proposed in this Notice.

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Congress made important revisions to Section 15B(b)(1) of the Securities Exchange Act of 1934, which governs the composition of the Municipal Securities Rulemaking Board (“MSRB” or “Board”). Specifically, the Dodd-Frank Act mandated that the Board must have a majority of members who are “independent of any municipal securities broker, municipal securities dealer, or municipal advisor” (“Public Members”).

In 2010, the Commission approved a rule defining the standard of independence for Public Members.² In accordance with the statutory language of the Dodd-Frank Act, this rule required that a Public Member “is not, and within the last two years was not, associated” with a municipal securities broker, dealer, or municipal advisor.³ This is a clear and straightforward standard and, along with the further stipulation that a Public Member not have a current relationship with a regulated entity, constitutes a reasonable standard for the independence of Public Members.

The public policy justification for changes made to Board membership in the Dodd-Frank Act is both clear and pressing. Prior to the financial crisis, the Board failed to protect municipal issuers

¹ [Americans for Financial Reform](http://www.ourfinancialsecurity.org) is an unprecedented coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups.

² Securities and Exchange Commission, Release No. 34-63025; File No. SR-MSRB-2010-08, (Sept. 30, 2010).

³ *Id.*, at 5-6.

from significant abuses at the hands of MSRB-regulated entities. The municipal market reforms in the Dodd-Frank Act responded to the revelation of massive financial abuses of municipal borrowers by banks and derivatives dealers. The most notorious case was in Jefferson County, Alabama, which was driven into bankruptcy due to billions in losses suffered in exploitative swaps deals sold by JP Morgan Chase. Yet Jefferson County is just the tip of the iceberg. For example, the Justice Department has brought numerous criminal cases against major banks for manipulation and bid-rigging in municipal markets.⁴ The collapse of the auction rate securities market caused significant losses to municipalities and investors, and has been the subject of many lawsuits.⁵ Across the country, hundreds of cities and towns have been trapped in deceptive swaps deals requiring them to pay exorbitant fees.⁶ Public entities, public employees, taxpayers, and users of public services across the country have been deeply harmed by this abusive behavior. The change in the Board's membership was intended to make it a more effective watchdog for the public interest in municipal finance markets.

It is thus disturbing to see that this Notice would drastically weaken the independence standard for Public Members, undermining the Dodd-Frank reforms. If adopted, the notice would change the standard for qualification as a Public Member to require simply that the individual is not, and within the past two years has not been, "an officer, director (other than an independent director), an employee, or a controlling person of any municipal securities broker, municipal securities dealer, or municipal advisor".⁷ Unlike the 2010 standard, this proposal would permit a so-called Independent Member to be a current employee or director of a corporate entity that includes a municipal securities broker, dealer, or advisor as a subsidiary or affiliate, so long as the individual was not a current or recent employee of the specific subsidiary active in the municipal markets. For example, a current employee of JP Morgan Chase Bank NA could qualify as a Public Member of the MSRB, simply because they were not currently employed by JP Morgan's municipal securities broker affiliate.

A Board dominated by employees of major banks and dealers with subsidiaries active in the municipal market will not be a truly independent Board. Given the complexity of modern financial holding companies, which frequently have hundreds or even thousands of legal entities within the corporate structure, it will be impossible for the MSRB to police the relationships within a corporate entity. The profits made by any subsidiary or affiliate active in the municipal market flow to the corporate entity as a whole, and business generated within the broker-dealer subsidiary active in underwriting municipal bonds may lead directly or indirectly to business opportunities for other affiliates of the holding company.

⁴ O'Toole, James, "Bankers Nabbed in Bid-Rigging Scandal", CNN, September 18, 2012.

⁵ Austin, Andrew D., "[Auction Rate Securities](#)", Congressional Research Service, July 17, 2012.

⁶ See Morgenson, Gretchen, "The Swaps That Swallowed Your Town", New York Times, March 6, 2010.

⁷ SR-MSRB-2013-06– Proposed Rule Change Consisting of Amendments to MSRB Rule A-3, on Membership on the Board, to Modify the Standard of Independence for Public Board Members, (July 3, 2013) ("SR-MSRB-2013-06").

