

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63533; File No. SR-MSRB-2010-17)

December 13, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendments to Rule A-3, on Membership on the Board

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 30, 2010, the Municipal Securities Rulemaking Board (“Board” or “MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The MSRB is filing with the SEC a proposed rule change consisting of amendments to Rule A-3, on membership on the Board, in order to establish a Nominating Committee in compliance with MSRB transitional Rule A-3(i).

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, the MSRB included statements concerning the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make changes to MSRB Rule A-3(c) as are necessary and appropriate prior to the creation of the Nominating Committee of the MSRB (hereinafter, "Nominating and Governance Committee"). On September 30, 2010, the SEC approved MSRB Rule A-3(i), a transitional rule for MSRB fiscal year 2011 intended to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").³ The transitional rule provides that on or after October 1, 2010, and prior to the formation of the Nominating Committee for purposes of nominating Board members for fiscal year 2012, the Board will amend the provisions of Rule A-3(c) to (a) reflect the composition of the Board as provided under the Dodd-Frank Act, (b) assure that the Nominating Committee will be composed of a majority of public members and will have fair representation of broker-dealers, bank dealers, and municipal advisors, and (c) reflect such other considerations consistent with the provisions of Section 15B of the Act and the Dodd-Frank Act as the Board deems appropriate. The proposed rule change is intended

³ See Exchange Act Release No. 63025 (Sep. 30, 2010), 75 FR 61806 (Oct. 6, 2010).

to amend Rule A-3(c) to comply with the requirements of transitional Rule A-3(i), as approved by the SEC.

Amendments to Rule A-3(c)

Consistent with Rule A-3(i), the Nominating and Governance Committee would consist of eleven members, six of whom would be public members and five of whom would be industry members. The Chair of the Committee would be a public member. Establishing an eleven member committee will allow for fair representation of regulated entities by reserving five positions for brokers, dealers, municipal securities dealers and municipal advisors.

Each constituency identified in the Dodd-Frank Act would be guaranteed a minimum of one seat on the Nominating and Governance Committee but the level of each constituency would be capped to avoid overweighting of any one over the others. These ranges of membership are as follows:

- six public members consisting of (a) at least one, but no more than three, representative of institutional or retail investors; (b) at least one, but no more than three, representative of municipal entities; (c) at least one, but no more than three, members of the public with knowledge of or experience in the municipal industry and not representative of investors or municipal entities;⁴ and
- five regulated members, consisting of (a) at least one, but no more than two, representative of broker-dealers; (b) at least one, but no more than two,

⁴ In order to ensure balance on the committee and reflect the breadth of public representatives on the Board, the proposal would require one to three committee members be selected from Board members who are not representative of municipal entities or investors.

representative of bank dealers; and (c) at least one, but no more than two, representative of non-dealer municipal advisors.

The Board believes this formulation is consistent with the Dodd-Frank Act and Rule A-3(i) in that it provides for a majority of public members on the Committee and fair representation of regulated entities. The MSRB also believes it is important that the Chair of the Nominating and Governance Committee be a public member, both as a governance best practice and in recognition of the majority of public members on the Board, as mandated by the Dodd-Frank Act.

The Board also proposes certain administrative amendments to Rule A-3(c). First, the rule change provides that members may serve staggered terms, which are terms that do not commence and conclude on the same date thereby creating groups or classes of directors. The Board had been divided previously into three classes of five members per class. Each year, one class would conclude its service. In order to comply with the Dodd-Frank Act, the Board modified this structure to accommodate a 21 member Board. While the terms are staggered currently, the new group of 11 Board members is serving a two year transitional term, while the other members continue to serve three year terms. The Board is currently evaluating the appropriate term for new Board members, but expects that terms will continue to be staggered in order to relieve the burden on the Nominating and Governance Committee of replacing the entire Board in any one year and in order to ensure the continuity and consistency of the Board.

Next, the proposed rule change reflects that Board members may only serve consecutive terms under two scenarios: (a) by invitation from the Nominating and Governance Committee due to special circumstances as determined by the Board, such as

where a Board member possesses special expertise needed by the Board that is not possessed by other Board members or generally by persons in the pool of potential candidates for Board membership; or (b) having filled a vacancy under Rule A-3(e) and, therefore, served only a partial term.

The Board also proposes revisions to Rule A-3(c) to provide that it will solicit nominations for Board membership in a financial journal having national circulation among members of the municipal securities industry, as well as a financial journal having general national circulation. This change is proposed because potential public members and certain types of municipal advisors may not read municipal securities newspapers or periodicals regularly. Finally, the Board proposes changes to Rule A-3(c) to require the publishing on the Board's website of the names of all applicants for Board membership.⁵ Such publication is intended to make the nominating process more transparent. Some commentators on the transitional Rule A-3 amendments made suggestions regarding improving transparency of the MSRB's election process, and the Board believes the practice of publishing the names of all Board applicants will provide more transparency regarding the nominating process.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(B) of the Act, which provides that the MSRB's rules shall:

establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public

⁵ In some cases, a person may be recommended to the MSRB for membership on the Board but he or she may not wish to be considered. Any person who declines to be considered would not be treated as an applicant and his or her name would not be published.

representatives, broker dealer representatives, bank representatives, and advisor representatives.

The MSRB believes that the proposed rule change is consistent with Section 15B(b) of the Act, as amended by the Dodd-Frank Act, in that it would provide for the creation of an MSRB Nominating and Governance Committee that reflects the composition of the Board as provided under the Dodd-Frank Act and would assure that the Nominating and Governance Committee be composed of a majority of public members and have fair representation of broker-dealers, bank dealers, and municipal advisors, consistent with MSRB Rule A-3(i) as approved by the SEC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it is solely concerned with the administration of the MSRB and, in any event, provides for fair representation on the Nominating and Governance Committee of public representatives, broker dealer representatives, bank dealer representatives and municipal advisor representatives.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission seeks comment on all aspects of the MSRB's proposed rule change, including the proposed composition of the Nominating and Governance Committee and whether the number and proportion of public representatives, broker-dealer representatives, bank representatives, and advisor representatives is appropriate. Because the MSRB, under the Dodd-Frank Act, is now proposing and adopting rules with respect to the activities of two distinct categories of market participants – municipal securities dealers and municipal securities advisors – the Commission seeks comment on whether the proposed structure of the MSRB Nominating and Governance Committee will assure that the interests of each constituency are fairly represented. Are there alternative Nominating and Governance Committee structures or other arrangements that would better achieve these goals? Is the proposed process for soliciting nominations for Board membership an appropriate method of identifying applicants? Will the nomination process be sufficiently transparent? Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2010-17 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-MSRB-2010-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).