

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77390; File No. SR-MSRB-2016-01)

March 17, 2016

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

I. Introduction

On January 15, 2016, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of proposed amendments to the MSRB Rule A-3, on membership on the Board (the “proposed rule change”).

The proposed rule change was published for comment in the Federal Register on February 4, 2016.³ The Commission received two comment letters on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Board is comprised of 21 members⁵ who, collectively, govern the MSRB to carry out its mission primarily by regulating dealers and municipal advisors, providing market

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 76999 (Jan. 29, 2016), 81 FR 6088 (Feb. 4, 2016) (the “Proposing Release”).

⁴ See Letters from Lisa S. Good, Executive Director, National Federation of Municipal Analysts (“NFMA”), dated February 25, 2016 (“NFMA Letter”); and Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated February 25, 2016 (“BDA Letter”).

⁵ See MSRB Rule A-3(a).

transparency through its Electronic Municipal Market Access (EMMA) website, and conducting market leadership, outreach and education. Many general and some more detailed aspects of the Board's composition are set forth in the Act.⁶ It categorizes the members of the Board into 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").⁷ The Act then specifies that the number of Public Representatives must at all times exceed the number of Regulated Representatives,⁸ and sets minimum requirements for certain types of individuals to serve in the two groups.⁹

Congress also delegated authority to the MSRB to determine many aspects of Board composition by rule, including the size of the Board and the length of the term of Board member service.¹⁰ Currently, the Board is divided into three seven-member classes that serve staggered, three-year terms.¹¹ The MSRB stated that under this framework, total Board tenure typically is no more than three years because Board members may only serve consecutive terms under two

⁶ See 15 U.S.C. 78o-4(b)(1). MSRB Rule A-3 further establishes the Board's composition.

⁷ See 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a)(i)-(ii).

⁸ See 15 U.S.C. 78o-4(b)(2)(B)(i).

⁹ See 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a).

¹⁰ 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," and that the rules of the Board "specify the length or lengths of terms members shall serve." 15 U.S.C. 78o-4(b)(1), (b)(2)(B)(ii).

¹¹ See MSRB Rule A-3(b)(i).

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.¹²

According to the MSRB, the proposed rule change would lengthen the term of Board member service from three years to four years, and facilitate the new, longer term length by increasing the number of Board classes and adjusting their sizes.¹³ Additionally, the MSRB has stated that the proposed rule change would limit the number of consecutive terms a Board member can serve to two, and eliminate the requirement that there be at least one non-dealer municipal advisor per Board class.¹⁴ Finally, the MSRB has stated that the proposed amendments would delete an obsolete provision from the rule and provide a technical update to the name of a Board committee.¹⁵ The MSRB believes that the proposed rule change 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.¹⁶ A full description of the proposed rule change is contained in the Proposing Release.

1. Lengthening the Term of Board Member Service and Increasing the Number of Board Classes

The MSRB has proposed increasing both the Board member term length from three years to four years and the number of Board classes from three to four.¹⁷ The MSRB has proposed

¹² Id.

¹³ See supra note 3.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

that one class would be comprised of six members and three classes comprised of five members.¹⁸ The MSRB has stated that it believes that having members serve on the Board for a fourth year would improve the continuity and institutional knowledge of the Board from year to year which is important for the MSRB rulemaking process which can often span multiple years from conception to full implementation.¹⁹ The MSRB has further stated that the proposed changes would ensure that the MSRB nominates and elects new members every year, maintains classes that are as evenly distributed in size as possible, and has a Board composition that always satisfies the statutorily-required position allocations.²⁰ According to the MSRB, such changes would result in a consistent and manageable turnover from year to year.²¹ The MSRB has further represented that the classes would continue to be as evenly divided in number as possible between Public Representatives and Regulated Representatives, while also remaining majority public as is required by the Act and Rule A-3(a) and (b)(i).²²

