

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63764, File No. SR-MSRB-2010-17)

January 25, 2011

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Amendments to Rule A-3, on Membership on the Board

I. Introduction

On November 30, 2010, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule 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 proposed rule change was published for comment in the Federal Register on December 17, 2010.<sup>3</sup> The Commission received no comment letters about the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 63533 (December 13, 2010), 75 FR 79061 (December 17, 2010) (the “Commission’s Notice”).

<sup>4</sup> On January 13, 2011, Commissioner Aguilar, along with Michael E. Coe, Counsel to the Commissioner, met with representatives of the National Association of Independent Public Finance Advisors to discuss the proposed rule change among other matters. See Memorandum from Michael E. Coe, dated January 13, 2011.

## II. Description of the Proposed Rule Change

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.

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”).<sup>5</sup> 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 Exchange Act and the Dodd-Frank Act as the Board deems appropriate. The proposed rule change is intended to amend Rule A-3(c) to comply with the requirements of transitional Rule A-3(i), as approved by the SEC.

Consistent with Rule A-3(i), the Nominating Committee (hereinafter, “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

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<sup>5</sup> See Exchange Act Release No. 63025 (September 30, 2010), 75 FR 61806 (October 6, 2010).

committee would 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;<sup>6</sup> 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, 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.

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<sup>6</sup> 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.

A more complete description of the proposal is contained in the Commission's Notice.<sup>7</sup>

### III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB<sup>8</sup> and, in particular, the requirements of Section 15B(b)(2)(B) of the Exchange Act<sup>9</sup> and the rules and regulations thereunder. Section 15B(b)(2)(B) of the Exchange Act 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 representatives, broker dealer representatives, bank representatives, and advisor representatives.

The Commission believes that the proposed rule change is consistent with the Exchange 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 help 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.

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<sup>7</sup> See supra note 3.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-4(b)(2)(B).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>10</sup> that the proposed rule change (SR-MSRB-2010-17), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).