

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65158; File No. SR-MSRB-2011-11)

August 18, 2011

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 August 11, 2011, 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 permanent Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve three year terms. The terms would be staggered and, each year, one class would be nominated and elected to the Board of Directors.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 as are necessary and appropriate to establish a permanent Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve three year terms. The terms would be staggered and, each year, one class would be nominated and elected to the Board of Directors.

In order to facilitate the transition to three staggered classes, Rule A-3 would include a transitional provision, Rule A-3(h), applicable for the Board's fiscal years commencing October 1, 2012 and ending September 30, 2014, which would provide that Board members who were elected prior to July 2011 and whose terms end on or after September 30, 2012 may be considered for term extensions not exceeding two years, in order to facilitate the transition to three staggered classes of seven Board members per class. The transitional provision would further provide that Board members would be nominated for term extensions by a Special Nominating Committee formed pursuant to Rule A-6, on committees of the Board, and that the Board would then vote on each proposed term extension. The selection of Board members whose terms would be extended would be consistent with ensuring that the Board is in

compliance with the composition requirements of revised Section (a) of Rule A-3 during such extension periods.

In an order approving changes to MSRB Rule A-3 to comply with the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) (Pub. L. No. 111-203, 124 Stat. 1376 (2010)) requiring the Board to have a majority of independent public members and municipal advisor representation,³ the Commission approved a transitional provision of the rule that increased the Board from 15 to 21 members, 11 of whom would be independent public members and 10 of whom would be members representing regulated entities. Of the public members, at least one would be representative of municipal entities, at least one would be representative of institutional or retail investors, and at least one would be a member of the public with knowledge of or experience in the municipal industry. Of the regulated members, at least one would be representative of broker-dealers, at least one would be representative of bank dealers, and at least one, but not less than 30% of the regulated members, would be representative of municipal advisors that are not associated with broker-dealers or bank dealers.

The Commission also approved a provision in MSRB Rule A-3 that defined an independent public member as one with no material business relationship with an MSRB regulated entity, meaning that, within the last two years, the individual was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual has no relationship with any such entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. The rule further provided that the Board, or by delegation, its Nominating and Governance Committee,

³ See SEC Release No. 34-63025, File No. SR-MSRB-2010-08 (September 30, 2010).

could also determine that additional circumstances involving the individual could constitute a material business relationship with an MSRB regulated entity.

In finding that the proposed rule change was reasonable and consistent with the requirements of the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. 78o-4), in that it provided for fair representation of public representatives and MSRB regulated entities, the Commission noted that the MSRB had committed to monitor the effectiveness of the structure of the Board to determine to what extent, if any, proposed changes might be appropriate. Additionally, in its response to comment letters, the MSRB suggested that, at the end of the transitional period, the MSRB would be in a better position to make long-term decisions regarding representation, size and related matters.

While the transitional period has not yet concluded, the Board believes it is now in a position to establish a permanent structure. The MSRB has now operated as an expanded, majority-public Board with representation of municipal advisors, as approved by the Commission, for approximately one fiscal year. During this period, the Board has engaged in the full range of MSRB activities. In a typical year, the Board meets quarterly but this year, due to the requirements of the Dodd-Frank Act and the new rulemaking authority over municipal advisors, the Board met six times in person and numerous times by phone. Additionally, Board members participated in committee meetings and informal conversations. The Board has undertaken many significant rulemaking initiatives regulating the activities of brokers, dealers, municipal securities dealers and municipal advisors that would provide important protections for investors, municipal entities, obligated persons and the public interest. In particular, notwithstanding its larger size, the Board acted swiftly to propose and, in many cases, adopt baseline rules for municipal advisors, and also promulgate additional rules and interpretive guidance applicable to brokers, dealers and municipal securities dealers. The insight of Board members with diverse backgrounds and

viewpoints contributed considerably to the quality of the initiatives. In addition, the Board has continued to develop, operate and maintain information systems critical to investors, municipal entities and market professionals. Furthermore, the Board has made significant efforts to orient previously unregulated municipal advisors to the realities of a regulated environment through an unprecedented level of outreach and education activities.

Given the extensive interaction among Board members, the Board was able to evaluate its effectiveness, particularly in the development of a body of rules governing the activities of municipal advisors while maintaining its prior level of regulatory and other activities in connection with brokers, dealers and municipal securities dealers. The Board believes that it has acted effectively as a regulator carrying out the functions contemplated by the Exchange Act and the Dodd-Frank Act and that its current size and composition have been significant factors in the Board's efficient and effective operation during this transition period. The Board further believes there has been sufficient time to evaluate its effectiveness and has determined to proceed at this time with this proposed rule change to ensure that the federally mandated rule proposal process necessary to obtain SEC approval can be completed in time for the MSRB to undertake its Board member election process in a thorough and orderly manner for the first class of Board members to serve after the conclusion of the transition period.

In order to evaluate the effectiveness of the Board, the Nominating and Governance Committee developed a survey of the members of the Board that addressed various governance issues, such as participation in Board deliberations by individual Board members and constituencies, development of Board agendas, skills and experience of Board members, role of Board committees and staff, and management of Board meetings. The survey inquired as to the ability of industry and public Board members to participate in Board meeting discussions and debate, such as whether the Board considers adequately the interests of municipal advisors in its

deliberations, and whether discussions on key issues include a balance of perspectives. The survey results indicated that Board members believe the 21-member Board is working effectively and that the Board, as constituted, can carry out its mission and objectives. Board members also believe that all constituents, industry and public, are appropriately represented by Board members who are able to provide input into the development of Board agendas and participate actively in deliberations.

While the Board proposes a composition greater than the statutory minimum of 15, the Board believes this membership level is appropriate, given the diversity of the municipal securities marketplace and its constituencies, many of whom are required by statute to be represented on the Board. The Exchange Act requires the Board to have at least one retail or institutional investor representative, at least one municipal entity representative, at least one member of the public with knowledge of or experience in the municipal securities industry, at least one broker-dealer representative, at least one bank dealer representative, and at least one municipal advisor representative. Given the diversity of municipal entities, broker-dealers, bank dealers, and municipal advisors, a Board of 21 members provides more flexibility to provide representation from various sectors of the market. For example, at a 21-member level, the Board would be in a position to appoint municipal entity representatives that serve large and small constituencies, such as states and state agencies, cities, and other municipal entities, while at the same time retaining the flexibility to appoint academics and others with a broader view of the market. A smaller Board would be constrained in this regard. Moreover, at a 21-member level, the Board would be similar in size to its counterpart, the Board of Governors of the Financial Industry Regulatory Authority (“FINRA”), the self-regulatory organization that works closely

with the Board to enforce Board rules applicable to FINRA members. Consequently, a Board of 21 members is appropriate and consistent with industry norms.

The survey results confirm the individual sentiments of Board members that the Board, as currently constituted, is effective and provides fair representation of public and industry members. Consequently, the Board voted to approve changes to MSRB Rule A-3 to make permanent a Board of 11 independent public members and 10 regulated members, with at least 30% of the regulated members being municipal advisors who are not associated with brokers, dealers or municipal securities dealers (“non-dealer municipal advisors”). The Board further voted to divide itself into three classes of seven, serving staggered three year terms. Each class would be as evenly divided as possible between public members and regulated members, and there would be at least one non-dealer municipal advisor in each of the three classes. The Board believes this permanent structure is consistent with the Exchange Act and provides fair representation of public members, broker-dealers, bank dealers and municipal advisors.

Finally, the Board voted to permit existing Board members to be considered for extended terms of up to two years, in order to transition to three staggered classes. A transition plan is necessary to balance the classes with public and regulated representatives and to ensure there is at least one non-dealer municipal advisor per class. In order to carry out the transition plan, the Board voted to create, by resolution, a Special Nominating Committee of five disinterested Board members to nominate certain Board members for extended terms. Disinterested Board members are those members who are ineligible for a term extension and, therefore, are less likely to have a personal interest in the nomination process that could affect their independent judgment. The class of 2011 is ineligible and, hence, disinterested because the term extensions would commence as of fiscal year 2013, and these members would no longer be on the Board at

that time. Additionally, one public member from the class of 2012 is disinterested because the transition plan does not contemplate an extension for public members from that class. Therefore, there are six disinterested Board members, five of whom comprise the Special Nominating Committee, which includes three public members and two regulated members. The Chair of the Committee was selected from amongst the public members. The Board believes that a Special Nominating Committee of disinterested members, led by a public chair and with a public majority, is in the best position to nominate Board members for term extensions, in that these members are least likely to have personal interests regarding the term extensions that could affect their independent judgments.

The Dodd-Frank Act provides that the Board shall be composed of 15 members or more, provided that such number is an odd number, as specified by the rules of the Board. The Board has voted to increase its membership to 21 and to eliminate Rule A-3(b), which provides that the Board may increase or decrease its membership by multiples of six, in order to maintain an odd number, and that the membership be equally divided among public members, bank dealers, and broker-dealers, so long as the membership is not less than 15. This section is no longer applicable, since the Dodd-Frank Act eliminated the prior statutory requirement that the Board consist of five public members, five bank dealer representatives, and five broker-dealer representatives. Moreover, there is no necessity to specify in a Board rule that the membership may be greater than 15, provided that the membership is set at an odd number, since such a provision is incorporated into the Exchange Act. Future changes in size of the Board, if any, would be effected through the rule change process consistent with the Dodd-Frank Act provisions. Hence, section (b) is no longer necessary.

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 representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules –

(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

The MSRB believes the proposed rule change is consistent with the Exchange Act in that the proposal provides that the number of public representatives of the Board shall exceed the total number of regulated representatives by one so that the membership shall be as evenly divided as possible between public representatives and regulated representatives – 11 to 10. The proposal specifies the length of term that Board members will serve – three years – which is consistent with the length of the terms served by Board members prior to the adoption of the Dodd-Frank Act. The proposal increases the size of the Board from 15 to 21, consistent with the size of the Board during the transitional period that commenced on October 1, 2010. For the reasons discussed earlier, the Board believes a 21-member Board is effective and fairly represents all constituencies

referenced in the Exchange Act, including public representatives and regulated representatives. Finally, the proposed rule change maintains the existing requirement regarding the independence of public representatives.

Section 15B(b)(1) of the Exchange Act further sets forth minimum representation requirements for certain categories of public representatives, as well as for bank dealer, broker-dealer and municipal advisor representatives. The proposed rule change complies with these requirements. The Exchange Act does not, however, mandate the specific number of any class of representative that should serve on the Board, nor does it set forth maximum Board composition or representation requirements. Thus, the MSRB believes that its proposal does provide for fair representation of public representatives, broker-dealers, bank dealers and municipal advisors under the Exchange Act, and it believes that providing a minimum number of non-dealer municipal advisors – at least 30% of the regulated representatives - is reasonable, and consistent with the Exchange Act.

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 Board 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. 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-2011-11 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-2011-11. 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 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 MSRB's offices. 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-2011-11 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.⁴

Elizabeth M. Murphy
Secretary

⁴ 17 CFR 200.30-3(a)(12).