2. Establishing a Limit on Consecutive Terms

The MSRB has proposed that a Board member could serve no more than two consecutive terms, eight years in total, which could only occur under the a special circumstances exception²³. The MSRB has stated that this added provision would ensure that the special circumstances exception is not overused, mitigate some commenters' concerns of Board members becoming

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ See Rule A-3(b)(i)

too dominant and unduly influential, assure appropriate turnover of Board membership, and help maintain a robust pool of applicants for Board service.²⁴ The MSRB believes this modification reflects good corporate governance practices as applied to the particular characteristics of the MSRB.²⁵

3. Eliminating Requirement of One Non-Dealer Municipal Advisor

The MSRB has proposed eliminating the requirement that there be at least one non-dealer municipal advisor per class.²⁶ The MSRB has stated that it is proposing this change because the proposed amendments would result in the creation of four classes which would create an obligation that the Board always includes four non-dealer municipal advisors, which could potentially diminish representation of other regulated entities.²⁷ The MSRB has represented that the proposed rule change would not affect 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.”²⁸ The MSRB has stated that nothing in this proposed change would reduce the minimum required representation of municipal advisors and such proposed change would not prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the Board.²⁹ The MSRB has represented that all other provisions in Rule A-3(b)(i) would remain unchanged.³⁰

²⁴ See supra note 3.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

Clarifying and Technical Amendments

The MSRB has proposed two amendments to delete an obsolete provision and make a technical update. The MSRB believes that these changes will improve the clarity and readability of MSRB Rule A-3.

The MSRB has stated that MSRB Rule A-3(h) currently describes the transition process the MSRB used to increase its Board size from 15 to 21 members during its fiscal years 2013 and 2014.³¹ The MSRB has stated that the proposed rule change would delete this provision from MSRB Rule A-3 because that process has been completed and the provision is therefore obsolete.³²

Additionally, MSRB Rule A-3(g)(ii) makes reference to the “Nominating Committee,” which is now called the “Nominating and Governance Committee.”³³ The MSRB has stated that the proposed rule change would provide a technical update to the reference of the current name of the committee which would promote the accuracy of the rule.³⁴

Transition Plan

In order to effectuate the changes in term length and the number and size of classes, the MSRB has proposed a transition plan (the “Transition Plan”), under which each Board member, who was elected prior to, and whose term ends on or after the end of, the MSRB’s fiscal year

30 Id.

31 Id.

32 Id.

33 Id.

34 Id.

2016,³⁵ could be considered for a term extension not exceeding one year.³⁶ The MSRB has represented that this process would occur over fiscal years 2017, 2018 and 2019 and that the transition would proceed as follows: (1) for fiscal year 2017, 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) for fiscal year 2018, 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) for fiscal year 2019, three Public and two Regulated Representatives from the Board class of 2018 (i.e., members who began a three-year term on October 1, 2015) each would receive a one-year extension and five new members would join the Board.³⁷ The MSRB has stated that the full Board would vote by ballot on all members eligible for term extensions to determine who receives them.³⁸ Further, the MSRB has noted that the selection of Board members whose terms would be extended would be in compliance with the statutorily-required compositional requirements of the Board, and the Board would continue to consist of 21 members with a majority of Public Representatives.³⁹ The MSRB has represented that in fiscal year 2020, no further extensions would be required and five new members would join the Board, completing the transition to four classes and from that point forward, the Board would repeatedly nominate and elect classes in the sequence of six, five, five,

³⁵ The MSRB's fiscal year commences on October 1 of a given year and ends on September 30 of the following year.

³⁶ See supra note 3.

³⁷ Id.

³⁸ Id.

