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July 20, 2015

Mr. Ronald Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street  
Suite 600  
Alexandria, VA 22314

**RE: MSRB Release No. 2015-08**

Dear Mr. Smith:

The Government Finance Officers Associations (GFOA) appreciates the opportunity to comment on proposed changes to the Municipal Securities Rulemaking Board's (MSRB/Board) Rule A-3, related to the Standard of Independence for Public Board Members, the length of Board member service and publication of the names of Board applicants. The GFOA represents over 18,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking that is done in this sector. The comments of the GFOA pertaining to the Board's proposal are below.

### **Modifying the Standard of Independence for Public Board Members**

As drafted, the GFOA opposes the proposed changes to MSRB Rule A-3. By providing an alternative definition of "no material business relationship" and applying this new definition to only the Public Investor Representative, the Board's proposal appears to be establishing a permanent seat for a buy-side institutional investor. This seems to contradict the intent of the Securities and Exchange Act of 1934 (Exchange Act), which allows more than one member of the Board to be an Investor Representative. The Board's proposal too narrowly defines the characteristics of the preferred applicants for the Public Investor, and in doing so constrains the flexibility provided by the current rules for the Board to select a candidate to serve as a representative of either institutional *or* retail investors.

Though the MSRB's 2015 proposal would modify the standard of independence for only the Public Investor Representative, instead of modifying the standard of independence for all 11 Public Representatives as the Board proposed in 2013, we believe that this proposal would make permanent changes to the Board's composition in a manner that would also inappropriately change the balance of power on the Board (from 11-10 to 10-10). As MSRB acknowledges in this proposal, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act) was specific in its intent that the Board be composed of a majority of members who are independent of regulated parties. Diluting the criteria and definition could lead to public members being chosen who truly do not represent the best interests of issuers, investors, or the general marketplace and public.

As we commented in 2013 on the Board's Rule A-3 modification proposal, the qualifications for public board membership are already quite lenient, and allow individuals who have been away from regulated parties for two years, to be able to be considered for public board membership. While there are hundreds of marketplace individuals who could contribute well to the Board, this allows – as we have seen in the MSRB

board member selection process – professionals who have spent their entire career as a regulated individual, to become public members if they are retired or working outside of the private sector for only two years. Meanwhile the balance of their career may have 20-30 years associated with the broker/dealer or municipal advisor community. Additionally, we have seen some public members chosen whose profession would, on paper, be considered for public membership, however a vast majority of their work is spent interacting and doing business directly with regulated parties – a “material business relationship” within the meaning of Rule A-3(g)(ii), thus compromising their independence.

We have commented on this concern in the past, and believe that this ongoing problem will only be exacerbated by the proposed changes to Rule A-3. Furthermore, we would reiterate that those Board members representing the issuer community should have spent the vast majority of their career as an issuer, not just two years, as is currently required. The MSRB receives many applicants from issuers who meet this criteria, and as with all types of professionals represented, we believe that the full spectrum of their career should be taken into consideration as a Board member. Someone who as recently as two years ago worked for a regulated party should not qualify as an issuer representative.

While we respect the need to ensure that certain qualified individuals can be considered for the Board, we call on the MSRB to find a better way to address the problem. The current proposal would weaken the criteria for public board membership, and provide the MSRB alone with the subjective ability to determine when an individual meets the public membership criteria. This proposal compromises the ‘public’ aspects of public board membership. The MSRB could solve the specific problem that it cites, without changing Rule A-3, and without causing greater erosion of the independence of the public board members. The MSRB could allow those individuals who work in companies that have a division of professionals regulated by the MSRB to have one of the non-public board seats, and/or if there is a specific segment of the market that the MSRB does not believe is well represented on the Board, it could undertake additional outreach efforts to encourage those marketplace participants to apply.

### **Modifying the Length of Board Member Service**

The GFOA respects the MSRB’s desire to improve productivity by more rapidly increasing the preparedness of Board members to lead the organization, however we are not supportive of extending Board members two consecutive three-year terms. GFOA Board Members are also only eligible to serve a single three-year term, yet are still able to participate fully in shaping the direction of GFOA during their time on the Board. The MSRB may wish to consider dedicating more time to preparing Board members before their service on the Board begins to instill a greater understanding of their duties as Board members and the MSRB’s rulemaking process and oversight obligations.

For example, the GFOA holds a series of meetings with incoming Board members to educate them on functions of the Board, and provide a comprehensive overview of their duties as a Board member. These discussions have proven effective in preparing Board members to meaningfully engage during their service to the GFOA. Maintaining a single three-year term will also ensure consistent turnover on the Board, which is important in any organization interested in introducing new perspectives and ideas to the conversations on the work before it.

### **Eliminating the Publication of Board Member Applicants**

The GFOA has concerns with the MSRB’s proposal to eliminate or modify the publication of the names of Board applicants to its website, as we believe doing so would remove a needed element of transparency in the nominating Board process. In fact we believe that there is already a greater need for transparency in this process. Each year, many qualified candidates submit applications – a large pool for the MSRB to choose from. However, we are aware of many individuals both in the public and private sectors that are continually denied a chance to advance through the process. Disclosure of the names of these applicants is at least useful

in helping prospective applicants, market participants and the general public understand MSRB's nominating preferences, as well as the characteristics of both successful and unsuccessful applicants.

We appreciate the opportunity to comment on this proposal, and would welcome discussion on these comments with appropriate MSRB staff.

Sincerely,

A handwritten signature in blue ink that reads "Dustin McDonald". The signature is written in a cursive style with a large, stylized "D" and "M".

Dustin McDonald  
Director, Federal Liaison Center