

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70004; File No. SR-MSRB-2013-06)

July 18, 2013

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule A-3, on Membership on the Board, to Modify the Standard of Independence for Public Board Members

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 July 3, 2013, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (“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 Commission a proposed rule change consisting of amendments to MSRB Rule A-3 to modify the standard of independence for public Board members (the “proposed rule change”).

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-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 purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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 MSRB is the self-regulatory organization 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 (collectively “regulated entities”). It is governed by a 21-member board composed of eleven independent public members and ten regulated members.

The MSRB’s mission is to protect municipal entities, investors and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating dealers and municipal advisors and providing market transparency through its Electronic Municipal Market Access (“EMMA®”) website.

Given the role of the board of directors in overseeing the municipal securities market, it is imperative that the board identify candidates for the board of directors who have the requisite knowledge and expertise about the municipal market and its operation.

The composition of the board of directors of the MSRB is set forth in the Act, and categorizes individuals into two broad groups: regulated representatives and public representatives.³ The regulated representatives must be individuals who are associated with a regulated entity, and at least one of whom must be associated with a dealer that is not a bank (or subsidiary or department or division thereof), at least one of whom must be associated with a

³ 15 U.S.C. 78o-4(b)(1).

dealer that is a bank (or subsidiary or department or division thereof), and at least one of whom must be associated with a municipal advisor.⁴

The public representatives must be independent of any regulated entity, and at least one of whom must be representative of institutional or retail investors, at least one of whom must be representative of municipal entities, and at least one of whom must be a member of the public with knowledge of or experience in the municipal industry.

While Congress, as part of the Dodd-Frank Act, revised the statutory composition of the board of directors, it did not specify the requirements for independence of public representatives. Rather, it delegated the obligation to the MSRB.⁵

In 2010, in implementing this new standard, the MSRB amended Rule A-3 to define independent of any regulated entity to mean an individual who has “no material business relationship” with any regulated entity.⁶ The MSRB defined “no material business relationship” to mean that, at a minimum: (a) the individual is not and, within the last two years, was not associated with a regulated entity, and (b) the individual does not have a relationship with any regulated entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual.

In practice, this standard has precluded consideration of otherwise viable candidates who are knowledgeable of matters related to the municipal securities market from serving as public representatives because such candidates are encompassed within the broad definition of

⁴ MSRB Rule A-3 further requires that at least one, but not less than 30 percent of the total number of regulated representatives, must be associated with and representative of non-dealer municipal advisors.

⁵ See 15 U.S.C. 78o-4(b)(2)(B)(iv).

⁶ See Securities Exchange Act Release 34-63025 (September 30, 2010); 75 FR 61806 (October 6, 2010); File No. SR-MSRB-2010-08.

“associated with” a regulated entity under the Act. This standard of independence disqualifies many individuals with the expertise and knowledge to represent investors because such persons have a regulated entity within their employer’s corporate structure, even if 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, a candidate 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 would be disqualified from serving on the board as a public representative. Similarly, because many mutual fund and insurance companies have affiliated broker-dealers that engage in a municipal securities or municipal fund securities business, any non-clerical individual within such a company would be 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 a de minimis portion of the company’s overall business.

To address this shortcoming, and consistent with the approach of the Financial Industry Regulatory Authority (“FINRA”),⁷ another self-regulatory organization, the MSRB proposes amending Rule A-3 to set forth a more function-oriented approach to defining independence. Specifically, the term “no material business relationship” will 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. Replacing the “associated with”

⁷ FINRA Bylaws, Article I, defines 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.

language with the more function-oriented language described above does not have any effect on the portion of the “no material business relationship” provision in Rule A-3(g)(ii) that prohibits an individual from having a relationship with any regulated entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. This provision of Rule A-3 ensures that an individual with a meaningful nexus with a regulated entity, either by position or function, will not be an eligible candidate to serve as a public representative.

The proposed rule change will, however, allow the MSRB to consider candidates who are associated with regulated entities solely by virtue of the corporate structure of their employer. Removing these limitations will allow the MSRB to consider a broader group of public representative board candidates, with an appropriate level of independence, and with the objective of maximizing the depth of municipal securities knowledge and experience on the board. Regardless of their status – public or regulated – all board members have a fiduciary duty to the MSRB and are bound by a duty of loyalty and duty of care and are obligated to act in the best interests of the organization and to avoid conflicts of interest.⁸

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the Act and, in particular, Section 15B(b) of the Act,⁹ which provides, in part, that the MSRB shall be composed

⁸ The MSRB is a Virginia nonstock corporation. See Va. Nonstock Corporations Act § 13.1-870 (“A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation”), 13.1-871 (“A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes him from being a disinterested director.”); Bates v. Cekada, 130 F.R.D. 52, 1990 U.S. Dist. LEXIS 1571, 16 Fed. R. Serv. 3d (Callaghan) 282 (E.D. Va. 1990) (“Directors have a fiduciary duty to act for the benefit of the corporation...”).

⁹ 15 U.S.C. 78o-4(b).

of a majority of public members who are independent (as defined by the MSRB) of regulated entities. This section further requires that all members of the board must be knowledgeable regarding the municipal securities market. The proposed rule change will allow the MSRB to consider candidates who are associated with regulated entities solely by virtue of the corporate structure of their employer. Removing these limitations will allow the MSRB to consider a broader group of public representative board candidates, with an appropriate level of independence, and with the objective of maximizing the depth of municipal securities knowledge and experience on the board. Having such expertise on the board will ensure that the board has sufficient knowledge and perspective of all aspects of the municipal securities market and is well-positioned to carry out its statutory obligation “to protect investors, municipal entities, obligated persons, and the public interest.”¹⁰

The proposed rule change broadens the existing independence standard and public representative board candidates would no longer be automatically disqualified solely by virtue of a tenuous corporate affiliation with a regulated entity. As noted above, the proposed rule change also makes the MSRB independence standard consistent with the standard utilized by FINRA for its public governors.

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

The MSRB 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 broadens the potential pool of public board candidates and provides for fair representation by qualified members of the public on the board, consistent with the Act.

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

¹⁰ 15 U.S.C. 78o-4(b)(2)(C).

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 of up to 90 days (i) as the Commission may designate 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. 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-2013-06 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-2013-06. 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 a.m. and 3:00 p.m. Copies of the 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-2013-06 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).