³⁹ See supra notes 3, 5 and 7-9.

and five members.⁴⁰ The MSRB has further stated that while there are numerous possible combinations of the number of Board classes and the number of members in each class, they believe this specific combination would achieve the transition expeditiously and efficiently while minimizing any disruption from the changes.⁴¹

III. Summary of Comments Received

As noted previously, the Commission received two comment letters on the proposed rule change.⁴² The NFMA Letter expressed general support and agreement with the proposed rule change.⁴³ The BDA Letter also expressed general support and agreement with the proposed rule change, but noted interest in seeing the MSRB continue to strengthen its training of future Board members and to continue to reevaluate its training program to ensure it reflects changes in market practices and new regulations.⁴⁴ BDA made a substantially similar comment⁴⁵ in response to the MSRB's Request for Comment⁴⁶, and the MSRB responded to such comment in

⁴⁰ See supra note 3.

⁴¹ Id.

⁴² See supra note 4.

⁴³ See NFMA Letter.

⁴⁴ See BDA Letter.

⁴⁵ See Letter from Michael Nicholas, Chief Executive Officer, BDA, dated November 19, 2015.

⁴⁶ Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service, MSRB Notice 2015-18 (Oct. 5, 2015) ("MSRB Request for Comment").

the Proposing Release.⁴⁷ Full descriptions of the comments are contained in the comment letters.⁴⁸

Increase in Term Length – Training

The MSRB noted that this comment by BDA addresses internal MSRB matters and does not suggest any revision to the language of the amendments in the proposed rule change.⁴⁹ The MSRB further stated that the MSRB already allocates significant resources to educating new Board members as part of a robust and dedicated orientation process that begins prior to the commencement of their terms and focuses on organizational and other substantive matters, including, but not limited to, rulemaking and other large initiatives.⁵⁰ Finally, the MSRB represented that it already routinely revises and improves this process with the benefit of each successive experience orienting new Board members.⁵¹

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change as well as the comments received. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the rule change is consistent with 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 [P]ublic [R]epresentatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules —

⁴⁷ See supra note 3.

⁴⁸ See supra notes 4 and 33.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

(i) shall provide that the number of [P]ublic [R]epresentatives of the Board shall at all times exceed the total number of [R]egulated [R]epresentatives and that the membership shall at all times be as evenly divided in number as possible between [P]ublic [R]epresentatives and [R]egulated [R]epresentatives;

(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 Commission believes the increase of the term length from three to four years, the change in the number and size of Board classes from three classes of seven members to one class of six and three classes of five, and the elimination of the requirement that there be one non-dealer municipal advisor per class are consistent with the Act in that the composition of the Board would continue to satisfy the requirements of the Act. Further, the Commission believes the limitation of consecutive terms to two, totaling a maximum of eight years of consecutive service, is consistent with the Act in that it specifies the length of term that Board members can serve when the MSRB invokes the special circumstances exception.

Further, the Commission finds that the proposed deletion of the transition process described in MSRB Rule A-3(h) is consistent with the Act because removing the obsolete provision improves the clarity and readability of the rule. The Commission also believes the proposed update to the reference to the “Nominating and Governance Committee” in MSRB Rule A-3(g)(ii) is consistent with the Act because it enhances the accuracy of the rule in regard to a reference to a component of the Board’s governance structure.

In approving the proposed rule change, the Commission has also considered the proposed rule change’s impact on efficiency, competition, and capital formation.⁵² The Commission

⁵² 15 U.S.C. 78c(f).

believes that the effect of the proposed rule is beneficial and the proposed changes will improve the effectiveness and efficiency of the Board by providing the Board with increased continuity and institutional knowledge particularly in connection with the rulemaking process. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

MSRB Execution of the Transition Plan

In evaluating the proposed rule change, the Commission has considered the Transition Plan to effectuate the changes in term length and the number and size of Board classes proposed by the MSRB in the Proposing Release.⁵³ The Commission's approval of the proposed rule change is premised on the MSRB executing the Transition Plan.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁴ that the proposed rule change (SR-MSRB-2016-01) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁵⁵

Robert W. Errett
Deputy Secretary

⁵³ See supra note 3.

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ 17 CFR 200.30-3(a)(12).