The Board would retain the additional stipulation that an Independent Member may have no “relationship with any municipal securities broker, municipal securities dealer, or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual”.⁸ However, this is an inherently subjective restriction that is more difficult to interpret than a clear ban on a recent association with a regulated entity. In addition, this protection will be very difficult if not impossible to apply to an employee of a financial entity that has a municipal securities broker or dealer as an affiliate. Indeed, the very fact that the profits of the corporate group employing the individual are directly tied to the performance of a municipal securities affiliate regulated by the Board appears to constitute a relationship that affects independent decision making.

The Notice offers no justification for the proposed change beyond the difficulty of finding qualified Public Members. We strongly question the adequacy of the Board’s outreach efforts if these outreach efforts have not yielded sufficient qualified Public Members who do not have a current or recent employment association with a municipal broker, dealer, or advisor. The pool of qualified individuals who are knowledgeable concerning the municipal markets and not directly associated with a municipal broker, dealer, or advisor includes:

- Current or former elected officials, officers, employees and appointed board members of over 50,000 municipal issuers;
- Current or former elected and appointed officials who play a role in overseeing municipal finance at the state level, or employees of state entities who play a role in such oversight;
- Current or former employees of the members of the National Association of Bond Lawyers;
- Certified Public Accountants familiar with municipal finance and securities;
- Professors in universities, law schools, and business schools familiar with municipal finance; and
- The countless number of retail investors in municipal securities nationwide as well as the employees of non-associated institutional investors.

The Notice states that “many mutual fund and insurance companies have affiliated broker-dealers that engage in a municipal securities or municipal fund securities business”, and thus some potential Public Members employed by such companies would not qualify under the current standard.⁹ That is a completely inadequate justification for the major rule change proposed here. The Dodd-Frank Act requires only one single Public Member to have a connection with an institutional investor. Thus, the disqualification of some employees of institutional investors based on a connection with a regulated entity hardly justifies a sweeping change in the qualifications for a Public Member.

⁸ *Id.*, Exhibit 5.

⁹ *Id.*, at 4.

The Notice also states that:¹⁰

“Regardless of their status – public or regulated – all board members have a fiduciary duty to the MSRB and are bound by a duty of loyalty and duty of care and are obligated to act in the best interests of the organization and to avoid conflicts of interest.”

This also cannot be used as a justification for weakening the definition of Public Member. The fiduciary duty referred to existed before the passage of the Dodd-Frank Act. Congress clearly did not consider this fiduciary duty to be sufficient protection for the independence of the Board, and for this reason explicitly went beyond the existing fiduciary duty to require that a majority of Board members be Public Members, free of conflicts of interest.

The statutory language of Dodd-Frank also makes it clear that it is inappropriate and inconsistent with the goals of the law to permit individuals associated with a regulated municipal entity to qualify as Public Members. Section 975(b) of the Dodd-Frank Act defines those MSRB members who are not Public Members as those “associated with a broker, dealer, municipal securities dealer, or municipal advisor”. The fact that Congress specified that non-Public Members would be those associated with a broker or dealer clearly indicates that Congress did not intend for Public Members to be associated with a broker or dealer.

In sum, the change proposed in this Notice would severely weaken the important reforms made in the Dodd-Frank Act to the membership of the MSRB. Permitting employees of banks or other financial institutions with an affiliated municipal securities broker, dealer, or municipal advisor to qualify as Public Members of the board does not align with any reasonable standard of independence. It conflicts with both Congressional intent and the language of the Dodd-Frank Act. AFR urges the Commission to reject the change proposed in this Notice and retain the independence standard as defined in the 2010 rule. We also urge the Board to improve their outreach efforts to find genuinely independent Public Members who qualify under the 2010 standard. AFR would be glad to assist in such outreach efforts.

Thank you for your consideration of these comments. Should you have questions, please contact Marcus Stanley, AFR’s Policy Director, at (202) 466-3672 or marcus@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform

¹⁰ *Id.*, at 5.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal

- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA

- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG

- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET