MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

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Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers, Investors, General Public

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Request for Comment

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July 13, 2015

Category
Administration

Affected Rules
Rule A-3

Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board

Overview

The Municipal Securities Rulemaking Board (MSRB or Board) is seeking comment on draft amendments to MSRB Rule A-3, on membership on the Board, to modify the application of the standard of independence for the one public Board member required by the Securities Exchange Act of 1934 (Exchange Act)[1] to be representative of institutional or retail investors in municipal securities. The draft amendments are designed to allow the MSRB to consider and select from a broader group of applicants with no material business relationship with an entity regulated by the MSRB to serve in that Board member position. The current standard of independence will continue to apply to all other public Board members.

Additionally, the MSRB is seeking comment on whether it should modify the length of Board member service and whether it should remove or modify the requirement that the MSRB publish the names of all Board applicants. The MSRB is not, at this time, offering specific proposals or draft amendments to address either of these questions. Rather, this aspect of the request for comment is intended to elicit input from all interested parties to assist the MSRB in determining whether to consider modifying sections of Rule A-3 pertaining to the length of Board member service and the publication of the names of all applicants.

Comments should be submitted no later than July 13, 2015, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities

[1] 15 U.S.C. 78.

Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, Virginia 22314. All comments will be available for public inspection on the MSRB's website.[2]

Questions about this notice should be directed to Robert Fippinger, Chief Legal Officer, or Carl E. Tugberk, Assistant General Counsel, at 703-797-6600.

Application of the Standard of Independence for the Public Representative of Institutional or Retail Investors in Municipal Securities

Background

The MSRB is the self-regulatory organization (SRO) created by Congress to establish rules governing the municipal securities activities of brokers, dealers and municipal securities dealers (collectively, dealers) and the municipal advisory activities of municipal advisors. The MSRB's mission is to protect municipal entities, obligated persons, investors and the public interest, and to promote a fair and efficient municipal securities market. The MSRB fulfills this mission primarily by regulating dealers and municipal advisors, providing market transparency through its Electronic Municipal Market Access (EMMA®) website and conducting market leadership, outreach and education. The importance of the perspective of the investors in municipal securities in determining how best to carry out this mission cannot be overstated.

The requirements for the Board's basic composition (but not its actual size) are set forth in the Exchange Act.[3] As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),[4] Congress made various amendments to the Exchange Act to make the Board majority public. Those amendments categorized the members of the Board in two broad groups: individuals who must be associated with a broker, dealer, municipal securities dealer or municipal advisor (Regulated Representatives),

[2] Comments are posted on the MSRB's website without change. Personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

[3] *See* 15 U.S.C. 78o-4(b)(1). Rule A-3 further establishes the Board's composition and sets its size at 21 members.

[4] Pub. L. No. 111-203, 124 Stat. 1376.

and individuals who must be independent of any municipal securities broker, municipal securities dealer, or municipal advisor (Public Representatives).[5] The Dodd-Frank Act amendments further established that the number of Public Representatives shall at all times exceed the number of Regulated Representatives,[6] as well as minimum requirements for certain types of individuals to serve in each category as follows: (1) at least one of the Regulated Representatives must be associated with and representative of a dealer that is not a bank (or subsidiary or department or division thereof); (2) at least one of the Regulated Representatives must be associated with and representative of a dealer that is a bank (or subsidiary or department or division thereof); (3) at least one of the Regulated Representatives must be associated with and representative of a non-dealer municipal advisor; (4) at least one of the Public Representatives must be representative of institutional or retail investors in municipal securities (Investor Representative); (5) at least one of the Public Representatives must be representative of municipal entities; and (6) at least one of the Public Representatives must be a member of the public with knowledge of or experience in the municipal industry.[7] The Dodd-Frank amendments additionally required that each Board member be "knowledgeable of matters related to the municipal securities markets."[8]

The Dodd-Frank Act did not provide a definition of "independent of any municipal securities broker, municipal securities dealer, or municipal advisor," or specify how the Board should evaluate independence. Rather, it delegated the authority to set those requirements to the MSRB, subject to Securities and Exchange Commission (SEC) approval.[9] The MSRB, in 2010, implemented this new standard by amending Rule A-3. The amendments defined "independent of any municipal securities broker, municipal securities dealer, or municipal advisor" to mean that the individual has "no material business relationship" with any municipal securities broker, municipal

[5] *See id.*; 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a)(i)-(ii).

[6] *See* 15 U.S.C. 78o-4(b)(2)(B)(i).

[7] *See* 15 U.S.C. 78o-4(b)(1).

[8] *Id.*

[9] *See* 15 U.S.C. 78o-4(b)(2)(B)(iv).

securities dealer, or municipal advisor.[10] The MSRB defined "no material business relationship" to mean that, at a minimum, the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual does not have a 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.[11]

In practice, the "associated with" test the MSRB adopted in 2010 has eliminated qualified individuals, whom the Board believes, in retrospect, did not have any material business relationship with a regulated entity,[12] from being considered as Public Representatives.[13] The MSRB has considered these individuals to be disqualified solely due to the presence of a regulated entity within their employer's corporate structure—even where the individual's nexus with such regulated entity is remote and cannot reasonably be seen as affecting his or her independent judgment or decision making. For example, an individual, whose only affiliation with a broker-dealer registered with the MSRB is due to the individual's service as an independent director on the board of directors of a company that is in the same corporate family as the broker-dealer, has been disqualified from serving on the board as a Public Representative. Similarly, because many

[10] *See* Exchange Act Release No. 63025 (September 30, 2010); 75 FR 61806 (October 6, 2010) (SR-MSRB-2010-08) (approving the MSRB's standard of independence for Public Representatives); MSRB Rule A-3(g)(ii).

[11] *See* MSRB Rule A-3(g)(ii).

[12] The MSRB anticipates that any proposed amendment to the standard of independence would include a new definition of "regulated entity" to mean a broker, dealer, municipal securities broker, municipal securities dealer, or municipal advisor regulated by the MSRB to simplify the rule text. Such a change would be technical and unrelated to the meaning of "Public Representative" or "Regulated Representative" in Rule A-3. This new definition is included in the draft rule text as subsection (g)(vi) and corresponding changes have been made elsewhere in the draft rule text, including subsection (g)(ii) that defines the standard of independence.

[13] *See* 15 U.S.C. 78c(a)(18) ("The term 'person associated with a broker or dealer' or 'associated person of a broker or dealer' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of [the Exchange Act] (other than paragraph (6) thereof).").

institutional investors have affiliated broker-dealers that engage in municipal securities or municipal fund securities business, any non-clerical individual within such companies, many of whom have the expertise and knowledge to represent investors, and the statutorily-required knowledge of the municipal securities market, have been precluded from serving as a Public Representative even if the individual's role and responsibilities are wholly unrelated to the broker-dealer activity or such broker-dealer activity is an immaterial portion of the overall business of the family of companies. After having consistently used this broad interpretation of the term "associated with," the MSRB has believed, and continues to believe, that the proper way to address these issues would be through consideration of amendments to its rules. In an effort to do so, in July 2013, the MSRB filed with the SEC a proposed rule change to amend Rule A-3 to modify the standard of independence for Public Representatives to be consistent with the approach of the Financial Industry Regulatory Authority (FINRA), another SRO that also has public board members.[14] After commenters expressed concerns with the 2013 proposal, the MSRB withdrew the filing, with a plan to further increase its efforts to identify well-qualified applicants to serve as the Investor Representative and gain additional experience operating with the existing standard.[15]

After making those efforts and gaining additional informative experience applying the standard, the MSRB continues to believe that an applicant should be considered independent only if the person has no material business relationship with a regulated entity. The MSRB believes, however, that the current test for evaluating the materiality of a business relationship is unduly restrictive, resulting in the disqualification of qualified individuals, who have relevant knowledge and expertise that are key to the MSRB's ability to meet its statutory mandate, as Public Representatives. Specifically, the MSRB has continued to experience significant challenges in finding a sufficient pool of individuals qualified to serve as the Investor Representative. Accordingly, the MSRB is proposing to modify the standard of independence by providing an alternative definition of "no material business relationship" to determine whether an individual being considered

[14] *See* Exchange Act Release No. 70004 (July 18, 2013); 78 FR 44607 (July 24, 2013) (SR-MSRB-2013-06) (2013 proposal). *See* FINRA By-Laws, Article I (defining an "Industry Governor," in part, to include an individual who is or has served in the prior year as an officer, director (other than as an independent director), employee or controlling person of a broker or dealer and a "Public Governor," in part, as an individual who is not an Industry Governor and who otherwise has no material business relationship with a broker or dealer).

[15] *See* Exchange Act Release No. 70617 (October 7, 2013); 78 FR 62780 (October 22, 2013) (SR-MSRB-2013-06).

to serve as the Investor Representative is independent, while continuing to use the current definition to determine the independence of all other Public Representatives. This proposed modification is intended to address commenters' concerns with the 2013 proposal in at least three ways. First, it would require the Board to undertake additional analysis to ensure that this particular Public Representative does not have any material business relationship with a regulated entity. Second, as noted, the modification would not apply to any of the other Public Representative positions on the Board; for those, the current definition of "no material business relationship" would remain unchanged. The rationale for the draft amendments, as described above, is specific to the Investor Representative position and does not apply to the other Public Representative positions. Third, although the Exchange Act allows more than one member of the Board to be an Investor Representative, the draft amendments would limit the applicability of the alternative definition to only one such representative.

Draft Amendments to Rule A-3

The purpose of the draft amendments to Rule A-3 is to improve the MSRB's ability to identify and select individuals, who represent investors and have significant knowledge of the municipal securities market, to serve on the Board as the Investor Representative, as required by Section 15B(b)(1)(A) of the Exchange Act. Specifically, the MSRB believes that there are employees and other representatives (*e.g.*, officers and directors) of investment advisers, as defined in the Investment Advisers Act of 1940 (Advisers Act),[16] with "buy-side" expertise and representative of investors (*e.g.*, portfolio managers), who have no material business relationship with regulated entities, but who would, nonetheless, be disqualified from serving as a Public Representative under a broad reading of the "associated with" prong of the MSRB's current definition of "no material business relationship." The MSRB further believes that these individuals could help the Board be as informed as possible, balanced in its perspective on *all* aspects of the municipal securities market, and well-positioned to carry out its statutory mandate, particularly with respect to current and future market structure initiatives.[17] Employees and other representatives of investment advisers have a unique view of the

[16] 15 U.S.C. 80b-2(a)(11).

[17] *See*, *e.g.*, SEC Report on the Municipal Securities Markets (July 31, 2012), available at http://www.sec.gov/news/studies/2012/munireport073112.pdf (recommending MSRB rulemaking and enhancement of industry "best practices" relating to several market structure concerns).

market and knowledge of market structure distinct from the perspective and expertise of most individuals employed by or otherwise representative of regulated entities. Because many of these individuals serve the interests of the investment adviser's clients (*e.g.*, investment companies, as defined under the Investment Company Act of 1940, such as mutual funds, or investors in managed accounts)[18]— not regulated entities—and, therefore, are representative of investors, the MSRB is proposing a modified test for evaluating the materiality of a business relationship under which they may, depending on their individual circumstances, be considered for service as the Investor Representative.

Under the draft amendments to Rule A-3, an alternative standard would be used to determine whether individuals being considered to serve as the Investor Representative have "no material business relationship" and are, therefore, independent. The existing definition will continue to be used to determine the independence of all other Public Representatives. As discussed in detail below, the draft amendments include particular rule language designed to tailor the new definition to allow employees and other representatives of investment advisers, depending on their individual circumstances, to serve as the Investor Representative. This tailoring includes the consideration of factors that relate to whether such an individual has a disqualifying nexus with a regulated entity, as opposed to association solely by virtue of the corporate structure of his or her employer.

The draft amendments are primarily in the definitional section of the rule. In subsection (g)(ii), the base standard of independence is unchanged and requires that an individual has "no material business relationship" with any regulated entity. New paragraph (g)(ii)(1) completes the existing standard of independence that will apply to all Public Representatives, except for applicants being considered to serve as the Investor Representative, using the definition of "no material business relationship" that is currently in Rule A-3. Specifically, this definition includes an automatic disqualifier for individuals who are, or within the last two years, were associated with a regulated entity, and a discretionary component to determine whether, even if not automatically disqualified, an individual has a compensatory or other relationship with any regulated entity that reasonably could affect the independent judgment or decision making of the individual. Finally, the

[18] 15 U.S.C. 80a–3.

Board will continue to have further discretion to determine that additional circumstances constitute a material business relationship.[19]

A new paragraph (g)(ii)(2) would establish the alternative definition of "no material business relationship" that creates a new standard of independence to be applied only to employees and other representatives of investment advisers[20] being considered to serve as the Investor Representative. The alternative definition of "no material business relationship" is similar to the current definition in that it includes an automatic disqualifier and a discretionary component. Unlike the broad associational disqualifier in the existing definition, the automatic disqualifier in subparagraph (g)(ii)(2)(A) is similar to the approach of FINRA, which takes a more function-oriented approach to defining independence. Specifically, the definition will require that an employee or other representative of an investment adviser is not, and within the last two years, was not an officer, director (other than an independent director), employee, or controlling person of any regulated entity.[21] This provision would allow the Board to consider individuals to be the Investor Representative who, under the broad reading of the current definition, would be disqualified automatically simply by being employed by or otherwise representative of an affiliate of a holding company that has a separate regulated affiliate. Despite making the automatic disqualification less restrictive, the new provision would continue to ensure that an individual directly associated with a regulated entity would not be eligible to even be considered under the discretionary component of the definition to serve as the Investor Representative.

In subparagraph (g)(ii)(2)(B), the discretionary component of the alternative definition of "no material business relationship" would (as does the current

[19] The MSRB anticipates that any proposed amendment to the standard of independence would include a technical amendment to Rule A-3(g)(ii) to update the reference to the "Nominating Committee" to reflect its current name, the "Nominating and Governance Committee."

[20] Subsection (g)(iii) is amended to provide that "the term 'investment adviser' has the meaning set forth in Section 202(a)(11) of the Investment Advisers Act of 1940." To accommodate this new definition and the new definition of "investment company," the provision defining the terms "municipal advisor" and "municipal entity," previously in subsection (g)(iii), would move to new subsection (g)(v); no substantive changes are proposed to be made to those definitions. *See* note 25 *infra*.

[21] The new definition includes a minimum two-year cooling-off period that is identical to the cooling-off period in the existing definition of "no material business relationship" and is more stringent than FINRA's one-year period. *See* note 14 *supra*.

definition) require the Board to determine whether an applicant has a compensatory or other relationship with any regulated entity that reasonably could affect his or her independent judgment or decision making. However, to guide and limit the Board's discretion in making that determination, paragraph (g)(ii)(2) would require the Board to consider a non-exhaustive list of specified factors, with no single factor being determinative.[22] The factors are whether: (i) the regulated entity accounts for a material portion of the revenues of the consolidated entity that includes the investment adviser and the regulated entity;[23] (ii) the regulated entity underwrites, privately places, or otherwise facilitates the origination of municipal securities;[24] and (iii) the investment adviser has a fiduciary duty or other similar relationship of trust to investment company[25] or investor clients.

The consideration of these factors would enable the Board to limit the pool of applicants, who would be eligible under the new automatic disqualifier, to individuals who are truly independent of any regulated entity and representative of investors. Specifically, an employee or other representative of an investment adviser, which has a relationship with a regulated entity that does not account for a material portion of the revenues of the consolidated entity that includes the investment adviser and the regulated entity, is less likely to have an appropriately disqualifying nexus with, or be subject to any significant influence from, the regulated entity. Similarly, if such a regulated entity does not underwrite, privately place or otherwise facilitate the origination of municipal securities, then any municipal securities business likely is only an incidental component of the consolidated entity's

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[22] Independence is evaluated in other regulatory contexts by considering relevant factors, including, but not limited to, sources of compensation and affiliation. *See, e.g.*, 15 U.S.C. 78j-3(a)(3); 17 CFR 240.10C-1(b)(1)(ii) (establishing independence requirements for directors serving on compensation committees of companies listed on national securities exchanges).

[23] Two other SROs, International Securities Exchange, LLC (ISE), and ISE Gemini, LLC (ISE Gemini), consider employees of an entity not regulated by the exchanges, but that is affiliated with a broker or dealer regulated by the exchanges, that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-regulated entity, to be "Public Directors." *See* Sections 3.2(b)(iv) and 13.1(t), (w), (cc) of ISE's Second Amended and Restated Constitution; Sections 3.2(b)(ii) and 13.1(r), (u), (z) of ISE Gemini's Constitution.

[24] ISE and ISE Gemini also consider persons affiliated with a broker or dealer regulated by the exchanges that operates solely to assist the securities-related activities of the business of broker-dealer affiliates not regulated by the exchanges to be "Public Directors." *Id.*

[25] New subsection (g)(iv) provides that "the term 'investment company' has the meaning set forth in Section 3 of the Investment Company Act of 1940."

business model primarily used to support the investment adviser's investment activities on behalf of investment company or investor clients (*e.g.*, to reduce transaction costs), and the corporate affiliation with the regulated entity is less likely to affect the independent judgment or decision making of an employee or other representative of the investment adviser. Finally, if the investment adviser has a fiduciary duty or similar relationship of trust to its investment company clients, such as mutual funds, or directly to investors in managed accounts, it has a legal obligation to act in the best interest of those clients.[26] This obligation applies to any employee or other representative of the investment adviser,[27] who participates in advising those clients as contemplated by the Advisers Act.[28] As a result, investment advisers, including their employees and other representatives, must put their clients' interests ahead of their own and the interests of any affiliated regulated entities. Additionally, since the investment companies that actively invest in municipal securities are institutional investors themselves and often include holdings of retail investors, the entities and individuals advising their securities transactions may be viewed as effectively representing the interests of both institutional and retail investors.

In total, although the less restrictive automatic disqualifier in the first prong of the new definition of "no material business relationship" allows for the consideration of individuals with some association or affiliation with a regulated entity, the addition of the tailored, non-exhaustive factor analysis will ensure that only individuals, whose judgment and decision making are not reasonably affected by those relationships, and who are sufficiently representative of investors, will be qualified to serve as the Investor Representative. The alternative definition would be applied only to

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[26] *See S.E.C. v. Capital Gains Research Bureau*, 375 U.S. 180 (1963) (finding that the Advisers Act "reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser - consciously or unconsciously - to render advice which was not disinterested," and that investment advisers are fiduciaries with "an affirmative duty of 'utmost good faith and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' . . . clients"). Other regulatory obligations to investment adviser clients flow from this fiduciary duty, including, but not limited to, requirements that the investment adviser have a reasonable, independent basis for its recommendations and seek best execution for clients' securities transactions. *See* SEC Report on the Regulation of Investment Advisers (March 2013), 22-28, *available at* http://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf.

[27] *Id.*

[28] *See* note 16 *supra*.

applicants, who are employees or other representatives of investment advisers, being considered for this one statutorily-required Public Representative position on the Board. Therefore, since Board members serve three-year terms, this alternative definition would only be applied to applicants once every three years, unless an Investor Representative serves a partial term.[29]

Economic Analysis

The MSRB has historically given careful consideration to the costs and benefits of its new and amended rules. The MSRB's policy on the use of economic analysis in rulemaking states that, prior to proceeding with a rulemaking, the Board should evaluate the need for the rule and determine whether the rule as drafted will, in its judgment, meet that need. During the same timeframe, the Board also should identify the data and other information it would need in order to make an informed judgment about the potential economic consequences of the rule, make a preliminary identification of both relevant baselines and reasonable alternatives to the proposed rule, and consider the potential benefits and costs of the draft rule and the main alternative regulatory approaches.

1. **The need for the draft amendments to Rule A-3 and how the draft amendments to Rule A-3 will meet that need.**

The need for the draft amendments arises primarily from the Exchange Act, as amended by the Dodd-Frank Act, which specifies the statutory mandate and composition of the Board. Specifically, the Dodd-Frank Act established categories of market participants that must be included as members of the Board, including at least one Public Representative who is both independent of any regulated entity *and* is representative of institutional or retail investors in municipal securities.[30] In recent years, the MSRB has found that it is increasingly difficult, due to its broad reading of the "associated with" test, to identify a robust set of applicants who have the requisite experience and knowledge, and are representative of investors. The MSRB believes this challenge will persist into the future, and may become more severe, if the standard of independence in Rule A-3 remains unchanged. Such a result could negatively impact investor confidence.

[29] *See* note 36 *infra*.

[30] *See* 15 U.S.C. 78o-4(b)(1)(A).

Additionally, meeting the MSRB's rulemaking mandate[31] increasingly requires that the MSRB engage in deliberations regarding highly complex issues related to the structure and operation of the market, and how municipal securities are priced and transacted.[32] Identifying applicants for the Board, who have relevant knowledge and expertise about these issues, is fundamental to the MSRB's ability to perform this function in the most effective and least burdensome manner.

Employees and other representatives of investment advisers often have extensive knowledge of the structure of the market, are familiar with the relevant regulatory framework, understand technological changes that impact investors, and interact frequently with a range of market participants. These individuals also are likely to have views of the market that are distinct from those held by individuals employed by, or otherwise representative of, regulated entities.

Investment companies and other investor accounts, which are managed by investment advisers and actively invest in municipal securities on behalf of retail investors, represent a growing share of retail investment in municipal securities. Between 2010 and 2014, the portion of all municipal securities held by mutual funds grew from approximately 14 percent to more than 18 percent, while shares held directly by retail investors has fallen from nearly 50 percent to 42 percent.[33] However, because many of these funds have affiliated regulated entities, a significant number of individuals, who are employed by or representative of investment advisers and have relevant knowledge, are precluded from consideration for the statutorily-required Investor Representative position on the Board–even if the individual's nexus with a regulated entity is remote and cannot reasonably be seen as affecting his or her independent judgment or decision making. As the total number of

[31] *See* 15 U.S.C. 78o-4(b)(2)(C) (requiring the MSRB's rules to 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).

[32] *See* note 17 *supra*.

[33] *See* Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, Fourth Quarter 2014, Table L. 211, Municipal Securities and Loans at p. 117 (March 12, 2015).

mutual funds that hold municipal securities declines (down more than 27 percent since 2004),[34] it is reasonable to assume that the number of employees and representatives of investment advisers, who manage those funds, is declining proportionally. As a result, the MSRB expects that the difficulty of identifying applicants with no association with regulated entities will likely grow.

The composition of the Board and its continued ability to identify qualified applicants is fundamental to effective, efficient regulation that protects investors, municipal entities, obligated persons and the public interest. If investors perceive that the MSRB is not able to identify a strong pool of applicants, particularly for the Public Representative position that is specifically designated for investor representatives, their confidence in the market may decline, which could have consequences for the market as a whole.

By modifying the standard by which the Board evaluates whether individuals being considered to serve as the Investor Representative have a material business relationship with a regulated entity, the draft amendments would increase the MSRB's ability to identify and select from a pool of qualified applicants. The ability to consider a wider applicant pool for this member position would further the MSRB's ability to meet its statutory mandate and, therefore, confer benefits on investors.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule A-3 can be considered.

To evaluate the potential impact of the draft amendments, a baseline or baselines must be established as a point of reference. The analysis proceeds by comparing the expected state with the draft amendments in effect to the baseline state prior to the draft amendments taking effect. The economic impact of the draft amendments is generally viewed to be the difference between these two states.

The Dodd-Frank Act and the 2010 amendments to Rule A-3 established the relevant baseline. As discussed above, the Dodd-Frank Act charged the MSRB with including on the Board at least one individual who is independent of a regulated entity and is representative of institutional or retail investors in municipal securities. The Dodd-Frank Act delegated authority to establish the

[34] *See,* Investment Company Institute, 2015 Investment Company Fact Book at p. 177 (May, 4, 2015).

requirements regarding the independence of Public Representatives to the MSRB, subject to SEC approval.[35]

Existing Rule A-3 specifies how members of the Board are selected and defines membership criteria, including the standard by which an applicant would be considered independent of any regulated entity.

3. Identifying and evaluating reasonable alternative regulatory approaches.

The MSRB recognizes that there are alternatives to the approach proposed by the draft amendments that range from taking no action, seeking other ways to incorporate the expertise of employees or other representatives of investment advisers, or utilizing factors other than those proposed in these draft amendments to evaluate whether individuals being considered to serve as the Investor Representative have a material business relationship with a regulated entity.

The MSRB could elect not to engage in additional rulemaking and continue to rely exclusively on outreach efforts to identify applicants. Based on several years of experience since the enactment of the Dodd-Frank Act and given the declining number of mutual funds that hold municipal securities and the likelihood that the most active of those will have an affiliation with a regulated entity, the Board anticipates that outreach will not be sufficient to identify reliably a robust pool of applicants who have the requisite experience and knowledge, are representative of investors as required by the Exchange Act, and meet the current standard to be considered Public Representatives.

The Board could elect not to engage in additional rulemaking and consider employees or other representatives of investment advisers, who are associated with a regulated entity, for positions on the Board as Regulated Representatives. This approach would provide access to the knowledge and expertise of these individuals, but it explicitly would not address the MSRB's concern about attracting a robust pool of applicants to satisfy the Exchange Act requirement that at least one of the Public Representatives must be representative of institutional or retail investors in municipal securities. Further, these individuals may not possess the knowledge and expertise to properly represent regulated entities.

[35] *See* note 9 *supra*.

The MSRB could seek to incorporate the expertise of employees or other representatives of investment advisers informally by, for example, adding such individuals as non-voting members of the Board or creating an advisory committee made up of them. While these alternatives might provide access to relevant knowledge and expertise, they likely would not address the MSRB's concern about attracting a robust set of applicants to serve as the Investor Representative. In addition, incorporating the views of an advisory group or a non-voting member might make Board processes more complex and may not result in the full incorporation of investor viewpoints in Board decision making, as can be expected to flow from full Board member voting authority.

The MSRB could utilize factors other than those proposed in the draft amendments to evaluate whether employees or other representatives of investment advisers being considered to serve as the Investor Representative have a material business relationship with a regulated entity.

The MSRB could amend Rule A-3 to define "no material business relationship" solely on the basis of whether the individual is not and, within the last two years, has not been an officer, a director (other than an independent director), an employee, or a controlling person of any regulated entity. Under such an alternative, the Board would not necessarily conduct an additional analysis of factors to evaluate the presence of any material business relationship. This alternative likely would achieve similar benefits to the draft amendments but might risk a perception that a Board member selected under this standard was not sufficiently independent.

Finally, the MSRB could adopt objective, "bright-line" tests to determine the materiality of business relationships, rather than using the factors as considerations. Strict tests may not provide sufficient context for the Board to make reasonable judgements about materiality.

4. **Assessing the benefits and costs of the draft amendments to Rule A-3 and the main alternative regulatory approaches.**

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the rule with the draft amendments fully implemented against the context of the economic baseline discussed above.

Benefits

The draft amendments are intended to increase the MSRB's ability to identify and select from a pool of qualified applicants who do not have a material business relationship with a regulated entity and are representative of

institutional or retail investors in municipal securities. This, in turn, will ensure that the MSRB can continue to effectively and efficiently meet its statutory mandate.

The MSRB expects that expanding the pool of applicants will also ensure that future rulemaking efforts take full account of the realities of the market, and are informed by the knowledge and expertise often possessed by employees or other representatives of investment advisers.

Costs

The MSRB might incur limited costs associated with gathering information relevant to determine the materiality of business relationships of employees or other representatives of investment advisers. Beyond these costs, however, the MSRB is aware of no other direct costs associated with the draft amendments, relative to the baseline state.

The MSRB is requesting comment on whether the draft amendments could result in other direct costs, indirect costs or unintended impacts on the MSRB or market participants.

Effect on Competition, Efficiency, and Capital Formation

The MSRB does not expect the draft amendments to directly impact competition, efficiency or capital formation. The MSRB expects that the availability of a broad and qualified applicant pool will positively impact future MSRB efforts.

Length of Board Member Service

Currently, the Board is divided into three seven-member classes who serve three-year, staggered terms.[36] Board members may only serve consecutive terms under two scenarios: (1) by invitation from, and due to special circumstances as determined by, the Board; or (2) having filled a vacancy under Rule A-3(d) and, therefore, having served only a partial term.[37]

From experience and feedback from current and former Board members, the MSRB has learned that Board members often take multiple years to fully

[36] *See* MSRB Rule A-3(b)(i).

[37] *Id.*

understand the MSRB's rulemaking process and oversight obligations. The MSRB believes that allowing members to serve on the Board longer could improve the engagement and effectiveness of individual members, and improve the continuity and knowledge transfer on the Board as a whole. The current, standard three-year term of Board member service is significantly shorter than the average tenure of 8.4 years for members of other boards.[38] Accordingly, the MSRB is considering whether it should modify the length of Board member service to gain these benefits and be more consistent with best practices in general. For example, the Board could consider modifying Rule A-3 by allowing members the opportunity to serve two or more consecutive three-year terms without the special circumstances exception, similar to the length of service for FINRA governors,[39] or by increasing the term length.

The MSRB is requesting comment on whether it should modify the length of Board member service, and, if so, in what manner.

Requirement to Announce Publicly the Names of All Board Applicants

In 2011, the SEC approved an MSRB rule provision that requires the Board to publish on its website the names of all applicants, who agree to be considered for membership, no later than one week after the announcement of the names of new Board members for the following fiscal year.[40] The rationale for this requirement was to provide transparency. However, in practice, the MSRB believes this information can be misleading since the selection of Board members is based on a number of factors, including, but not limited to, merit of the applicant and there is no public disclosure explaining the basis for the selections. As a result, the MSRB believes that the requirement deters applications by qualified individuals, who are concerned that a failure to be selected will negatively affect their professional

[38] *See* Spencer Stuart Board Index 2014, 5, *available at* https://www.spencerstuart.com/~/media/pdf%20files/research%20and%20insight%20pdfs/ssbi2014web14nov2014.pdf%20target; Governance Minutes by the Society of Corporate Secretaries and Governance Professionals – Director Tenure (February 26, 2014), *available at* http://main.governanceprofessionals.org/governanceprofessionals/memberresources/resources/viewdocument/?DocumentKey=37b09de5-7404-4eab-bc70-10741cbf7138 (stating that average board member tenure is 8-10 years and that board members typically experience a 3-4 year learning curve).

[39] *See* FINRA By-Laws, Article VII, Section 5.

[40] *See* Exchange Act Release No. 63764 (January 25, 2011), 76 FR 5417 (January 31, 2011) (SR-MSRB-2010-17); MSRB Rule A-3(b)(vi).

reputation. Accordingly, the MSRB is considering whether it should eliminate or modify the publication requirement to remove this deterrent, and foster a more robust pool of applicants. As an alternative to removing the requirement entirely, the MSRB could consider an approach that could maintain a level of transparency by modifying Rule A-3 to provide for the publication of other identifying information, such as the names of the applicants' employers or categories of positions on the Board for which applicants were considered, while maintaining the anonymity of the individual applicants themselves.

The MSRB is requesting comment on whether it should eliminate or modify the requirement to announce publicly the names of all Board applicants, and, if it should modify the requirement, in what manner.

Request for Comment

The MSRB seeks public comment on the following questions, as well as any other comments on these topics, to assist it in determining whether it should: (1) proceed with the development of the draft amendments to the standard of independence for the Board member position representative of investors in Rule A-3; (2) modify the length of Board member service; and (3) remove or modify the requirement to announce publicly the names of all Board applicants. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views, assumptions or issues raised in this request for comment.

Application of the Standard of Independence for the Public Representative of Institutional or Retail Investors in Municipal Securities

1. Would the draft amendments likely increase the number of qualified applicants to the Board who have no material business relationship with regulated entities and are representative of institutional or retail investors in municipal securities?

2. What portion of investment advisers are affiliated with a regulated entity? Of those that are affiliated, what is the primary function of the regulated affiliate? Of those that are affiliated, what portion of annual revenue does the affiliated entity contribute to the consolidated entity that includes the investment adviser and the regulated entity?

3. For those investment advisers that are affiliated with a regulated entity, how should the MSRB evaluate the materiality of the annual revenue contributed by the regulated entity to the consolidated entity? Is there a percentage of annual revenue contributed by the

regulated entity to the consolidated entity above which all affiliations should be considered a material business relationship? If so, what is that percentage?

4. Are there additional factors the Board should consider if it were to apply the alternative standard by which the MSRB evaluates the materiality of business relationships?

5. Should the alternative standard by which the MSRB evaluates the materiality of business relationships include objective, "bright-line" tests, which must be satisfied or proved, in addition to or instead of minimum factors for consideration?

6. Does the fiduciary obligation owed by investment advisers to investment companies and other investor clients provide a meaningful level of independence from any affiliated regulated entities?

7. What, if any, changes are needed to the draft amendments to Rule A-3 to ensure that the alternative standard by which the MSRB evaluates the materiality of business relationships does not inadvertently dilute the public majority of the Board?

8. Would the draft amendments impose any costs or burdens, direct, indirect, or inadvertent, on investors, municipal entities, obligated persons or regulated entities? Are there data or other evidence, including studies or research, that support commenters' cost or burden estimates?

9. Are there alternatives to the draft amendments that would address the stated need at the same or lower cost?

Length of Board Member Service

10. Would modifying Rule A-3 to provide Board members with a longer tenure increase the engagement and effectiveness of individual Board members, and provide for greater continuity and knowledge transfer on the Board collectively? If so, would either allowing members the opportunity to serve two or more consecutive three-year terms without the special circumstances exception or increasing the term length accomplish these goals?

11. Are there alternative approaches to modifying the length of Board member service the MSRB should consider?

12. Would modifying the length of Board member service impose any costs or burdens, direct, indirect, or inadvertent, on investors, municipal entities, obligated persons or regulated entities? Are there data or other evidence, including studies or research, that support commenters' cost or burden estimates?

Requirement to Announce Publicly the Names of All Board Applicants

13. Is the MSRB's requirement to announce publicly the names of all Board applicants a deterrent to potential applicants, and would eliminating or modifying it likely increase the number of applicants to the Board? Would the publication of other identifying information, such as the names of the applicants' employers or the categories on the Board for which they were considered, provide adequate transparency to the process?

14. Are there alternative approaches to modifying the publication requirement to provide applicants anonymity that the MSRB should consider?

15. Would eliminating or modifying the requirement to announce publicly the names of all Board applicants impose any costs or burdens, direct, indirect, or inadvertent, on investors, municipal entities, obligated persons, or regulated entities? Are there data or other evidence, including studies or research, that support commenters' cost or burden estimates?

16. Are there other changes to Rule A-3 that the MSRB should consider to further the MSRB's ability to meet its statutory mandate, and enhance its structure and governance?

June 11, 2015

* * * * *

Text of Proposed Amendments[41]

Rule A-3: Membership on the Board

(a) *Number and Representation*. The Board shall consist of 21 members who are knowledgeable of matters related to the municipal securities markets and are:

(i) **Public Representatives.** Eleven individuals who are independent of any regulated entity~~municipal securities broker, municipal securities dealer, or municipal advisor~~, of which:

(1)-(3) No change.

(ii) **Regulated Representatives.** Ten individuals who are associated with a regulated entity~~broker, dealer, municipal securities dealer, or municipal advisor~~, of which:

(1)-(3) No change.

(b)-(f) No change.

(g) *For purposes of this rule:*

(i) No change.

(ii) the term "independent of any regulated entity~~municipal securities broker, municipal securities dealer, or municipal advisor~~" means that the individual has "no material business relationship" with any regulated entity~~municipal securities broker, municipal securities dealer, or municipal advisor~~.

(1) Except as otherwise provided in paragraph (g)(ii)(2), ~~T~~the term "no material business relationship" means that, at a minimum, the individual (A) is not and, within the last two years, was not associated with a regulated entity~~municipal securities broker, municipal securities dealer, or municipal advisor~~, and ~~that the individual~~ (B) does not have a relationship with any regulated entity~~municipal securities broker, municipal securities dealer, or municipal advisor~~, whether compensatory or otherwise, that reasonably could affect ~~the~~his or her independent judgment or decision making ~~of the individual~~. The Board, or by delegation its Nominating and Governance Committee, may determine that additional circumstances involving the individual constitute a "material business relationship" with a regulated entity~~municipal securities broker, municipal securities dealer, or municipal advisor~~.

[41] Underlining indicates new language; strikethrough denotes deletions.

(2) For an employee or other representative (*e.g.*, officer or director) of an investment adviser being considered by the Board to serve as the Public Representative of institutional or retail investors in municipal securities required by Section 15B(b)(1)(A) of the Act, the term "no material business relationship" means that, at a minimum, the employee or representative (A) is not and, within the last two years, was not an officer, director (other than an independent director), employee, or controlling person of a regulated entity, and (B) does not have a relationship with any regulated entity, whether compensatory or otherwise, that reasonably could affect his or her independent judgment or decision making. In making a determination under subparagraph (B), the Board shall consider relevant factors, including but not limited to, whether:

(i) revenue from the regulated entity accounts for a material portion of the revenues of the consolidated entity that includes the investment adviser and the regulated entity;

(ii) the regulated entity underwrites, privately places, or otherwise facilitates the origination of municipal securities; and

(iii) the investment adviser has a fiduciary duty or other similar relationship of trust to investment company or other investor clients.

(iii) the term "investment adviser" has the meaning set forth in Section 202(a)(11) of the Investment Advisers Act of 1940.

(iv) the term "investment company" has the meaning set forth in Section 3 of the Investment Company Act of 1940.

(v) the terms "municipal advisor" and "municipal entity" have the meanings set forth in Section 975(e) of the Dodd-Frank Act.

(vi) the term "regulated entity" means a broker, dealer, municipal securities broker, municipal securities dealer, or municipal advisor regulated by the MSRB.

(h) No change.

Alphabetical List of Comment Letters on MSRB Notice 2015-08 (June 11, 2015)

1. Americans for Financial Reform; American Federation of State, County and Municipal Employees; and Consumer Federation of America: Letter dated July 13, 2015

2. Government Finance Officers Association: Letter from Dustin McDonald, Director, Federal Liaison Center, dated July 20, 2015

3. Investment Company Institute: Letter from Dorothy Donohue, Deputy General Counsel--Securities Regulation, dated July 13, 2015

4. Jay M. Goldstone: Letter dated July 10, 2015

5. Jerry Gold: Letter dated July 17, 2015

6. Lamont Financial Services Corporation: Letter from Bob Lamb, President, dated July 7, 2015

7. Loews Corporation: Letter from Mark G. Muller dated July 1, 2015

8. National Association of Municipal Advisors: Letter from Terri Heaton, President, dated July 13, 2015

9. National Federation of Municipal Analysts: Letter from Lisa S. Good, Executive Director, dated July 13, 2015

10. Office of the Investor Advocate, U.S. Securities and Exchange Commission: Letter from Rick A. Fleming, Investor Advocate, dated July 13, 2015

11. Robert E. Rutkowski: E-mail dated July 13, 2015

12. Robert Zubak: Letter dated July 6, 2015

13. Samson Capital Advisors: Letter from Benjamin S. Thompson, Managing Principal and Chief Executive Officer, dated July 7, 2015

14. Securities Industry and Financial Markets Association: Letter from Michael Decker, Managing Director, dated July 13, 2015

15. Wells Capital Management Incorporated: Letter from Gilbert L. Southwell III, Vice President, dated July 8, 2015

AMERICANS
FOR FINANCIAL REFORM
ACCOUNTABILITY * FAIRNESS * SECURITY

Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

July 13, 2015

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: Comments on Independence Standard for Public Investor Representative

Dear Municipal Securities Rulemaking Board,

The American Federation of State, County and Municipal Employees ("AFSCME"), Americans for Financial Reform ("AFR"), and the Consumer Federation of America ("CFA") appreciate this opportunity to provide comments to the Municipal Securities Rulemaking Board ("MSRB" or "Board") on the Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board ("MSRB Proposal").

First, we would like to note our serious concern for the short period of time given to review and comment on this rule. Thirty days is a limited amount of time for a serious rule change. As discussed below, we do believe that this proposal outlines a significant rule change that could potentially reverse the statutory intention of the Dodd-Frank Act to provide a majority of independent members on the Board. We suggest that the Board extend the comment period to allow for more detailed examination of this proposal by members of the public interest community with an interest in municipal finance.

We feel that this MSRB Proposal is superior to the modification in Rule A-3 proposed in July 2013, and which our organizations also commented on and objected to.[1] The July 2013 proposal would have unacceptably weakened the standard for independence for all public board members. This proposal affects only one public board member, the member required to be representative of investors (the "Public Investor Representative"). In addition, the current proposal adds a requirement to consider whether the revenue from a regulated entity constitutes a material portion of the revenues of the consolidated entity that employs the potential Public Investor Representative. We believe that both of these changes, particularly the first, are significant improvements on the July 2013 proposal.

[1] Americans for Financial Reform, "Comment on MSRB Rule A-3 Proposal", August 14, 2013; AFSCME, "Comment on Proposed Rule Change to Amend MSRB Rule A-3", August 14, 2013; Consumer Federation of America, "Comment on File Number SR-MSRB-2013-06", August 14, 2013.

However, we continue to oppose the modification of Rule A-3 to permit individuals currently associated with entities that include MSRB-regulated subsidiaries to serve as independent public board members. In the case of the single Public Investor Representative, we believe that it should be possible for the MSRB to find a person qualified to represent investor interests without selecting an individual currently associated with a company that includes a regulated entity.

The justification given in the proposal for this change is that large mutual funds holding municipal bonds are generally part of a holding company that includes a regulated entity subsidiary, hence it is not possible to appoint a current trader for such a fund as a public member of the Board. However, both the 2012 GAO report on municipal market structure and the 2012 SEC report on the same topic specifically point out that the largest mutual funds and institutional investors are precisely the buy-side investors who currently have the *most* information regarding municipal bonds and suffer the *least* from transparency issues that the Board seeks to remedy with its current reform agenda.[2] Both reports highlight retail investors (and, presumably, smaller institutional investors) as the constituency that requires protection. In addition, as the MSRB Proposal states (p. 12), mutual funds currently hold less than 20% of outstanding municipal bonds, so a mutual fund trader is not representative of the typical market investor. Households remain the major investors in the market at more than 40%.

The Dodd-Frank Act established that the number of Public Representatives shall at all times exceed the number of Regulated Representatives. 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." We continue to believe in the importance of this requirement and we continue to believe that permitting individuals employed by companies that include a regulated subsidiary would unacceptably undermine the clear intent of the Dodd-Frank Act.

In addition we do not believe that selecting a Public Investor Representative from a large institutional investor / major private fund is necessary to represent investor interests. As stated above, these entities are clearly not the investors currently most disadvantaged due to lack of transparency in the municipal market, nor do they represent the majority of investor holdings. As a result, we believe implementing this MSRB Proposal is both unnecessary to ensure adequate investor representation and would essentially undermine the Dodd-Frank requirement that the Board be majority independent.

Additionally, the MSRB Proposal seeks comment on whether the requirement that the MSRB publish the names of all Board applicants should be modified or removed. We would strongly support transparency in MSRB applications and strongly support continuing to publish the names of applicants. Permitting anonymous applications is likely to give rise to an impression, or strengthen an impression that may already exist, that the MSRB is dominated by industry insiders and does not welcome a broad range of membership. In our view, the interest of transparency of candidates for the MSRB Board outweighs any concerns that being named but

[2] See pp. 20-27, Government Accounting Office, "Municipal Securities: Overview of Market Structure, Pricing, and Regulation", GAO 12-256, January 2012.; pp. 121-122, Securities and Exchange Commission, "Report on the Municipal Securities Market", July 31, 2012.

not selected would deter eligible and qualified candidates from applying. We also note that the lists do not currently mention whether a candidate applied for a Public Representative or Regulated Representative. We believe it would be useful to know which seats the candidates applied for as well, including each of the three special categories for Public and regulated Representatives.

We appreciate the opportunity to share our views with the MSRB on this important issue. If you have any questions, or need additional information, please do not hesitate to contact John Keenan at AFSCME at jkeenan@afscme.org or Marcus Stanley at Americans for Financial Reform at marcus@ourfinancialsecurity.org.

Sincerely,

American Federation of State, County and Municipal Employees

Americans for Financial Reform

Consumer Federation of America

Government Finance Officers Association
1301 Pennsylvania Avenue, NW Suite 309
Washington, DC 20004
(202) 393-8020

July 20, 2015

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

RE: MSRB Release No. 2015-08

Dear Mr. Smith:

The Government Finance Officers Associations (GFOA) appreciates the opportunity to comment on proposed changes to the Municipal Securities Rulemaking Board's (MSRB/Board) Rule A-3, related to the Standard of Independence for Public Board Members, the length of Board member service and publication of the names of Board applicants. The GFOA represents over 18,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking that is done in this sector. The comments of the GFOA pertaining to the Board's proposal are below.

Modifying the Standard of Independence for Public Board Members

As drafted, the GFOA opposes the proposed changes to MSRB Rule A-3. By providing an alternative definition of "no material business relationship" and applying this new definition to only the Public Investor Representative, the Board's proposal appears to be establishing a permanent seat for a buy-side institutional investor. This seems to contradict the intent of the Securities and Exchange Act of 1934 (Exchange Act), which allows more than one member of the Board to be an Investor Representative. The Board's proposal too narrowly defines the characteristics of the preferred applicants for the Public Investor, and in doing so constrains the flexibility provided by the current rules for the Board to select a candidate to serve as a representative of either institutional *or* retail investors.

Though the MSRB's 2015 proposal would modify the standard of independence for only the Public Investor Representative, instead of modifying the standard of independence for all 11 Public Representatives as the Board proposed in 2013, we believe that this proposal would make permanent changes to the Board's composition in a manner that would also inappropriately change the balance of power on the Board (from 11-10 to 10-10). As MSRB acknowledges in this proposal, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act) was specific in its intent that the Board be composed of a majority of members who are independent of regulated parties. Diluting the criteria and definition could lead to public members being chosen who truly do not represent the best interests of issuers, investors, or the general marketplace and public.

As we commented in 2013 on the Board's Rule A-3 modification proposal, the qualifications for public board membership are already quite lenient, and allow individuals who have been away from regulated parties for two years, to be able to be considered for public board membership. While there are hundreds of marketplace individuals who could contribute well to the Board, this allows – as we have seen in the MSRB

board member selection process – professionals who have spent their entire career as a regulated individual, to become public members if they are retired or working outside of the private sector for only two years. Meanwhile the balance of their career may have 20-30 years associated with the broker/dealer or municipal advisor community. Additionally, we have seen some public members chosen whose profession would, on paper, be considered for public membership, however a vast majority of their work is spent interacting and doing business directly with regulated parties – a "material business relationship" within the meaning of Rule A-3(g)(ii), thus compromising their independence.

We have commented on this concern in the past, and believe that this ongoing problem will only be exacerbated by the proposed changes to Rule A-3. Furthermore, we would reiterate that those Board members representing the issuer community should have spent the vast majority of their career as an issuer, not just two years, as is currently required. The MSRB receives many applicants from issuers who meet this criteria, and as with all types of professionals represented, we believe that the full spectrum of their career should be taken into consideration as a Board member. Someone who as recently as two years ago worked for a regulated party should not qualify as an issuer representative.

While we respect the need to ensure that certain qualified individuals can be considered for the Board, we call on the MSRB to find a better way to address the problem. The current proposal would weaken the criteria for public board membership, and provide the MSRB alone with the subjective ability to determine when an individual meets the public membership criteria. This proposal compromises the 'public' aspects of public board membership. The MSRB could solve the specific problem that it cites, without changing Rule A-3, and without causing greater erosion of the independence of the public board members. The MSRB could allow those individuals who work in companies that have a division of professionals regulated by the MSRB to have one of the non-public board seats, and/or if there is a specific segment of the market that the MSRB does not believe is well represented on the Board, it could undertake additional outreach efforts to encourage those marketplace participants to apply.

Modifying the Length of Board Member Service

The GFOA respects the MSRB's desire to improve productivity by more rapidly increasing the preparedness of Board members to lead the organization, however we are not supportive of extending Board members two consecutive three-year terms. GFOA Board Members are also only eligible to serve a single three-year term, yet are still able to participate fully in shaping the direction of GFOA during their time on the Board. The MSRB may wish to consider dedicating more time to preparing Board members before their service on the Board begins to instill a greater understanding of their duties as Board members and the MSRB's rulemaking process and oversight obligations.

For example, the GFOA holds a series of meetings with incoming Board members to educate them on functions of the Board, and provide a comprehensive overview of their duties as a Board member. These discussions have proven effective in preparing Board members to meaningfully engage during their service to the GFOA. Maintaining a single three-year term will also ensure consistent turnover on the Board, which is important in any organization interested in introducing new perspectives and ideas to the conversations on the work before it.

Eliminating the Publication of Board Member Applicants

The GFOA has concerns with the MSRB's proposal to eliminate or modify the publication of the names of Board applicants to its website, as we believe doing so would remove a needed element of transparency in the nominating Board process. In fact we believe that there is already a greater need for transparency in this process. Each year, many qualified candidates submit applications – a large pool for the MSRB to choose from. However, we are aware of many individuals both in the public and private sectors that are continually denied a chance to advance through the process. Disclosure of the names of these applicants is at least useful

in helping prospective applicants, market participants and the general public understand MSRB's nominating preferences, as well as the characteristics of both successful and unsuccessful applicants.

We appreciate the opportunity to comment on this proposal, and would welcome discussion on these comments with appropriate MSRB staff.

Sincerely,

Dustin McDonald
Director, Federal Liaison Center

INVESTMENT COMPANY INSTITUTE

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July 13, 2015

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board (2015-08)

Dear Mr. Smith:

The Investment Company Institute[1] supports the Municipal Securities Rulemaking Board's proposal to improve the MSRB's ability to identify and select individuals who represent investors and have significant knowledge of the municipal securities market to serve on the MSRB Board.[2] As discussed below, the proposal would increase the opportunity for employees of investment advisers, including advisers to registered investment companies ("fund advisers"), to serve on the MSRB Board. Fund advisers are active participants in the $3.7 trillion municipal securities markets, providing the means through which many retail and institutional investors participate in these markets.[3] We support the MSRB working toward enhancing the representation of these investors, which should help to ensure the maintenance of fair and efficient municipal markets.

Additionally, the MSRB is seeking comments on whether it should extend the length of MSRB Board member service and remove or modify the requirement that the MSRB publish the names of all Board applicants. We support both of these initiatives as well.

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[1] The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of $18.2 trillion and serve more than 90 million U.S. shareholders.

[2] MSRB Regulatory Notice 2015-08 (June 11, 2015) ("Notice"), available at http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2015-08.ashx.

[3] Of the $3.7 trillion outstanding in the municipal securities markets as of year-end 2014, mutual funds and other registered investment companies held 26 percent.

Background

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B(b)(1) of the Securities Exchange Act of 1934 ("Securities Exchange Act") to require that a majority of MSRB Board members be independent ("Public Representatives"), while the remainder be associated with a broker, dealer, municipal securities dealer, or municipal advisor ("Regulated Representatives"). Accordingly, MSRB Rule A-3 provides for eleven Public Representatives, including at least one representative each of retail or institutional investors, issuers, and members of the public, and ten Regulated Representatives.

The MSRB defines a Public Representative as an individual who has "no material business relationship" with any municipal securities broker, municipal securities dealer, or municipal advisor ("regulated entity"). The MSRB defines "no material business relationship" to mean the individual is not or was not "associated with" a regulated entity within the last two years. In addition, the individual must not have a relationship with any regulated entity that reasonably could affect his or her independent judgment or decision making.

The MSRB explains that, in practice, the "associated with" test is without limitation and has disqualified otherwise viable candidates solely due to the presence of a regulated entity within their employer's corporate structure. It encompasses, for example, individuals who serve as independent directors on the boards of companies within the same corporate family as broker-dealers. It also includes employees of fund advisers if the adviser is affiliated with a municipal advisory firm or with a broker-dealer that engages in the sale of municipal securities or Section 529 College Savings Plans.

MSRB's Proposal

To address this shortcoming, in July 2013, the MSRB proposed to amend MSRB Rule A-3 to provide a more function-oriented approach to defining independence for all Public Representatives.[4] Specifically, under the 2013 proposal, the term "no material business relationship" would require that an individual is not, and within the last two years was not, an officer, director (other than as an independent director), employee, or controlling person of any regulated entity. After some commenters expressed concern with the 2013 proposal,[5] the MSRB withdrew the filing with plans to further increase its efforts to identify well-qualified applicants to serve on the MSRB Board, and gain additional experience operating under the existing standard.

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[4] *See* Exchange Act Release No. 70004 (July 18, 2013).

[5] Commenters opposing the 2013 proposed amendments suggested that the amendments were not consistent with the Securities Exchange Act's mandate that Public Representatives be independent of regulated entities. In contrast, ICI submitted a letter expressing support for the 2013 proposal, noting that the proposed amendments would improve the quality of representation for both institutional and retail investors on the MSRB Board. *See* Letter from Dorothy Donohue, Deputy General Counsel-Securities Regulation, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (September 18, 2013), *available at* https://www.iciglobal.org/pdf/27584.pdf.

According to the Notice, after making these efforts and gaining additional experience applying the current standard, the MSRB concluded that the existing test for evaluating materiality of a business relationship is overly restrictive. Indeed, the Notice states that the MSRB continues to experience significant challenges in finding a sufficient pool of individuals qualified to serve as the public MSRB board member representing institutional or retail investors in municipal securities ("Investor Representative"). As such, the MSRB proposes to provide an alternative definition of "no material business relationship" to determine whether the Investor Representative is independent. This modified standard of independence would apply only to one Investor Representative; the MSRB would continue to apply the existing definition of independence to all other Public Representatives, which may include Investor Representatives selected under the existing test. The MSRB explains that the proposed amendments are tailored to allow employees and other representatives of investment advisers[6]—who serve the interests of the adviser's clients, rather than the regulated entities—to serve as the MSRB Investor Representative.

The proposed amendments to MSRB Rule A-3(g)(ii)(2) apply a two part test. First, the adviser cannot currently, or within the past two years, be an officer, director (other than independent director), employee, or controlling person of a regulated entity. Second, the test applies a discretionary component to determine if the individual has a relationship with a regulated entity that could affect the individual's decision making. In making this determination, the board considers a non-exhaustive list of specified factors. The factors are whether: (1) the revenue from the regulated entity accounts for a material portion of the revenues of the consolidated entity that includes the investment adviser[7]; (2) the regulated entity facilitates the origination of municipal securities[8]; and (3) the investment adviser has a fiduciary duty to the investment company or other investor clients.

The twenty-one members of the MSRB Board are charged with the significant responsibility of protecting municipal entities, investors, and the public interest. Each representative should bring to the table experience and expertise to effectively serve the interests of their constituents. As a starting point, there is only one required Investor Representative position on the MSRB Board—for both retail and institutional investors. The pool of applicants is further narrowed by the "associated with" language within the Public Representative definition, as described above. The proposal offers the potential to improve the quality of representation for both institutional and retail investors, which would enhance the MSRB's ability to satisfy its investor protection mandate.

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[6] The term "investment adviser" has the meaning in Section 202(a)(11) of the Investment Advisers Act of 1940.

[7] According to the MSRB, an employee or other representative of an investment adviser, which has a relationship with a regulated entity that does not account for a material portion of the revenues of the consolidated entity that includes the investment adviser and the regulated entity, is less likely to have an appropriately disqualifying nexus with or be subject to any significant influence from the regulated entity.

[8] If a regulated entity does not underwrite, privately place, or otherwise facilitate the origination of municipal securities, the MSRB suggests that the corporate affiliation with the regulated entity is less likely to affect the independent judgment or decision making of an employee or other representative of the investment adviser.

The proposal's function-oriented approach would allow the MSRB to consider candidates who have the relevant municipal market knowledge and expertise to represent investors, but who technically may have some association or corporate affiliation with a regulated entity. For example, the MSRB's rulemaking mandate increasingly requires the MSRB to engage in deliberations regarding highly complex issues relating to the structure and operation of the market, including how municipal securities are priced and transacted. As representatives of underlying fund retail and institutional investors, fund advisers invest in the municipal securities market on behalf of fund investors and interact with a variety of market participants. This provides a distinct and at times contrasting view of the municipal market and its structure compared to representatives or employees of regulated entities or other Public Representatives who represent other market participants, such as municipal issuers and insurers. In fact, the MSRB acknowledges that investment advisers with "buy-side" expertise and representative of investors (*e.g.*, fund portfolio managers) could help the MSRB be as informed as possible on all aspects of the municipal securities markets, particularly with respect to current and future market structure initiatives. We agree.

The proposal also is appropriately limited in a manner consistent with the Dodd-Frank Act. The modified definition of "no material business relationship" retains the prohibition on an individual having relationships with regulated entities that reasonably could affect his or her independent judgment or decision making. Specifically, the proposal would require the MSRB Board to undertake additional analysis to ensure that the Investor Representative does not have any material business relationship with a regulated entity. As noted above, to help make this determination, the proposal includes a non-exhaustive list of three factors for the board to consider.

We support the inclusion of meaningful factors that would enable the MSRB Board to limit the pool of applicants to individuals who are truly independent of any regulated entity and representative of investors. For example, we agree that the amount of revenue from a regulated entity affiliated with an investment adviser is an important factor in determining whether the affiliation impairs independence. The source of that revenue, however, may be equally as important. Specifically, revenue derived from services provided to affiliated investment advisers and other affiliated entities may be less of a factor in determining whether an individual has a disqualifying nexus with a regulated entity, than revenue derived from third parties.

We also note that the proposed third factor—"the investment adviser has a fiduciary duty to the investment company or other investor clients"—is not necessary because the first part of the proposed modified definition of "no material business relationship" only applies to investment advisers, which by law are fiduciaries.[9] Investment advisers are required to make decisions in the best interests of

[9] An adviser's fiduciary duty to its clients is a fundamental tenet of the regulatory framework for investment advisers. *See, e.g.,* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 184-85 (1963). *See also* Information for Newly-Registered Investment Advisers, Prepared by the Staff of the Securities and Exchange Commission's Division of Investment Management and Office of Compliance Inspections and Examinations (November 2010), available at https://www.sec.gov/divisions/investment/advoverview.htm.

their clients. Other safeguards that complement an adviser's fiduciary duty to its clients include firewalls between the asset management and banking/underwriting divisions of commercial and investment banks. Codes of ethics and restrictions on communications further ensure the functional independence of investment advisers.[10]

For all of these reasons, we strongly support the proposed amendments to MSRB Rule A-3.

Other Issues Raised by MSRB

The MSRB also requests comment on whether it should extend the length of the board member service, and, if so, in what manner. Currently, board members are divided into three seven-member classes who serve three-year, staggered terms and can only serve consecutive terms under special circumstances.[11] The MSRB believes allowing members to serve on the board for longer than three years will improve the effectiveness of the board because board members typically take multiple years to fully understand the MSRB's rulemaking process and oversight obligations.[12] We agree, and would support modifications to Rule A-3 that would allow board members to serve, for example, consecutive three-year terms without the special circumstances exception, similar to the length of service for FINRA governors.

We also share the MSRB's concerns that the current requirement to publicly announce the names of all board member applicants deters applicants who are concerned that not being selected will negatively impact their professional career. As an alternative to removing the requirement, the MSRB is considering whether it should publish other identifying information, such as the names of the applicants' employer, to maintain the anonymity of the individual applicants. We would support such an approach.

* * * *

[10] *See, e.g.,* Rule 204A-1 under the Investment Advisers Act (requiring advisers to adopt a code of ethics including, among other things, a standard of business conduct that reflects the adviser's fiduciary obligations; and Section 204A under the Advisers Act (requiring advisers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information).

[11] *See* MSRB Rule A-3(b)(i). Board members may serve consecutive terms only under two scenarios: (1) by invitation from, and due to special circumstances as determined by, the Board; or (2) having filled a vacancy under Rule A-3(d) and, therefore, having served only a partial term.

[12] The Notice states that the average tenure for members on other boards is 8.4 years.

We look forward to working with the MSRB as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 218-3563 or Jane Heinrichs, Associate General Counsel, at (202) 371-5410.

Sincerely,

/s/ Dorothy Donohue

Dorothy Donohue
Deputy General Counsel—Securities Regulation

cc: Jessica S. Kane, Director
Office of Municipal Securities
Securities and Exchange Commission

Lynnette Kelly, Executive Director
Municipal Securities Rulemaking Board

Jay M. Goldstone
P.O. Box 5000
PMB 419
Rancho Santa Fe, CA 92067

July 10, 2015

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Dear Mr. Smith,

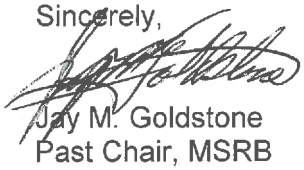
Thank you for the opportunity to respond to proposed changes to the Municipal Securities Rulemaking Board (MSRB) Rule A-3, relating to the Stand of Independence for Public Board Members. I am writing this encourage the Board to approve the proposed amendments to Rule A-3 to modify the application of the standard of independence for the one public Board member required by the Securities Exchange Act of 1934 to be representative of institutional or retail investors in municipal securities. As stated in the Regulatory Notice Overview and based upon my own firsthand knowledge or the nomination and selection process for Board members, this amendment would allow the MSRB to consider and select from a broader group of applicants with no material business relationship with an entity regulated by the MSRB. I am not weighing in on the other two questions posed in your Regulatory Notice regarding terms and publication of names.

As a former public member of the MSRB and a past Chair, I understand the importance of balancing the need for a majority public (independent) Board with the ability to attract qualified individuals with diverse backgrounds and interests. I have participated in the process of both seeking out and encouraging qualified individuals to apply for the Board and recognize that trying to find qualified investors who understand the municipal bond market, have the time and willingness to devote to the Board, and have absolutely no affiliation, no matter how remote, to a regulated entity made this perhaps the most challenging Board position to fill.

In looking back at the comment letters sent to the SEC the last time the Board proposed to modify Rule A-3, I was reminded that a number of concerns were expressed relating to Board's independence and that this amendment would jeopardize the intent of Dodd-Frank. I strongly disagree with that conclusion. First of all, the proposed amendment would open up additional opportunities to attract strong candidates with a municipal bond investment background. Secondly, any corporate relationship between the investor side of the house and the regulated side would be de minimis. Third, every Board member brings his or her background, expertise and bias to the Board room and this adds to a great debate about the pros and cons of the various issues that come before the Board. In my three years on the Board; however, I never felt that the discussion and ultimately the individual votes were cast in what that Board member felt was in the best interest of the industry versus a particular sector, even when the vote was not unanimous.

After spending 37 years in the public sector as an issuer of municipal debt, three years as a Board member of the MSRB and one year as Chair of the MSRB, if I felt that the positives that will be achieved by approving this amendment didn't far outweigh the concerns of jeopardizing the Board's independence, I would not be in support of this change. It is in my professional and personal opinion, however, that the Board and thus the industry will be much better served should this recommended amendment be approved.

Sincerely,



Jay M. Goldstone
Past Chair, MSRB

July 17, 2015

Mr. Ronald W. Smith, Corporate Secretary

Municipal Securities Rulemaking Board

1900 Duke Street, Suite 600

Alexandria, VA 22314

Re: Request for Commentary on MSRB 2015-08 - Proposed Modifications to MSRB Rule A-3

Dear Mr. Smith:

Thank you for the opportunity to submits comments to this very important proposed rule change. You will note that I have copied Senator Elizabeth Warren on this letter. I have chosen to do so because I am concerned that by continuing to put forth proposals to undermine the voice of retail investors and taxpayers, the MSRB is, at best, confused about who it is supposed to be working for. I think a healthy dose of sunlight in the form of an investigation by Senator Warren might do well to "disinfect" the MSRB and expose the clubby arrangements between the Board and giant financial services companies that result in (1) endless delays to simple rules that would help retail investors understand how much they are paying for bonds, (2) million dollar salaries for MSRB employees that once advocated on behalf of the companies they are now supposed to regulate and (3) so-called public member appointments to the MSRB Board that make a mockery of even the paper thin independence standards currently in effect at the MSRB. Suffice to say that I do not support the MSRB's now repeated attempts to roll back the important protections provided to the municipal market in the Dodd-Frank Act. This particular proposal is not as bad on its face on prior proposals but I do find it disturbing that, after getting slapped down with their prior attempt to undermine the majority public composition of the Board, the MSRB is now back with what they undoubtedly believe is a clever first step to undo the Dodd-Frank Act on a brick-by-brick basis.

I apologize in advance for the strong tone of this letter but it is borne out of frustration. I am concerned that the MSRB can't pass a mark-up rule to save their lives yet they can spend precious time and resources tinkering with Board membership rules on an annual basis. And all of their tinkering has done nothing but expand the Board to its current bloated form and reduce protections (such as SEC approval of public Board members) designed to ensure the independence of the public majority of the Board.

Now the current members want to consolidate power even further by lengthening their terms and cutting out retail investor membership. The MSRB should abandon the proposed rule change because it will hurt the vast majority of municipal bond investors (retail investors) and also issuers by reducing their voice on the MSRB Board in favor of dealer-affiliated buy-side firms that have a vested interest in maintaining the current opaque municipal market structure. That structure works against the interest of issuers, retail investors and the average American taxpayer.

Just as in their prior attempts to undercut the clear Congressional intent of the Dodd-Frank Act to have a majority public MSRB Board, the MSRB tries to reassure us that they will have processes in place to ensure that public members do not have "material business relationships" with regulated entities. Unfortunately, this is of little comfort because the MSRB has continually shown that it apparently does not understand what constitutes a material business relationship even under existing standards. And even though the MSRB has alleged that they have policies and procedures in place to test the independence of public members, they have not disclosed those policies nor demonstrated their effectiveness.

If the MSRB feels otherwise then the entire municipal finance community needs an explanation as to how the MSRB could have seated Mr. Robert Cochran as a public member on the current board. Previously, the MSRB facetiously tried to claim that the objection to Mr. Cochran as a public member is that he is associated with an industry group or trade association, while purposely ignoring or glossing over important specific facts in the objection. It is not simply that Mr. Cochran was associated or affiliated with SIFMA and the BDA both of which lobby aggressively on behalf of dealers, it is also that essentially 100% of his business is derived from underwriters and financial advisors. Any minimally effective policy or procedure of the MSRB that truly investigated "material business relationships" would have turned up the fact that Mr. Cochran's company spends lavishly on marketing to underwriters and financial advisors because they rely on these firms to push bond insurance on municipal financings. All Congress and the SEC have to do is subpoena the invitation lists to Build America Mutual (BAM) marketing events and it would be even more clear where Mr. Cochran gets nearly all of his income (I am providing samples of those invitation lists to the SEC and Senator Warren under separate cover). Whether the MSRB is actually unaware or purposely unaware of the material business relationships between Mr. Cochran and the entities he is supposed to be regulating as a member of the general public gives this taxpayer little comfort. And Mr. Cochran is just one of the latest and most egregious examples of a public member where the MSRB has blatantly ignored "relationships compensatory or otherwise" that affect the independent judgment of the public member.

The point for purposes of my objection to this rule is that the first part of the rule A-3 is a key barrier in keeping out persons with ties to regulated entities and maintaining the independence and majority public membership mandated by Congress. This rule change would eliminate that for the investor

representative and therefore goes against Congressional intent and harms investors and issuers. Absent some actual showing that the MSRB that can screen out blatantly obviously conflicted public members like Mr. Cochran, I don't see how anyone can believe this proposed rule change is a good idea.

The alternative to the assumption that the MSRB does not understand their role and does not understand how business relationships (e.g. between bond insurers and regulated entities) work in the municipal market is that the Board is trying to actively undermine changes in market practices that would aid retail investors. The reality may be that with dealer trading profits now squarely within the targets of the SEC, the dealer-dominated MSRB has moved to shore up their alliances on the Board with their buy side trading buddies – both of which profit off the backs of retail investors and issuers. In comparison to their numbers and, even more importantly, their actual need for protection, institutional investors are already over-represented on the MSRB Board. And despite that we are to believe that in a scant four years of experience with the current standard and hundreds of applicants, somehow the MSRB has only noted a shortage of dealer-affiliated buy side reps despite having ZERO representation from the largest group of municipal bond investors (retail investors) in this same time period.

To that last point, the former head of the MSRB, a Mr. Kit Taylor, said in the months leading up the passage of the Dodd-Frank Act that there is an unhealthy relationship between the bond funds and the dealer community. However, the new leadership at the MSRB (straight from their job at SIFMA) seems to be unaware of some basic facts about the municipal market. Underwriters curry favor with buy side firms by giving them advantageous pricing so they can make quick and easy trading profits – activity which harms the downstream retail investors as well as issuers (and by extension) taxpayers. And we are to believe that these representatives of dealer-affiliated buy side firms aren't going to know which side their bread is buttered on when they sit as public members of the MSRB. Certainly the alleged policies and procedures of the MSRB that would ferret that out would not catch it if they could not identify the blatant conflicts of current public members like Mr. Cochran.

The MSRB continues to make the incredible claim that without more dealer-affiliated buy-side representatives the MSRB can't fulfill their mandate to have public members that are knowledgeable of matters related to the municipal securities market. First of all, none of these people are prohibited from being on the Board, they are all eligible for regulated entity slots so there is no barrier to their participation. Second of all, prior comment letters on this issue clearly highlight the many groups and the hundreds of individuals that the MSRB has somehow missed in their attempts to pack the MSRB Board with dealer-friendly public members. If all of these financial service companies are so complex that they can not satisfy the current independence tests then they an just simplify their corporate structures. But the MSRB is naïve in thinking that even far-flung affiliates can not have conflicts of interests.

Most shockingly but also most tellingly, the MSRB has attempted to claim that the focus of the types of issues the MSRB is likely to address has changed because of the SEC Report on the State of the Municipal Securities Market which includes many market structure initiatives. The reason those items were in the SEC report is because the MSRB has failed to do its job in the last 38 years! As even the SEC Report notes, the MSRB has dragged its feet and failed to deliver on basic investor protections like disclosure of markups. And the MSRB has failed to do its job because it has been dealer-dominated since its inception. Now the MSRB tries to claim that the very basic investor protections that the SEC, retail investors and issuers have spent decades clamoring for are suddenly a new thing for the MSRB to address. And the MSRBs reaction to this is to try to pack the MSRB Board with the very buy side firms that most profit from the existing opaque and unfair market structure.

This rule change supposedly gives the MSRB greater flexibility to elect knowledgeable candidates with an "investors perspective." First of all there is no election involved – it is an opaque appointment process by the MSRB that continually yields 1) public members like Mr. Cochran with significant ties to regulated entities, 2) issuer representatives that have spent the majority of their careers as broker-dealers and 3) ZERO retail investors. If this rule expanded possibilities for true RETAIL investor participation on the MSRB Board I would be in support of it – but due to the finite number of slots on the Board this rule actually reduces the possibility of retail investor participation – the group most in need of a voice on the MSRB.

I am also opposed to the attempt by current members of the Board to consolidate power and lengthen their terms. Hundreds of people apply to be on the MSRB board every year. Already the Board has taken disturbing steps in the last few years to consolidate power such as expanding membership so that no members would have to resign after the Dodd-Frank Act passed, removing the requirement that the SEC approve public members without any notice to the public and appointing members from the same locality as departing members. In addition, since the Dodd-Frank Act passed, the Chair of the Board has only been an investment banker or someone who changed jobs to be an investment banker. That is kind of surprising for what is supposed to be a Board made up of a public majority.

For all of the reasons above, in the name of retail investors, issuers and taxpayers, I urge Senator Warren and the SEC to reject this misguided rule change and to open an investigation into the inner workings of the MSRB that have resulted in proposals such as this one. The SEC should once again be tasked with approving the appointment of public members to the Board because the MSRB has demonstrated that they are not capable of evaluating conflicts of interest. Mostly, I am troubled that the Board does not understand that its job is to protect investors (especially retail investors) and issuers

and it is attempting to limit representation by those persons that most need the protection that Congress empowered them to provide.

Very truly yours,

Jerry Gold

cc: Senator Elizabeth A. Warren

Date: July 7, 2015
To: Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
From: Bob Lamb, President
Lamont Financial Services Corporation
Re: Comments on Independence Standard for Investor Representatives (Rule A-3)

Lamont Financial appreciates the opportunity to comment on the proposal to expand the definition of independence regarding the required investor representative for its Board of Directors. In reading through all the material, I strongly believe that any person with a fiduciary duty to investor clients, including mutual funds, should qualify as independent for Board selection purposes. I believe this because any person who must care about his or her fiduciary responsibility on behalf of his or her clients is used to putting the clients interest ahead of the firm's interest. As a result, the relationship to an affiliated entity which may be a dealer should be approached from the basis of an ownership interest or where the person is an officer or director of a company.

This approach is parallel to the obligations that the Board is seeking from an Investor Representative. I believe that the Board seeks to recruit candidates that will approach issues being discussed for rulemaking from the point of view of a advocate for the investor in the marketplace. Any candidate, whether or not an employee of an affiliate of a regulated enterprise, who routinely approaches investment decision-making from the point of view of his or her fiduciary duty to clients should be an effective Investor Representative since he or she is used to putting the investor's interest first, ahead of the interests of the firm. This should be the standard that the MSRB seeks for all of its members, putting the Board first ahead of any individual firm interest.

In my opinion, the Board should have substantial flexibility to select candidates to the slot of Investor Representative so long as the candidate maintains a fiduciary responsibility to clients. I don't believe it is necessary to limit the flexibility regarding an Investor Representative to a single position, as I believe it would be good for the Board to more regularly recruit investor representatives with every class as independent board members. As a result, I write in support of the proposed amendments to the Independence Standard for Investor Representatives.

The Board also asked for comments about posting the names of persons who applied but were not selected by the Board. I think that this practice serves to limit the potential pool of candidates applying to the Board, and it should be abandoned.

The Board also asked for comments about the length of the term of board members. Given that most board members take longer than a year to become fully engaged in the rulemaking process, I would suggest staying with 3 year terms due to the number of board positons, but permit a board member to serve for a second consecutive 3 year term. Alternatively, the Board could permit former board members to reapply for a second term after two years. However, I believe that the chair should remain a one year obligation.

LOEWS
CORPORATION

MARK G. MULLER

July 1, 2015

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

To the Board of Directors of the MSRB:

Please accept this letter as a formal reply to your request seeking comment on:

> "draft amendments to MSRB Rule A-3, on membership on the Board, to modify the application of the standard of independence for the one public Board member required by the Securities Exchange Act of 1934 (Exchange Act) to be representative of institutional or retail investors in municipal securities."

I support your proposal to amend Rule A-3 to modify the standard of independence by providing an alternative definition of "no material business relationship" to determine whether an individual being considered to serve as the Investor Representative is independent, while continuing to use the current definition to determine the independence of all other Public Representatives.

As a former Board Member (2010-2012) fulfilling the role of Public Representative (Investor Representative) and former Chair of the Nominating and Governance Committee responsible for nominating candidates for the Board of Directors of the Municipal Securities Rulemaking Board for election by the Board, I had firsthand knowledge and experience with Rule A-3 being too restrictive, resulting in the elimination of qualified individuals with relevant knowledge and expertise that otherwise were particularly capable of serving in the role of Public Representative (Investor Representative). The disqualification of qualified individuals, who have the relevant knowledge and expertise required by the MSRB to meet its statutory mandate, as Public Representatives created a significant challenge in finding a sufficient pool of qualified candidates. The standard of independence used to determine whether an individual being considered to serve as the Investor Representative is independent requires modification.

I find that your proposed modifications to the standard of independence are consistent with the mandate given by the Dodd-Frank Act and the Securities Exchange Act of 1934, respectful to commenters' concerns registered in 2013, and beneficial to serving the MSRB's statutory mandate.

Sincerely,

Mark G. Muller

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P.O. Box 304
Montgomery, Illinois 60538.0304
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July 13, 2015

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Release 2015-08: Proposed Changes to MSRB Rule A-3

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on recently proposed changes to MSRB Rule A-3. NAMA is America's leading organization of municipal securities industry professionals who provide municipal advisor ("MA") services to municipal entities and obligated persons. NAMA members must be registered and in good standing with the Securities and Exchange Commission ("SEC") and the MSRB. Our organization and members support core principles to protect the interests of municipal bond issuers and the public trust; build a more vibrant, competitive, and transparent municipal securities marketplace; and to uphold the highest standards of professional ethics, qualifications, education, training, and regulatory compliance.

Following review of the proposed changes to MSRB Rule A-3, NAMA would like to comment on the three core issues addressed in the document – changing the definition of "independent" related solely to the statutorily designated investor representative; extending the length of Board terms; and the requirement to publically announce the names of all Board applicants.

Standard of Independence for the Public Representative of Institutional or Retail Investors in Municipal Securities

NAMA has expressed concern in the past that the Board meet the requirements set forth in the *Dodd-Frank Wall Street Reform and Consumer Protection Act* that "the number of public representatives of the Board shall at all times exceed the total number of regulated representatives." Therefore, the action to dilute the independence requirement and allow an investment representative from an entity that is regulated by the MSRB, even tangentially, is problematic. First, we question whether doing so would violate the current *Exchange Act* requirement to have a majority of public members on the Board. Second, we would argue that more emphasis should be placed on finding retail investors (which make up a majority of the investor base for municipal bonds) than make the proposed change to seek out a greater number of institutional investor applicants. Third, if a person does not meet the current independence requirement, but otherwise is qualified to serve on the Board, that individual could become a Board member by filling the vacancy of one of the broker/dealer or banking representative positions, depending on the specific circumstance.

Regarding the second point above, we disagree with the argument contending the MSRB is lacking in the number of qualified investors who wish to serve on the Board, who do not have an affiliation with a

regulated entity. It is worth mentioning that the *Exchange Act* requires MSRB Board members to be "knowledgeable of matters related to the municipal securities market" but does not require them to be knowledgeable of *all* matters. This is important to note as the knowledge of how the realities of the municipal securities marketplace affect retail investors in practice has been absent from the Board. Our concern is that the proposed change to MSRB Rule A-3 would make the MSRB even less likely to have this particular knowledge available as part of its Board. NAMA notes that retail investors regularly comment on the MSRB rules that most directly affect them as part of the public comment process (see e.g. MSRB 2014-20) and, given the realities of the investor base for municipal securities, the MSRB should be working to include more of these investors on its Board and not fewer. By either targeting recruitment efforts to find investors not related to any regulated entity or allowing them to serve as a regulated member, we believe the MSRB can achieve their goal of expanding investor representation on the Board.

The proposed change to MSRB Rule A-3 provides significant potential imbalance on the Board to favor the interests of dealers and institutional investors, at the expense of issuers and retail investors affecting a break with the public trust. This singular reality provides for a stand-alone basis of rationale to reject this proposed change to ensure the standard of independence of the Board as contemplated and intended by the *Dodd-Frank Act* is not subjected to compromise.

Length of Board Member Service

NAMA is concerned with extending the length of service for Board members, especially as mentioned in the proposal to two or more consecutive three-year terms. While we understand that learning the suite of MSRB rules (and proposed changes) does take time, the requirement that Board members be knowledgeable of matters related to the municipal securities market should shorten the "learning curve" time. Moreover, the MSRB can devote extensive staff time and other resources to elevate new members' knowledge quickly. Lastly, there seems to be no shortage of applicants for Board membership who understand that they would be committing to a single three-year term.

MSRB rules can currently allow for Board member to serve more than one term "by invitation from, and due to special circumstances as determined by, the Board." While we do not encourage the overuse of this clause, it does provide the MSRB with the ability to retain a member beyond his/her current term.

We believe that the proposed changes to Rule A-3 are incomplete because the effect of those changes on the MSRB's leadership and a Chairman's current one-year term are not addressed. If there are term extensions for Board members, the proposed changes should address term lengths for leadership, and at what point in a Board member's term they are eligible for a leadership position. NAMA contends that addressing these issues should be incorporated into any proposed changes to MSRB Rule A-3.

Requirement to Announce Publically the Names of All Board Applicants

As recently as 2011, in response to comments from the Government Finance Officers Association (GFOA) and NAMA (at that time called NAIPFA) on prior amendments to MSRB Rule A-3, the MSRB indicated that the Board was exploring alternatives to promote transparency in its processes because "transparency in an important priority of the Board." (http://www.sec.gov/comments/sr-msrb-2011-11/msrb201111-4.pdf at page 8) The SEC specifically noted the Board's indication that it would explore alternatives to increase transparency in the approval order for MSRB 2011-11 (http://www.sec.gov/rules/sro/msrb/2011/34-65424.pdf at page 16) as well as in its 2012 Report on the State of the Municipal Securities Market (http://www.sec.gov/news/studies/2012/munireport073112.pdf at footnote 184). Accepting the currently proposed changes to Rule A-3 would be a step back in the transparency effort.

More than 100 people have applied for membership on the MSRB Board in each year for the available seven spots which indicates that candidates are not discouraged from applying to the Board. Full disclosure of the applicant list is important for the public to be able to evaluate the composition of the applicants as well as those selected for membership to evaluate the selection process.

Other Items

NAMA would also like to take this opportunity to encourage the MSRB to look for ways to reduce the size of the Board and return the number to 15 members. While we understand that there was a need to undertake additional board members to transition to and fully comply with the *Dodd-Frank Act*, the Board should now determine how best to revert back to its original format, albeit with the new composition requirements, which will provide overall cost savings to the organization.

NAMA again appreciates the opportunity to comment on this rulemaking and representatives would be happy to speak with MSRB staff about them at your convenience.

Sincerely,

Terri Heaton, CIPMA
President
National Association of Municipal Advisors (NAMA)

cc:

Jessica Kane, Director, Office of Municipal Securities
Rebecca Olsen, Deputy Director, Office of Municipal Securities
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board

July 13, 2015

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314-3412

Re: MSRB Regulatory Notice 2015-08

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board (MSRB or Board) request for comments on draft amendments to Rule A-3 modifying the standard of independence for the one public Board member.

The NFMA is a not-for-profit association with nearly 1,400 members throughout the United States, and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal bond marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our *Recommended Best Practices in Disclosure* and *White Papers* are available via our website, www.nfma.org.

The NFMA's membership is diverse, with individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the marketplace. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms while they serve.

The NFMA supports the above-referenced proposal to provide an alternative standard of independence for prospective Board members because we believe that this would broaden the pool of applicants who would be eligible. We also believe that it would give a voice to a significant segment of the municipal bond market, primarily analysts and portfolio managers employed by mutual funds, who are largely ineligible for membership consideration under

existing rules. We believe that this rule should not only apply to the one investor position allocated under Dodd-Frank, but to any investor seeking to apply for membership on the Board.

However, we believe that this proposal does not go far enough to ensure that both institutional and retail investors are adequately represented on the Board. The allocation of one investor to serve as a Public Representative is woefully inadequate given the significant role that investors play in the municipal bond market. We note that there is the minimum one investor on the current Board, a reduction from the two who served on previous Boards. We believe that three representatives are necessary to provide adequate representation for the wide range of municipal market investors, including municipal bond mutual funds, money market funds, wealth management firms and retail investors.

The MSRB requests comment on the current three-year term structure. We understand the concern about the limited nature of a three-year term, but feel that a six-year or longer term would not allow the opportunity for a larger pool of applicants, with fresh ideas, to serve on the Board. Any effort to lengthen the term structure should be limited in nature, subject to term limits and prohibit any members from serving on the Board again for a period of at least five years.

With respect to publishing applicants' names after final selection, we believe that transparency and full disclosure are necessary components of this process. We do not see evidence from past application processes that this requirement limits interest in those seeking Board membership. Consideration could be given as to whether or not the list of applicants should be divulged in conjunction with the announcement for new Board members or be made available elsewhere on the MSRB website.

The NFMA is of the opinion that the proposed rule change to broaden investor eligibility for Board membership is a positive move and should be extended to all investors applying for Board membership. We also feel that a proposal to have a minimum of three investor representatives on the Board would be more appropriate, given the diversity of institutional and retail investors present in the municipal marketplace. We do not see any need to significantly lengthen the three-year membership term; however, modest extensions coupled with term limits (both consecutive and non-consecutive) may be appropriate. We also support the proposal that the names of all Board applicants be disclosed, but believe that there may be alternative approaches to implementing this policy.

Sincerely,

/s/

Lisa S. Good
Executive Director
NFMA

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INVESTOR ADVOCATE

July 13, 2015

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Regulatory Notice 2015-08
Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board

Dear Mr. Smith:

Pursuant to Section 4(g)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), the Office of the Investor Advocate[1] at the U.S. Securities and Exchange Commission ("Commission" or "SEC") is responsible for, among other things, analyzing the potential impact on investors of proposed rules of self-regulatory organizations ("SROs"). In furtherance of this objective, we routinely review and examine the impact on investors of significant rulemakings of the Municipal Securities Rulemaking Board ("MSRB" or "Board"). As appropriate, we make recommendations and utilize the public comment process to help ensure that the interests of investors are considered as decisions are being made.

I. Executive Summary

On June 30, 2015, certain MSRB staff met with the Investor Advocate to discuss MSRB Rule A-3. We are grateful to the staff of the MSRB for explaining the proposed amendments to MSRB Rule A-3, and we appreciate this opportunity to provide comments in regard to Regulatory Notice 2015-08, Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board.[2]

The Exchange Act requires that at least one of the public representatives on the Board represent institutional or retail investors in municipal securities ("Public Investor Representative"). The Public Investor Representative is a very important seat on the Board and should be filled by a highly qualified

[1] This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.

[2] MSRB Notice 2013-10, *Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board* (June 11, 2015), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2015-08.ashx?n=1.

applicant. Thus, we support the MSRB's effort to attract a robust pool of knowledgeable and experienced Board applicants to satisfy this requirement. We also recognize the challenge of finding talented and qualified people who are willing to devote the time and energy to serve in that capacity.

Nonetheless, we believe that the proposed change to the membership qualifications in Rule A-3(g) is deeply flawed because it weakens the standard for material business relationships and allows the Board to consider less independent applicants for the Public Investor Representative seat. In our view, the proposal is based on an overly restrictive view of the existing pool of qualified candidates and focuses far too narrowly on what appears to be one preferred type of candidate. In doing so, it significantly undermines the very purpose of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amendments in this area. For these reasons and those set forth below, we cannot support Regulatory Notice 2015-08 in its current form.

Instead, we believe that the MSRB's effort would be best served by considering other alternatives identified in the Request for Comment, including potential changes to the length of Board members' service or the allowing confidential treatment of applicants for the Public Investor Representative position. We encourage the MSRB to consider offering specific proposals and draft amendments in either of these areas. We believe that implementing changes to either of these two alternatives would make the proposed changes to member qualifications unnecessary.

II. Background

The Dodd-Frank Act amended Sections 15B(b)(1) and (b)(2)(B) of the Exchange Act, which govern the composition of the Board. These amendments categorized the Board members into two broad groups – Regulated Representatives and Public Representatives – and mandated that the Board be comprised of a majority of Public Representatives.[3] Regulated Representatives are individuals associated with a broker, dealer, municipal securities dealer, or municipal advisor, while Public Representatives are individuals independent of any municipal securities broker, municipal securities dealer, or municipal advisor.[4]

At issue is the appropriate independence standard for a Public Representative. The Dodd-Frank Act did not further define the independence standard applicable to Public Representatives beyond requiring the member be "independent of any municipal securities broker, municipal securities dealer, or municipal advisor." In 2010, the MSRB defined this phrase to mean that the relevant individual must have "no material business relationship" with any municipal securities broker, municipal securities dealer, or municipal securities advisor.[5] The MSRB defined the phrase "no material business relationship" to mean, in part, "at a minimum the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor."[6]

On July 3, 2013, the MSRB filed with the Commission a proposed rule change to amend MSRB Rule A-3 by modifying the standard of independence for all 11 Public Representatives ("July 2013

[3] *See* Pub. L. No. 111-203, 124 Stat. 1376; 15 U.S.C. § 78o-4(b)(1), (2)(B)(i); MSRB Rule A-3(a)(i)-(ii).
[4] *See id*.
[5] *See* Exchange Act Release No. 63025 at 5 (Sept. 30, 2010) [75 FR 61806 (Oct. 6, 2010)]; MSRB Rule A-3(g)(ii).
[6] Exchange Act Release No. 63025 at 5-6 (Sept. 30, 2010) [75 FR 61806 (Oct. 6, 2010)]; MSRB Rule A-3(g)(ii).

Proposal").[7] Asserting that the standard adopted in 2010 precluded otherwise viable candidates from serving on the Board as Public Representatives, the July 2013 Proposal sought to redefine the phrase "no material business relationship," in part, by replacing the "associated with" language in the existing definition with a requirement that an individual is not, and within the last two years, was not an officer, director (other than an independent director), employee or controlling person of any regulated entity.[8] After commenters objected to the July 2013 Proposal, the MSRB withdrew its filing with the Commission.[9]

On June 11, 2015, the MSRB published for comment Regulatory Notice 2015-08, Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board ("June 2015 Proposal").[10] The June 2015 Proposal seeks comment on draft amendments to modify the application of the standard of independence for one of the required Public Representatives – the Public Investor Representative.[11] The proposed modifications would establish an alternative definition of the phrase "no material business relationship" for applicants to the Public Investor Representative seat exclusively.[12]

Rather than requiring the Public Investor Representative to be an individual that is not and, within the last two years, was not "associated with" a municipal securities broker, municipal securities dealer, or municipal advisor, the proposed draft definition would require that an employee or other representative of an investment adviser is not, and within the last two years, was not an officer, director (other than an independent director), employee, or controlling person of any regulated entity.[13] A discretionary component of the current definition would be retained, requiring the Board to determine if an applicant has a compensatory or other relationship with any regulated entity that could reasonably affect his or her independent judgment or decision making. The proposal identifies three new non-exclusive factors that would be utilized to guide this determination.[14]

The MSRB asserts that this alternative draft definition would allow the Board to consider individuals for the Public Investor Representative seat who, under the current broad definition of the "no material business relationship" standard, would be disqualified automatically because they are employed by or otherwise representative of an affiliate of a holding company that has a separate regulated affiliate.[15] The MSRB contends that the draft definition, discretionary component, and non-exhaustive factors would continue to ensure individuals directly associated with a regulated entity are not eligible to be considered to serve as the Public Investor Representative.[16]

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[7] *See* 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, Exchange Act Release No. 34-70004 (July 18, 2013) [78 FR 44607 (July 24, 2013)], File No. SR-MSRB-2013-06, available at http://www.sec.gov/rules/sro/msrb/2013/34-70004.pdf.
[8] *See id* at 4-5.
[9] *See* Exchange Act Release No. 70617 (Oct. 7, 2013) [78 FR 62780 (Oct. 22, 2013)].
[10] MSRB Notice 2013-10, *supra* note 2.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.

III. Comments on the Application of the Standard of Independence for the Public Representative of Institutional or Retail Investors in Municipal Securities

Although we support the MSRB's goal of attracting knowledgeable and experienced Board applicants to serve as the Public Investor Representative, we believe the proposal to broaden the group of applicants by weakening the standard for material business relationships is the wrong approach. We also have serious concerns about the adequacy of the MSRB's economic analysis regarding the proposed change.

We recognize that the Dodd-Frank Act requires each Board member, including the Public Investor Representative, to be "knowledgeable of matters related to the municipal securities markets."[17] Unfortunately, the June 2015 Proposal, including the Economic Analysis section, does not describe who the MSRB believes would satisfy this requirement, nor does it attempt to quantify the pool of available candidates for the Public Investor Representative position. Rather, the June 2015 Proposal simply asserts that, "[i]n recent years, the MSRB has found that it is increasingly difficult, due to its broad reading of the 'associated with' test, to identify a robust set of applicants who have the requisite experience and knowledge, and are representative of investors."[18]

The June 2015 Proposal strongly implies that the MSRB has been unable to find highly qualified candidates because the MSRB has been precluded from accepting applications from buy-side portfolio managers who work for investment firms with affiliated broker-dealers.[19] This suggests a very high threshold for the type of applicant the MSRB considers "knowledgeable" – that is, the qualified applicant must have highly specialized experience in the municipal securities markets. As a practical matter, the proposed amendments seem to convert the Public Investor Representative seat into a *de facto* buy-side fund adviser seat.

This high threshold appears to be an abrupt shift from the Board's thinking as recently as 2011. At that time, in response to a commenter's concern about the potential difficulty of filling 11 Public Representative seats with individuals with sufficient knowledge and expertise in the municipal securities market, the MSRB asserted that "[t]he municipal securities market is replete with individuals who, while satisfying Rule A-3's definition of 'independent,' are very knowledgeable about the workings of the municipal securities market and have devoted a considerable amount of their time to the improvement of that market. Previous MSRB searches for public Board members have elicited significant indications of interest from such public servants."[20]

Although we agree that the Board could benefit by having representation from a buy-side portfolio manager, such a narrow view of public member qualification, particularly as applied to the Public Investor Representative, is unnecessary. It may also contradict the purpose of the Dodd-Frank Act amendments, which seem designed to inject greater independence into the Board and avoid the inevitable bias that comes from an insular type of industry group-think. While it is helpful to have both the buy-side and sell-side of the industry represented on the Board, the MSRB could also benefit from *non*-industry representation, particularly in the slot for the Public Investor Representative.

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[17] *See* 15 U.S.C. § 78o-4(b)(1).
[18] MSRB Notice 2013-10, *supra* note 2.
[19] *See* MSRB Notice 2013-10, *supra* note 2, at 8-9.
[20] *See* Letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB to Elizabeth M. Murphy, Secretary, SEC (Sept. 19, 2011), available at https://www.sec.gov/comments/sr-msrb-2011-11/msrb201111-4.pdf (responding to Comments on File No. SR-MSRB-2011-11).

Of course, the Board considers very complex issues, and industry experience is generally helpful. But, it is *not* indispensable. Many of the issues before the Board may require careful explanation, but a grasp of these issues is not beyond the reach of talented men and women with significant investment experience. Moreover, many of the issues that the Board considers come down to relatively straightforward policy choices. The Board could benefit greatly from a fresh perspective as it makes these types of choices.

While the learning curve for a person lacking industry experience may be steep, it is a challenge that can be addressed by extending the term limit for the Public Investor Representative, instead of modifying the standard for independence. As discussed in greater detail below, we would welcome a proposal from the MSRB to modify its rules to allow the Public Investor Representative to serve a full three year term renewable for an additional three-year term.[21] By doubling the tenure of the Public Investor Representative, the challenge of finding quality candidates for the seat could be cut in half, thereby lessening the need for such a drastic change to the standard of independence for the seat.

We are also concerned about the impact the proposed changes would have on the balance of power of the Board. As stated above, the Dodd-Frank Act mandated that the Board be comprised of a majority of Public Representatives.[22] With the current 11 Public Representatives and 10 Regulated Representatives, the June 2015 Proposal would modify the Public Investor Representative seat in a manner that would create the potential to flip the balance of power for the Board.

Perhaps the most disturbing aspect of the proposal is that it subjects the seat for the Public Investor Representative, in particular, to potential conflicts of interest. In our view, while none of the public members should be conflicted, the Public Investor Representative seat is the one that should be shielded most carefully from the influence of regulated entities.

If a buy-side portfolio manager with an affiliate active in the municipal market were to occupy the Public Investor Representative seat, it is not difficult to imagine the potential conflicts of interest that would arise. Revenue from the regulated entity would flow to the consolidated entity, even if the MSRB believes those amounts might be immaterial. Business generated within the regulated entity could lead directly or indirectly to business or investment opportunities for the portfolio manager. In addition, there are other professional and personal ties that could create conflicts for the potential applicant, even if subtly – for example, the portfolio manager may serve on corporate committees with members of the regulated entity. The fundamental problem is that the portfolio manager and the regulated entity ultimately report to the same owners and share a common corporate brand. This could impair the portfolio manager's ability to operate objectively if the MSRB were to consider actions that could negatively impact the regulated entity or the brand. These various conflicts of interest could easily interfere with the portfolio manager's duty of independent representation on behalf of other institutional and retail investors.

Granted, the second prong of the proposed independence definition is designed to exclude any person having any relationship with a regulated entity, compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. However, we question whether the proposed amendments will actually exclude conflicted individuals, particularly when the June 2015

[21] In the event that a Public Investor Representative resigns without serving out their full term, the replacement could be permitted to serve the unexpired term and a maximum of two additional full three-year terms.
[22] *See* Pub. L. No. 111-203, 124 Stat. 1376; 15 U.S.C. § 78o-4(b)(1), (2)(B)(i).

Proposal seems to suggest that the MSRB has already concluded that the typical buy-side portfolio manager with an affiliate in the municipal markets is not generally disqualified from serving as the Public Investor Representative.

The proposal also seems to accord undue weight to a particular factor for evaluating potential conflicts of interest. Proposed paragraph (g)(ii)(2) of MSRB Rule A-3 would require the Board to consider three specific factors to determine whether an applicant has a compensatory or other relationship with a regulated entity that reasonably could affect his or her independent judgment or decision-making:

(i) revenue from the regulated entity accounts for a material portion of the revenues of the consolidated entity that includes the investment adviser and the regulated entity;

(ii) the regulated entity underwrites, privately places, or otherwise facilitates the origination of municipal securities; and

(iii) the investment adviser has a fiduciary duty or other similar relationship of trust to investment company or other investor clients.

The third factor seems to credit an applicant for an attribute inherent in his or her status as an investment adviser – *i.e.*, that the person is a fiduciary. We see no reason to include this as a discretionary factor for consideration when it should be true of all applicants who wish to use this new provision. The fact that an investment adviser is a fiduciary should be taken as a given, and not be used as a "credit" to be balanced against the conflicts of interest that are unique to that investment adviser.

In addition, an investment adviser's role on the Board would be a policymaking role that is separate from the investment adviser role. The fiduciary duty to clients would not govern conduct on the Board. Thus, such fiduciary status should not be given any special weight.

The flaws in the June 2015 Proposal result, at least in part, from a lack of economic analysis and data. The Economic Analysis section fails to adequately quantify the benefits and costs of the proposal or assess any reasonable alternative approaches. Specifically, the June 2015 Proposal fails to quantify the size of the existing pool of potential applicants for the Public Investor Representative position under the current standard for evaluating material business relationships. It also fails to quantify the impact that the proposed changes will have on the size of that pool.

In our view, the current pool of applicants is actually quite large. American households are the largest holders of municipal bonds,[23] and even if a relatively small percentage of these individual investors could be considered "knowledgeable of matters related to the municipal securities markets" as required by the Dodd-Frank Act,[24] there are many thousands of individual investors who could qualify to serve on the Board. In addition, there are tens of thousands of investment adviser representatives who

[23] At the end of 2014, individuals held 42.2% ($1.54 billion) of outstanding municipal securities directly. *See* SIFMA, US Municipal Securities Holders: Quarterly Data, available at http://www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/Municipal-US-Municipal-Holders-SIFMA.xls (last visited June 11, 2015).

[24] *See* Pub. L. No. 111-203, 124 Stat. 1376; 15 U.S.C. § 78o-4(b)(1).

work for firms that are not affiliated with regulated entities,[25] many of whom regularly give advice to clients about the purchase or sale of municipal securities. Some of these unaffiliated professionals are advisers to funds with significant holdings of municipal securities.[26]

In comparison to the size of the existing pool of qualified applicants, the proposed change would increase the size of that pool by a very minimal percentage. As described in the June 2015 Proposal, the amendments seem tailored to open the door for a narrow type of applicants – namely, buy-side portfolio managers from investment firms with affiliated broker-dealers. We question the need to loosen the qualifications of the Public Investor Representative to accommodate this type of candidate, particularly when the existing candidate pool is so large and the conflicted buy-side portfolio managers would already qualify for seats on the Board as Regulated Representatives.

IV. Comments on Length of Board Member Service

As noted above, we believe that the MSRB could offer a specific proposal and draft amendment to modify the length of Board member service for the Public Investor Representative. We believe that allowing a knowledgeable and experienced public member to remain on the Board for one additional three-year term would more effectively address the objectives that appear to underlie the Request for Comment, without altering the current standard for evaluating material business relationships.

To the extent the MSRB is concerned about continuing to locate well-qualified applicants for the Public Investor Representative on the Board, doubling the term limit for this position could effectively cut in half the challenge of finding such candidates. Importantly, lengthening the potential term of service for well-qualified applicants that already meet the independence standard under the existing MSRB Rule A-3 would not appear to raise the concerns described above. In addition, such a proposal might provide the advantages of greater continuity and more effective use of expertise and experience with respect to the specialized work of the Board.

Any proposal should, however, still assure appropriate turnover of Board membership. A restriction from serving more than two consecutive full terms may appropriately balance this interest in fresh ideas against the countervailing advantages of longer serving Public Investor Representatives making more effective contributions to the work of the Board.

V. Comments on Requirement to Announce Publicly the Names of All Board Applicants

Similarly, we believe that the MSRB could develop a specific proposal and draft amendment to modify the requirement to announce publicly the names of Board applicants for the Public Investor Representative position. Although we appreciate the need to maintain transparency in the selection

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[25] At the end of 2014, there were 10,895 registered investment advisers. Only 4.2% (456) reported directly engaging in broker-dealer activity and only 21.3% (2,323) reported they were affiliated with broker-dealers, municipal securities dealers or government securities broker-dealers. Importantly, around 36.8% of registered investment advisers (4,005) reported having no financial industry affiliations at all. *See* 2014 Evolution Report – A Profile of the Investment Adviser Profession, Investment Adviser Association & National Regulatory Services (2014), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Reports_and_Brochures/IAA-NRS_Evolution_Revolution_Reports/evolution-revolution_2014.pdf.

[26] 28.4% ($1.04 billion) of municipal bonds are held indirectly through mutual funds. *See* SIFMA, US Municipal Securities Holders: Quarterly Data, *supra* note 23. Banking institutions and insurance companies held 13.1% ($475.9 billion) and 12.9% ($469.5 billion), respectively, with the other 3.5% held by various other entities. *Id.*

process, we nonetheless believe that an applicant for the Public Investor Representative position should have the opportunity to request and be granted confidential treatment of the application.

This alternative, like extending the tenure of the Public Investor Representative, could better address the objectives that appear to underlie the Request for Comment, without altering the current standard for evaluating material business relationships. If the MSRB is concerned about continuing to locate well-qualified applicants for the Public Investor Representative on the Board, providing some level of anonymity to those who seek confidentiality could increase the availability of interested Board applicants who meet the existing standards. This modification would not raise the concerns described above.

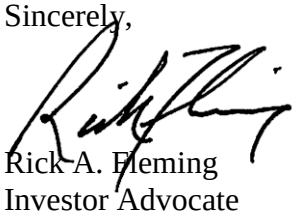
Any proposal should continue to ensure adequate transparency for the Board application process, but the interest of transparency should be appropriately balanced against the applicants' interest in anonymity and the potential harm to the professional reputations of rejected applicants.

VI. Conclusion

Although we support the MSRB's efforts to attract a robust pool of knowledgeable and experienced Board applicants to represent institutional or retail investors on the Board, we have significant reservations about the potential consequences of modifying the application of the standard of independence in order to achieve the underlying objective. Such a change could have a significant impact on public representation on the Board. We encourage you to consider alternatives that would attract qualified applicants without raising such concerns.

Should you have any questions, please do not hesitate to contact me or Senior Counsel Ashlee Connett at (202) 551-3302.

Sincerely,



Rick A. Fleming
Investor Advocate

cc (electronically): Lynnette Kelly, Executive Director
Robert Fippinger, Chief Legal Officer
Carl Tugberk, Assistant General Counsel

From: Robert E. Rutkowski [mailto:r_e_rutkowski@att.net]
Sent: Monday, July 13, 2015 6:48 PM
To: MSRB Support
Subject: Comments on Independence Standard for Public Investor Representative

Ronald W. Smith

Corporate Secretary

Municipal Securities Rulemaking Board

1900 Duke Street, Suite 600

Alexandria, Virginia 22314

MSRBsupport@msrb.org

Re: Comments on Independence Standard for Public Investor Representative

Dear Municipal Securities Rulemaking Board,

AFR, AFSCME and CFA sent a letter to the Board opposing weakening of Independence Standard.

I do believe that this proposal outlines a significant rule change that could potentially reverse the statutory intention of the Dodd-Frank Act to provide a majority of independent members on the Board. The Board should extend the comment period to allow for more detailed examination of this proposal by members of the public interest community with an interest in municipal finance.

I draw your attention to the full letter:
http://ourfinancialsecurity.org/2015/07/letter-to-regulators-afr-afscme-and-cfa-oppose-weakening-of-independence-standard/

Hoping that the concerns expressed in the letter will receive the attention they deserve, I remain,

Yours sincerely,
Robert E. Rutkowski

cc: House Minority Leadership

2527 Faxon Court
Topeka, Kansas 66605-2086
P/F: 1 785 379-9671
E-mail: r_e_rutkowski@att.net

July 6, 2015

Ronald W. Smith

Corporate Secretary

Municipal Securities Rulemaking Board

1900 Duke Street, Suite 600

Alexandria, VA 22314

To the Board of Directors of the MSRB:

This letter is my reply to your request seeking comments on draft amendments to the MSRB Rule A-3.

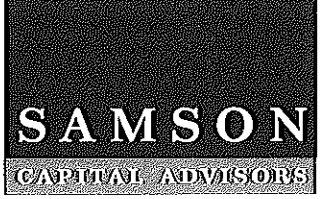
I am in support of your proposal to amend Rule A-3 by modifying the standard of independence. Providing an alternative definition of "no material business relationship" to determine if the candidate being considered as the Investor Representative is independent, will serve to expand the number of potential candidates for this position.

As a former Public Representative Board Member Investor Representative (2006 - 2009, I saw the difficulty the Board had in finding qualified candidates. As a former chair of the Nominating Committee I experienced the restrictions imposed by Rule A-3 as it shrunk the number of qualified candidates for this position. The current Rule eliminates many individuals with market knowledge and experience which could be valuable Board Members. The draft amendments to MSRB Rule A-3 should be approved to expand the potential pool of candidates to serve as the Investor Representative for the MSRB. I believe your proposed modifications to Rule A-3 are consistent with the mandates of the Dodd-Frank Act and the mission of the MSRB.

Sincerely,

Robert M. Zubak

Robert Zubak



BENJAMIN S. THOMPSON
MANAGING PRINCIPAL
CHIEF EXECUTIVE OFFICER

July 7, 2015

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

To the Board of Directors of the MSRB:

I appreciate the opportunity to comment on the Board's recent draft amendments to Rule A-3, which are intended to modify the standard of independence for the Board's statutorily-mandated public investor representative. As a past MSRB Board Member (2010-2014) and three year member of the MSRB's Nominating and Governance Committee (2010-2013), during one of which I served as Chairman, I fully appreciate the challenges faced by the Board in accessing the highest quality candidates for each Board seat. As a public investor representative during my Board service, I also appreciate and understand the importance of the public investor's role in the Board's deliberative process. **It is with this perspective that I strongly support the draft amendments to Rule A-3, and feel that adopting them would be a healthy and appropriate evolution for the MSRB.**

Each statutorily-mandated position on the Board exists for reasons that are specific to accomplishing the MSRB's mission, which is to protect municipal entities, obligated persons, investors and the public interest, and to promote a fair and efficient municipal securities market. The expertise in the boardroom is the insurance that this mission can and will be fulfilled, so the MSRB is obligated to access the most knowledgeable and capable individuals in order to accomplish that objective. Public investor representatives, specifically, play a crucial role as sophisticated financial markets participants who are professionally engaged on behalf of a multitude of investor types. Simply put, one of the most significant responsibilities of the MSRB is to ensure fairness and transparency between those who raise capital for municipal entities and those who provide the capital to municipal entities. As an individual-investor dominated marketplace, it is critically important that the voice of the investor be as or more informed, experienced and sophisticated than their counterparts on the other side of the transaction.

During my four years on the Board and three on the Nominating and Governance committee, the restrictive nature of Rule A-3's public investor criteria was a chronic challenge. Many of the professional investors who are considered industry leaders and possess skills and knowledge critical to the MSRB are currently ineligible for Board service as a result of peripheral or de minimis linkages to regulated entities. Oftentimes very accomplished professional investors reside within complex organizations that are designed to participate in different marketplaces and provide different products to clients, and their regulatory structures conform to those business objectives. In many cases, highly limited or distant regulated components serve to essentially poison the current Rule A-3 test for an organization and its employees before a more thoughtful assessment of true conflict could even be considered.

SAMSON CAPITAL ADVISORS LLC
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I believe that, while well-intended in its initial form, experience has shown that Rule A-3's absolutist approach to the "no material business relationship" test for public investors is too restrictive and is a material impediment to the fulfillment of the MSRB's mission. The draft amendments present a measured and thoughtful improvement to the existing Rule that will allow for informed consideration of talented individuals who are currently ineligible for Board service. The amendments are also more consistent FINRA's functions-oriented approach, while still ensuring independence through a thorough review process.

Regarding the additional question about modifying the length of Board service, I believe that this is an appropriate issue for Board consideration. The MSRB underwent dramatic changes as a result of Dodd-Frank in 2010, both in the scope of the mission and in the composition of the Board itself. While single three-year terms was a good starting point for the post Dodd-Frank MSRB, enough years have passed that this should be re-evaluated.

The post Dodd-Frank experience included a number of modified Board terms which were created in order to reach a consistent turnover rate for the entire Board, and this experience should be instructive. I was fortunate to have been engaged for an additional year of Board service due to the resignation of another Board member, so I had the benefit of, effectively, a four year term. To serve on the MSRB in an informed and productive capacity, Board members must become deeply engaged on a wide range of market and regulatory issues. This process takes a substantial amount of time, but, once accomplished, Board members are highly effective. Extending Board service would allow the MSRB to leverage that accumulated knowledge more effectively than the current three-year term. Also, with a 21-member Board, there may be cases where individual Board members provide unique or specialized expertise that may be difficult to find elsewhere. In such cases, the initial Board terms or extensions could be considered in a more flexible way than they are today.

Finally, similar to the consideration of length of Board member service, I would urge the Board to consider reviewing the single-year term length for the Board Chairman. The Board Chair must possess all of the topic knowledge of a normal Board member, but at the same time shoulder a significant organizational management role. Even for an experienced Board member moving into the Chair, there is a ramp-up period before they can reach their full level of effectiveness. Extension of the Chair's term would likely allow for more continuity in leadership and improve the MSRB's ability to achieve multi-year objectives.

Sincerely,

Benjamin S. Thompson

sifma
Invested in America

July 13, 2015

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Dear Mr. Smith,

SIFMA is pleased to comment on Municipal Securities Rulemaking Board ("MSRB") Notice 2015-08, "Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board" (the "Notice"). SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

Proposed amendments to Rule A-3

SIFMA generally supports the proposed amendments to MSRB Rule A-3, with some suggestions for changes to the proposal to address reasonable concerns. We agree with the MSRB that the current definitions of "independent of any regulated entity" and "no material business relationship" are overly restrictive with respect to the public board seat that is required by statute to be representative of institutional or retail investors in municipal securities. We agree that the rule as it currently exists makes it excessively difficult to recruit independent board members who are investor representatives due to business affiliations that may not affect the independence of the board member. We believe it is important for the MSRB to recruit the best possible candidates for board membership, and the current Rule A-3 makes it difficult to find qualified investor representatives for the independent board seat that is required to be an investor.

We also agree that the proposed changes to Rule A-3 should be applicable only to the public board seat that is required to be an investor representative. We believe the current more restrictive rule for establishing the independence and absence of material business relationships does not seriously impede the MSRB's ability to recruit independent board members other than for the seat required to be an

investor representative. The current, more restrictive rule helps ensure that the independent board members who are not required to be investor representatives are truly free from conflicts.

Proposed new paragraph (g)(ii)(2) of Rule A-3 would, among other tests, establish factors for determining that an independent board member "does not have a relationship with a regulated entity." For one of those factors, proposed Rule A-3(g)(ii)(2)(1) states "(1) revenue from the regulated entity accounts for a material portion of the revenues of the consolidated entity that includes the investment advisor and the regulated entity." The proposed rule does not, however, establish any firm test for "material portion of revenues." In that regard, we urge the MSRB to revise the proposed rule to establish a more quantitative test for "material portion of revenues." We suggest that "material portion of revenues" should be defined more than 20 percent of the revenues earned by the consolidated entity. This test would provide a degree of objectivity in determining "material portion of revenues" while still providing the MSRB with sufficient flexibility to recruit qualified candidates.

Other questions

Notice 2015-08 seeks comments on other issues related to Rule A-3 and board membership. We offer comments on some of those questions.

On the issue of board terms, we urge the MSRB to consider providing for a longer term for board membership. Under the current three-year term, it can take new board members a year or more to orient themselves to MSRB issues and processes. By the time some board members have adapted to their roles, they may have only a year or so left in their terms to serve as fully effective and participatory members. We believe a term of four years would help address this issue and would allow the MSRB to leverage the experience of board members who are two or three years into their service. Under this approach, however, we believe the MSRB should consider establishing a firm lifetime cap of four years of board service. It is sometimes the case currently that board members serve their three-year terms, leave the board, and then come back later for second terms; or a board member may fill out a partial term and then remain on the board for a successive full term. We believe imposing a lifetime cap of four years of board service would help ensure new members are able to serve as appropriate while allowing the MSRB to leverage fully the experience of veteran board members.

Under four-year terms, there would be three "classes" of five board members and a fourth "class" of six board members. If the MSRB moved to four-year terms, there would need to be a transition plan for current board members. We believe the firm cap of four years of board service should also apply to board members serving under any transition plan. We also believe that a new four-year term should apply only to new board members; the terms of existing three-year board members should not be extended.

Four-year terms would also strengthen the leadership of the MSRB. Under our suggested four year-term arrangement, a board member would become eligible to serve as Vice Chair of the board in their third year of service and as Chair in their fourth year. This approach would ensure that the MSRB's leadership has already served long enough as board members—two years for Vice Chair and three years for Chair—that they are fully oriented to MSRB issues and processes.

Conclusion

SIFMA is pleased to comment on the issues raised in Notice 2015-08. We generally agree with the MSRB's proposal to amend Rule A-3 to provide more flexibility in recruiting individuals to serve in the independent board seat required to be an investor representative, subject to the suggested changes to the proposal that we outline. We also believe the MSRB should consider amending the terms of board members to four years and apply the provisions we describe, such as a lifetime cap of four years of service. We believe moving to single four-year terms would strengthen the board by leveraging the experience board members accumulate as they serve out their terms.

As always, please feel free to contact us if you have any questions on our comments.

Best regards,

Michael Decker
Managing Director

WELLS CAPITAL MANAGEMENT INCORPORATED
100 Heritage Reserve
MAC N9882-010
Menomonee Falls, WI. 53051

July 8, 2015

Municipal Securities Rulemaking Board (MSRB)
1900 Duke St., Suite 600
Alexandria, VA 22314
Attention: Ronald W Smith
Corporate Secretary

RE: Comments On MSRB Rule A-3 Amendments Proposing An Investor Representative Position

To The MSRB:

Wells Capital Management, Inc. is a registered investment advisor that manages municipal mutual funds, separate municipal accounts and other third party municipal investment products for both retail and institutional investors (Wells Cap). Wells Cap hereby responds to the MSRB's Request For Comments On Draft Amendments And Other Issues Related To MSRB Rule A-3 On Membership On The Board (MSRB Proposal).

Wells Cap supports the MSRB Proposal for an Investor Representative on the MSRB for the following reasons:

1) The current investor representation limitations on the MSRB excludes many of the most experienced investors in municipal securities due to their inevitable association with dealers through organizational structures. The excluded investors include municipal funds, high yield funds, hedge funds and many others with extensive experience. This is an inequitable situation that the pending proposal seeks to remedy. An Investor Representative will bring additional experience, insight and market concerns to the MSRB's deliberations that may be currently lacking or under-represented. Many areas of current or potential MSRB regulation and involvement require informed market sector experience and insights into primary issuance practices, preliminary offering disclosures, interaction of offering participants, secondary market liquidity and continuing disclosure. Each sector in the municipal market (health care, GOs, revenue bonds, conduit financings, higher education, transportation, etc) has unique issues and challenges that the MSRB must face. The appropriate Investor Representative can bring this varied, in-depth municipal sector experience to the MSRB;

2) New paragraph (g)(ii)(2) of MSRB Rule A-3 provides appropriate safeguards to avoid the potential conflicts of interest, lack of independence judgment, and "self-interest" in selecting and utilizing an Investor Representative by limiting that Investor Representative to someone who is not an officer, director, employee or controlling person of an entity regulated by the MSRB in the prior two years. Wells Cap recommends to the MSRB that such individual also not have functioned as a consultant or expert witness exclusively for such regulated entities in the prior two years;

3) New paragraph (g)(ii)(2) of MSRB Rule A-3 also provides an additional safeguard to avoid the potential conflicts of interest, lack of independence judgment, and "self-interest" in the MSRB utilizing an Investor Representative by limiting that Investor Representative to a municipal investment adviser registered/regulated under the Investment Advisers Act of 1940—i.e., a fiduciary organization that is experienced in safeguarding third party investments and already has compliance training programs in place to sensitize employees against conflicts of interest, self-dealing and other "unethical" activities. Wells Cap would further recommend to the MSRB that such municipal investment adviser have minimum municipal assets under management of at least $10 billion for the last ten years, have a diversified series of municipal mutual funds, and that the representative of that municipal investment advisor be a portfolio manager or senior analyst having at least ten years of experience;

4) Wells Cap agrees with the MSRB Proposal that a registered municipal investment adviser is able to represent the interests and concerns of both retail municipal investors and institutional municipal investors (especially if that registered municipal investment adviser is large and has a diversified line-up of municipal mutual funds). This type of municipal investment adviser will understand its retail municipal investors; and

5) Wells Cap agrees that the remaining components of existing Rule A-3 regarding the selection of MSRB representative contain adequate historic safeguards to ensure the highest integrity of MSRB members.

As regards the nine technical questions posed for comment by the MSRB regarding "Application of the Standard of Independence for the Public Representative of Institutional or Retail Investors in Municipal Securities", Wells Cap has no specific insights or information on these questions other than contained in the comments made above. In addition, Wells Cap has no comments on the MSRB proposal to consider comments on the length of MSRB member service (three years staggered terms) or publish the names of all MSRB applicants.

If you need any further information on these Comments, please contact me at 414-359-3776 or gsouthwe@wellscap.com.

Wells Capital Management Incorporated

By: _____
Gilbert L. Southwell III
Vice President

MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2015-18

Publication Date
October 5, 2015

Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
November 19, 2015

Category
Administration

Affected Rules
Rule A-3

Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service

Overview

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to MSRB Rule A-3, on membership on the Board of Directors (Board), to lengthen the term of Board member service from three years to four years. The draft amendments are primarily designed to improve the continuity and institutional knowledge of the Board from year to year, while retaining the benefits of the regular addition of new members.

Comments should be submitted no later than November 19, 2015, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, Virginia 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Robert Fippinger, Chief Legal Officer, or Carl E. Tugberk, Assistant General Counsel, at 703-797-6600.

Background

Many general, and some more detailed, aspects of the Board's composition are set forth in the Securities Exchange Act of 1934 ("Exchange Act" or

[1] Comments are posted on the MSRB's website without change. Personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

"Act").[2] It categorizes the members of the Board in two broad groups: individuals who must be associated with a broker, dealer or municipal securities dealer ("dealer") or municipal advisor (collectively, "Regulated Representatives"), and individuals who must be independent of any dealer or municipal advisor ("Public Representatives").[3] The Act then specifies that the number of Public Representatives must at all times exceed the number of Regulated Representatives,[4] and sets minimum requirements for certain types of individuals to serve in the two groups.[5]

At the same time, Congress delegated authority to the MSRB to determine many aspects of Board composition by rule, including such important aspects as the size of the Board and the length of the term of Board member service.[6] Currently, the Board is divided into three seven-member classes that serve three-year, staggered terms.[7] Under this framework, total Board tenure typically is no more than three years because Board members may only serve consecutive terms under two limited scenarios: (1) by invitation from, and due to special circumstances as determined by, the Board; or (2) having filled a vacancy and, therefore, having served only a partial term.[8]

The optimal term length for board membership of an organization depends to a great extent upon the particular characteristics of the organization, including the nature of its mission and its activities. The MSRB is the self-regulatory organization (SRO) created by Congress to establish regulation for the $3.7 trillion municipal securities market, including rules governing the municipal securities activities of dealers and the municipal advisory activities of municipal advisors. The MSRB's mission is to protect municipal entities, obligated persons, investors and the public interest, and to promote a fair

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[2] *See* 15 U.S.C. 78o-4(b)(1). Rule A-3 further establishes the Board's composition and sets its size at 21 members.

[3] *See* 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a)(i)-(ii).

[4] *See* 15 U.S.C. 78o-4(b)(2)(B)(i).

[5] *See* 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a).

[6] The Act provides that "[t]he members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board," 15 U.S.C. 78o-4(b)(1), and requires the rules of the Board to "specify the length or lengths of terms members shall serve" 15 U.S.C. 78o-4(b)(2)(B)(ii).

[7] *See* MSRB Rule A-3(b)(i).

[8] *Id.*

and efficient municipal securities market. The MSRB fulfills this mission primarily by regulating dealers and municipal advisors, providing market transparency through its Electronic Municipal Market Access (EMMA®) website[9] and conducting market leadership, outreach and education.

Against the backdrop of the nature of the mission and activities of an organization, the optimal term length for board member service is necessarily a balance among numerous competing interests, such as the interests in continuity, institutional knowledge and membership experience, on the one hand, and the interest in the addition of new perspectives, on the other. To date, the MSRB has aimed to achieve this balance using a Board member term of three years. In July 2015, the MSRB published a request for comment that raised the issue, at a conceptual level, of whether it should modify the length of Board member service.[10] After further deliberation and carefully considering the comments, the MSRB now believes that the desired balance could be better achieved using an incrementally longer Board member term of four years.

Based on its experience and the views repeatedly expressed by former Board members, the Board believes that members are capable of making significantly increasing contributions with each year that they become more fully acclimated to the role and work of the MSRB.[11] The existence of such a multi-year "learning curve" is consistent with views expressed in a survey conducted by the Society of Corporate Secretaries and Governance

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[9] EMMA® is a registered trademark of the MSRB.

[10] Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3, MSRB Notice 2015-08 (Jun. 11, 2015) (Initial Request for Comment). The MSRB received fifteen comment letters in response to the Initial Request for Comment, *available at* http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2015/2015-08.aspx?c=1, all of which were informative in developing the draft amendments.

[11] The current, standard three-year term of Board member service is significantly shorter than the average tenure of over 8 years that studies have shown for members of other boards. *See* Spencer Stuart Board Index 2014, 5, *available at* https://www.spencerstuart.com/~/media/pdf%20files/research%20and%20insight%20pdfs/ssbi2014web14nov2014.pdf%20target; Governance Minutes by the Society of Corporate Secretaries and Governance Professionals – Director Tenure (February 26, 2014), *available at* http://main.governanceprofessionals.org/governanceprofessionals/memberresources/resources/viewdocument/?DocumentKey=37b09de5-7404-4eab-bc70-10741cbf7138 (stating that average board member tenure is 8-10 years and that board members typically experience a 3-4 year learning curve) (Governance Minutes).

Professionals of board members across a range of industries.[12] A number of studies suggest that longer board member tenures—to a point—are associated with superior governance.[13] Overall, based on its experience and expertise regarding its mission and activities, the MSRB believes that allowing members to serve on the Board for a fourth year would improve the continuity and institutional knowledge of the Board from year to year, as well as its overall efficiency and effectiveness due to the collective value of retaining several members who possess additional knowledge and experience from their service as MSRB Board members.

Greater continuity and institutional knowledge is particularly important for the MSRB rulemaking process. This process, particularly for rules that are complex or address unique problems, frequently spans multiple years from conception to full implementation.[14] Even for rulemaking initiatives that can be completed in relatively less time, Board members have noted frequently that they are often able to engage more fully and effectively in the process after they have gained experience with the organization and have deeper knowledge of other, related rulemaking activities.

The MSRB believes that the draft amendments would ensure greater continuity and institutional knowledge from year to year, particularly through the rulemaking process, and increase overall efficiency, while maintaining the benefits of having a significant number of new Board members join the organization each year.

Draft Amendments to Rule A-3

The draft amendments would lengthen the term of Board member service from three years to four years. To facilitate the proposed four-year term length, the draft amendments would increase the number of Board classes

[12] *See* Governance Minutes, *supra* note 11.

[13] *See*, *e.g.*, Nikos Vafeas, *Length of Board Tenure and Outside Director Independence*, 30 J. OF BUS. FIN. & ACCT. 1043 (2003); Lucian Arye Bebchuck, Jesse M. Fried, and David I. Walker, *Managerial Power and Rent Extraction in the Design of Executive Compensation*, 69 U. of CHI. L. REV. 751 (2002); Mark S. Beasley, *An Empirical Analysis of the Relation Between the Board of Director Composition and Financial Statement Fraud*, 71 THE ACCT. REV., 443 (1996).

[14] For example, the MSRB began its current rulemaking initiative for Rule G-42, to establish core standards and duties for municipal advisors, in the fall of 2013, and the proposal remains under SEC consideration whether to be approved (and then would have a six-month implementation period). The MSRB's ongoing initiative for Rule G-18, to establish the first best-execution rule for transactions in municipal securities, began as early as the spring of 2013 and will continue to be in an implementation period into 2016.

and adjust their sizes. Finally, the draft amendments would provide for a transition to these changes in an expeditious but minimally disruptive manner.

The primary draft amendments are to Rule A-3(b)(i). They would increase the Board member term length from three years to four years and the number of Board classes from three to four—three classes comprised of five members and one class comprised of six. The changes in the number of classes and their sizes would ensure that the MSRB nominates and elects new members every year, maintains classes that are as evenly distributed in size as possible, and ensures that the composition of the Board always satisfies statutorily-required position allocations,[15] while resulting in a consistent and manageable rate of turnover from year to year. As required by Rule A-3(b)(i), the classes would continue to be as evenly divided in number as possible between Public Representatives and Regulated Representatives.

While maintaining the existing requirement in Rule A-3(a)(ii)(3) that, for the Board as a whole, "at least one, and not less than 30 percent of the total number of [R]egulated [R]epresentatives, shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer or municipal securities dealer," the draft amendments would eliminate the additional requirement that there be at least one municipal advisor representative per class that is not associated with a dealer ("non-dealer municipal advisor").[16] Because the draft amendments would result in four classes, not eliminating this requirement would create an unintended obligation that the Board always include four non-dealer municipal advisors, thus potentially diminishing representation of other regulated entities. Nothing in this change would reduce the representation of municipal advisors nor would it prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the Board. All other provisions in Rule A-3(b)(i), including the special circumstances exception to a Board member serving consecutive terms, would remain unchanged.

To effectuate the changes in term length and the number and size of classes, the MSRB is proposing a transition plan to be contained in Rule A-3(h)(i).[17]

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[15] *See* note 5 *supra*.

[16] *See* MSRB Rule A-3(b)(i).

[17] Existing Rule A-3(h)(i) is now an obsolete provision that was created following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to transition the Board to be in compliance with the requirements of that law.

Under the transition plan, each Board member, who was elected prior to, and whose term ends on or after the end of, the MSRB's fiscal year 2016,[18] could be considered for a term extension not exceeding one year. This process would occur over fiscal years 2017, 2018 and 2019. The transition would proceed as follows: (1) one Public Representative from the Board class of 2016 (*i.e.*, members who began a three-year term on October 1, 2013) would receive a one-year extension and six new members would join the Board; (2) one Public and two Regulated Representatives from the Board class of 2017 (*i.e.*, members who began a three-year term on October 1, 2014) each would receive a one-year extension and five new members would join the Board; and (3) three Public and two Regulated Representatives from the Board class of 2018 (*i.e.*, members who will begin a three-year term on October 1, 2015) each would receive a one-year extension and five new members would join the Board. The draft amendments would provide that Board members would be nominated for the term extensions by a special nominating committee comprised only of Board members not being considered for extensions, and then the Board would vote on each proposed term extension.[19] The selection of Board members whose terms would be extended would be consistent with the statutorily-required compositional requirements of the Board,[20] and the Board would continue to consist of 21 members with a majority of Public Representatives.[21] In fiscal year 2020, no further extensions would be required and five new members would join the Board, completing the transition to four classes. From that point forward, the Board would repeatedly nominate and elect classes in the sequence of six, five, five, and five members. While there are numerous possible combinations of the number of Board classes and the number of members in each class, the MSRB believes this specific combination would achieve the transition expeditiously and efficiently while minimizing any disruption from the changes.

[18] The MSRB's fiscal year commences on October 1 of a given year and ends on September 30 of the following year.

[19] Revisions to this transition plan would be needed if the draft amendments were not approved by the SEC and effective prior to the MSRB's nomination and election of new Board members who will begin their terms on October 1, 2016.

[20] *See* note 5 *supra*.

[21] *See* notes 2 and 4 *supra*.

Alternatives

The MSRB identified and considered the following as the main alternatives to the approach proposed in the draft amendments.

The MSRB could propose to extend terms to more than four years and/or ease the conditions under which Board members may serve consecutive terms. While each of these approaches would similarly address the continuity and institutional knowledge concerns, the MSRB believes that more regular turnover of a significant number of Board members also has benefits. At the current juncture, the MSRB is therefore proposing the more limited term extension of a single year.

The MSRB also could couple the term extension with new limitations such as a lifetime cap on the number of years a Board member could serve. The MSRB believes that such a limitation would unnecessarily limit its flexibility to elect the best candidates to the Board and to address special circumstances that may arise.

Additionally, the MSRB could elect not to propose changes to Rule A-3 and devote additional resources, beyond the significant resources already allocated, to educating new Board members. This approach, however, might not address adequately the interest in improving Board continuity and institutional knowledge during complex rulemaking initiatives that more and more frequently exceed three-year periods.

Finally, rather than achieving four-year terms by electing four classes over four years (three classes comprised of five members and one class comprised of six members), the MSRB could maintain the current approach of electing only three classes, each comprised of seven members. This alternative would follow the MSRB's current approach to the composition of each Board class, but would necessarily mean that the MSRB would not elect any new members once every four years.[22]

[22] As specifically provided for in the MSRB's Policy on the Use of Economic Analysis in Rulemaking, the Board has excepted this rulemaking initiative from the particular terms of that policy. While the primary purpose of the policy is to avoid unnecessary regulatory burdens in the municipal securities market, the draft amendments involve only administrative changes and will not place any regulatory burden on market participants. The MSRB nevertheless has, as discussed above, identified the need for the draft amendments and the main alternative approaches. Additionally, the Board considered whether the rule would affect efficiency, competition, or capital formation.

Request for Comment

The MSRB seeks public comment on the following questions, as well as on any other topic raised in this request. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views, assumptions or issues raised in this request for comment.

1) Would the draft amendments likely provide for greater continuity and institutional knowledge on the Board as a whole?

2) Would the draft amendments impose any costs or burdens, direct, indirect, or inadvertent, on investors, municipal entities, obligated persons or regulated entities? Are there data or other evidence, including studies or research, that support commenters' cost or burden estimates?

October 5, 2015

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Text of Draft Amendments[23]

Rule A-3: Membership on the Board

(a) No change.

(b) *Nomination and Election of Members.*

(i) Members shall be nominated and elected in accordance with the procedures specified by this rule. The 21 member Board shall be divided into ~~three~~four classes, ~~each~~one class being comprised of ~~seven~~six members and three classes being comprised of five members, who serve ~~three~~ four-year terms. The classes shall be as evenly divided in number as possible between public representatives and regulated representatives~~, and there shall be at least one municipal advisor representative per class that is not associated with a broker, dealer or municipal securities dealer~~. The terms will be staggered and, each year, one class shall be nominated and elected to the Board of Directors. The terms of office of all members of the Board shall commence on October 1 of the year in which elected and shall terminate on September 30 of the year in which their terms expire. A member may not serve consecutive terms, unless special circumstances warrant that the member be nominated for a successive term or because the member served only a partial term as a result of filling a vacancy pursuant to section (d) of this rule. No broker-dealer representative,

[23] Underlining indicates new language; strikethrough denotes deletions.

bank representative, or municipal advisor representative may be succeeded in office by any person associated with the broker, dealer, municipal securities dealer, or municipal advisor with which such member was associated at the expiration of such member's term except in the case of a Board member who succeeds himself or herself in office.

(ii)-(vii) No change.

(c)-(g) No change.

(h) *Transitional Provision for the Board's Fiscal Years 2013~~7~~7, 2018 and 2014~~9~~9*.

(i) Notwithstanding any other provision of this rule, for the Board's fiscal years commencing October 1, 2012~~6~~6 and ending September 30, 2014~~9~~9, the Board shall transition to ~~three~~four staggered classes, one class of six and three classes of ~~seven~~five Board members ~~per class~~. During this transitional period, Board members who were elected prior to, ~~July 2011~~ and whose terms end on or after, the Board's fiscal year 2016, ~~September 30, 2012~~ may be considered for term extensions not exceeding ~~two~~one year~~s~~, in order to facilitate the transition to ~~three~~four staggered classes ~~of seven Board members per class~~. Board members shall be nominated for term extensions by a Special Nominating Committee only comprised of members not being considered for extensions~~formed pursuant Rule A-6~~. The Board shall vote on each nominee for term extension prior to the end of fiscal year 201~~1~~6.

Alphabetical List of Comment Letters on MSRB Notice 2015-18 (October 5, 2015)

1. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated November 19, 2015

2. National Association of Municipal Advisors: Letter from Terri Heaton, President, dated November 19, 2015

3. Office of the Investor Advocate, U.S. Securities and Exchange Commission: Letter from Rick A. Fleming, Investor Advocate, dated October 29, 2015

4. Securities Industry Financial Markets Association: Letter from Michael Decker, Managing Director, dated November 19, 2015

5. Stephen Heaney: E-mail dated November 10, 2015

BDA Bond Dealers of America

21 Dupont Circle, NW • Suite 750
Washington, DC 20036
202.204.7900
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November 19, 2015

SUBMITTED ELECTRONICALLY

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Regulatory Notice 2015-18 Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Regulatory Notice 2015-18, Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service at the Municipal Securities Rulemaking Board (MSRB). BDA is the only DC based group representing the interests of middle-market securities dealers and banks focused on the United States fixed income markets and we welcome this opportunity to present our comments.

The BDA appreciates the importance in having a knowledgeable and experienced Board and we believe that lengthening the term of member service for this purpose is an approach worthy of industry consideration and feedback. Below we have laid out the reasons for which we support this change.

Membership and Makeup of the MSRB Board of Directors

We appreciate the specialized needs in assembling the MSRB Board given the statutory requirements that are in place. We note that the draft amendments would eliminate the additional requirement that there be at least one municipal advisor representative per class that is not associated with a dealer but that nothing would prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the board. Because the draft amendments would result in four classes and not three as in the current rule, not eliminating this requirement would cause the Board to always include four non-dealer municipal advisors, potentially diminishing the representation of other regulated entities. The BDA supports this adjustment since it is our preference to ensure the number of dealer-affiliated regulated entities on the board is as robust as possible such that our voice is not diminished throughout the rulemaking process.

Rulemaking is an Iterative Process

We appreciate the need to manage the learning curve associated with the arduous process the board must go through to study, evaluate and eventually make recommendations for rule proposals and changes that ultimately affect how the market operates. Since these changes impact the municipal market in such meaningful ways, we believe having an extra year to serve on the Board would promote continuity of knowledge and ensure appropriate overlap among those working on these initiatives.

In light of the extensive amount of ongoing regulatory change, we would also encourage the MSRB to take advantage of the extra year by considering instituting a robust, formalized training program for all incoming board members in year one. Adding an additional year of service supports the expectation that board members will be municipal market experts by year four. BDA believes the on-the-job learning process for Board members could be valuably supported by a formal training program, which will maximize the benefits of the proposed fourth year of service as a Board member. Therefore, the BDA believes that lengthening the term of Board member service, in conjunction with a more robust training process at the outset, will provide all Board members with the opportunity to be more deeply engaged throughout their service on the Board. We feel strongly that this approach would bolster and enhance all board members' understanding of the value and potential shortcomings of various regulatory and market items for consideration before the MSRB board.

Transition Plan

The BDA supports the MSRB's plan to provide Board member nominations for term extensions by a special nominating committee comprised only of Board members not being considered for extensions, then turning to the full board for a vote on each proposed term extension. We believe this approach is fair in that members on the nominating committee will not be themselves serving a longer term than the currently established term of 3 years. We believe that this approach reduces any potential for self-dealing since the nominating committee themselves will not be experiencing a term extension.

Length of Board Service

The MSRB has suggested a 4-year board term, while also allowing for consideration of other options. In reading through and comparing and contrasting the options available to other similarly situated Boards, the BDA believes that a 4-year Board term is an acceptable balance and results in a term neither too short nor too long. While we support this extension in the length of Board service, the BDA would go a step further to mention that the Board should be constantly vigilant in seeking out and securing the best quality candidates and members regardless of term.

Again, we appreciate the opportunity to comment on this proposal and we would be happy to answer any questions you have in relation to our perspective as laid out above.

Sincerely,

Michael Nicholas

Chief Executive Officer

National Association of Municipal Advisors
19900 MacArthur Boulevard, Suite 1100
Irvine, CA 92612
844-770-NAMA
www.municipaladvisors.org

November 19, 2015

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Notice 2015-18
Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service

Dear Mr. Smith:

Thank you for the opportunity to comment on amendments to MSRB Rule A-3 related to Board service terms. The National Association of Municipal Advisors (NAMA) does not object to the current amendment to change the term of service from three to four years.

However, NAMA would like to once again to encourage the MSRB to look for ways to return the number of Board members to 15. There has been adequate time since the implementation of the *Dodd-Frank Act* to allow those Board members who served during the transition to complete their terms, while also ensuring new parties are properly represented as noted in the *Act*. Such an effort would also reduce costs for the organization. Additionally, we would also encourage the MSRB to ensure that public representatives on the Board are subjected to as strong as a vetting process as possible when considering qualified candidates. This effort could include for public members, developing a greater eligibility standard than the two year period of independence from any regulated party.

Please do not hesitate to contact me, if I may provide any further information about NAMA's position on these issues, of if you wish to discuss further.

Sincerely,

Terri Heaton

Terri Heaton, CIPMA
President, National Association of Municipal Advisors (NAMA)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INVESTOR ADVOCATE

October 29, 2015

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Regulatory Notice 2015-18
Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service

Dear Mr. Smith:

Pursuant to Section 4(g)(4) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] the Office of the Investor Advocate at the U.S. Securities and Exchange Commission ("Commission" or "SEC") is responsible for, among other things, analyzing the potential impact on investors of proposed rules of self-regulatory organizations ("SROs").[2] In furtherance of this objective, we routinely review and examine the impact on investors of significant rulemakings of the Municipal Securities Rulemaking Board ("MSRB" or "Board"). As appropriate, we make recommendations and utilize the public comment process to help ensure that the interests of investors are considered while rulemaking decisions are made.

We appreciate this opportunity to provide comments in regard to Regulatory Notice 2015-18, Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service.[3] In sum, we support the MSRB's proposed amendments to MSRB Rule A-3 and agree that lengthening the term of Board member service to four years will "improve continuity and institutional knowledge of the Board from year to year, while retaining the benefits of the regular addition of new members."[4]

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[1] 15 U.S.C. § 78d(g)(4).
[2] This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.
[3] MSRB, Regulatory Notice 2015-18, *Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service* (Oct. 5, 2015), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2015-18.ashx?n=1.
[4] *Id.*

On July 13, 2015, we submitted a comment letter opposing other amendments related to Rule A-3 as set forth in MSRB Regulatory Notice 2015-08.[5] The prior proposal sought to modify the standard of independence for the Public Investor Representative on the Board.[6] Recently, the MSRB announced that it no longer intended to pursue the proposed changes to the independence standard, and we are pleased with that decision.[7]

A stated goal of the earlier proposal was to lessen the burden of recruiting highly qualified prospects for Board service, particularly for the Public Investor Representative seat. Although we opposed the change to the membership qualifications for the Public Investor Representative seat, our comment letter underscored the importance of having a knowledgeable and experienced Board, and we expressed support for the MSRB's desire to attract a robust pool of qualified candidates.[8] More specifically, we indicated that lengthening the Public Investor Representative's term of service would support the goals of MSRB's proposal more effectively than amending the membership qualifications.[9] Although the current amendments to Rule A-3 would lengthen the term of member service for the entire Board rather than just the Public Investor Representative, we believe this is a reasonable approach.

Given the highly specialized nature of the MSRB's work, Board members may face a steep learning curve on many of the issues presented before them. We believe that lengthening the term of Board member service will give Board members – particularly Public Representatives – more time to develop the institutional knowledge and experience required for fully engaged and effective oversight of the MSRB. In our view, this is in the best interest of investors because it may lessen the Board's natural dependence upon the Regulated Representative Board members who, presumably, have greater experience on certain issues.

In determining the appropriate length of Board member service, a balance must be struck between a term that is too brief and one that is too long. A term that is too abbreviated will not allow Board members to become fully acclimated to the MSRB's mission and activities, thereby likely diminishing the ability to contribute as individual Board members. A term that is too lengthy would hamper the addition of fresh, new perspectives and may reduce Board member independence. In evaluating the appropriate balance, we look to the structure of similar organizations, each with a mission to protect investors. As relevant here, the members of the Financial Industry Regulatory Authority's Board of Governors serve three-year terms,[10] and members of the Public Company Accounting Oversight Board serve five-year terms.[11] Moreover, SEC Commissioners serve five-year terms,[12] and

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[5] Rick Fleming, Investor Advocate, Comment Letter regarding *MSRB Regulatory Notice 2015-08, Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board* (July 13, 2015), http://www.msrb.org/RFC/2015-08/OIAD.pdf

[6] MSRB, Regulatory Notice 2015-08, *Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board* (Jun. 11, 2015), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2015-08.ashx?n=1.

[7] *See* Press Release, MSRB Holds Quarterly Meeting (Aug. 3, 2015), http://www.msrb.org/News-and-Events/Press-Releases/2015/MSRB-Holds-Quarterly-Meeting-July-2015.aspx.

[8] Fleming, *supra* note 5.

[9] *Id.*

[10] FINANCIAL INDUSTRY REGULATORY AUTHORITY, https://www.finra.org/sites/default/files/Election-Notice-63015.pdf (last visited Oct. 8, 2015).

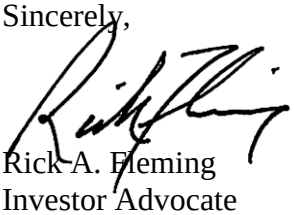
[11] PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD, http://pcaobus.org/About/Pages/default.aspx (last visited Oct. 8, 2015).

[12] SECURITIES AND EXCHANGE COMMISSION, http://www.sec.gov/about/commissioner.shtml (last visited Oct. 8, 2015).

members of the SEC's Investor Advisory Committee serve four-year terms. Taking into consideration the terms of membership of similar organizations, we believe the proposed four-year term for Board members is appropriate.

Thank you, again, for the opportunity to submit our comments regarding this important issue. Should you have any questions, please do not hesitate to contact me or Senior Counsel Ashlee Connett at (202) 551-3302.

Sincerely,



Rick A. Fleming
Investor Advocate

cc (electronically): Lynnette Kelly, Executive Director
Robert Fippinger, Chief Legal Officer
Carl Tugberk, Assistant General Counsel

sifma

Invested in America

November 19, 2015

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

In regard to Regulatory Notice 2015-18

Dear Mr. Smith,

SIFMA is pleased to comment on the Municipal Securities Rulemaking Board's ("MSRB") Notice 2015-18, "Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service" (the "Notice" or "Proposal"). SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

The proposed rule changes in the Notice would lengthen the term of MSRB Board membership from three years to four and would increase the number of Board "classes" and adjust their sizes. In addition the Proposal would establish provisions related to the transition to four-year Board terms.

On July 13, 2015 SIFMA filed a response to MSRB Notice 2015-08, "Request for Comment on Draft Amendments and Other Issues Related to MSRB Rule A-3 on Membership on the Board."[1] In our July 13 letter, in response to a question posed in Notice 2105-08, we supported the concept of lengthening the term of MSRB Board membership from three years to four. We maintain that position today and in that respect we support the general focus of the Proposal. We generally agree with the Board "that members are capable of making significantly increasing contributions with each year that they become more fully acclimated to the role and work of the MSRB" and "that allowing members to serve on the Board for a fourth year would improve the continuity and institutional knowledge of the Board from year to year."

In our July letter we also asked the Board to "consider establishing a firm lifetime cap of four years of board service." Paragraph (b)(i) of Rule A-3 states "a member may not serve consecutive terms, unless special circumstances warrant that the member be nominated for a successive term or because the

[1] Letter from Michael Decker, SIFMA, to Ronald W. Smith, MSRB, July 13, 2015.

member served only a partial term as a result of filling a vacancy." It is sometimes the case that some Board members are selected to serve full or partial second terms, either immediately upon the completion of their first terms or some time later. We remain concerned, particularly if the Board term is extended to four years, that serving more than one term could create an environment where one or more board members with multiple terms of service could become too dominant in Board deliberations. Two full four-year terms--eight years of Board service--is simply too long and opens the door for a Board member to have undue influence, particularly considering the composition of the Board has a majority of public members. Who may not have significant market or industry experience. In this regard, we are pleased that under the Proposal's transition provisions, no existing Board member would serve for more than four years.

We also recognize that from time to time, circumstances may arise where it is in the interest of the MSRB's mission to retain or recall a Board member for a partial second term. In the spirit of maintaining a "balance," as stated in the Notice, between "continuity, institutional knowledge and membership experience, on the one hand...and new perspectives, on the other" we urge the Board to consider amending Rule A-3 to further specify or limit the circumstances under which a Board member may serve for more than four years. Options the Board may wish to consider include:

- More explicitly defining the "special circumstances" under which a Board member may serve beyond a full four-year term;
- Imposing a maximum lifetime limit on Board service; or
- Specifying that when a Board member who has already served a full term is retained or recalled to fill a sudden vacancy, that the member's extended term be temporary for only as long as necessary to recruit a qualified, permanent new member to fill the vacancy.

SIFMA again is pleased to comment on Notice 2015-18. We generally support the Proposal to extend the term of MSRB Board membership to four years. At the same time we urge the MSRB to adopt policies that will serve to specify and limit the circumstances under which a Board member could serve for more than four years.

Sincerely,

Michael Decker
Managing Director

Comment on Notice 2015-18

from Stephen Heaney,

on Tuesday, November 10, 2015

Comment:

I served as a Board member from October 1, 2009 until September 30,2013; a four year term. My original three year term was extended as a part of the transition from a fifteen member Board to one with twenty-one members. While I am sure some would say I stayed too long, I believe the extra year provided value to the Board and enabled me to contribute more to the Board than the standard three year term. I wholeheartedly support the extension proposed in the draft amendment for all of the reasons noted in the Request for Comment.

I believe the MSRB will benefit significantly from the added stability and continuity of the Board. I think the retention of institutional knowledge on the Board will substantially enhance the deliberations on proposed rules. Finally I believe the proposed draft amendments recognize a reality; the subject matter the Board must deal with is more often than not complex and not everyone comes to the Board with a combination of a broad understanding of the markets and a deep knowledge of the different elements that make up the municipal markets. But everyone comes to the Board with the ability to learn and to contribute. This proposed draft amendments will help facilitate that learning and the outcome will be greater contributions from all Board members.

Thank you.