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April 29, 2020

VIA ELECTONIC MAIL

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Notice 2020-02

Dear Mr. Smith:

Acacia Financial Group, Inc. ("Acacia") is an independent, national municipal advisory firm that serves a wide range of municipal clients including high profile issuers, local small issuers and infrequent issuers. We appreciate the opportunity to comment on Municipal Securities Rulemaking Board (MSRB) Notice 2020-02 related to MSRB Rule A-3 in connection with the MSRB's stated objective to improve Board governance by examining the size and composition of the membership on the Board.

The MSRB presented its rationale for the expanding the Board to 21 members with a minimum of 3 independent municipal advisor representatives in its September 19, 2011 letter to the SEC Re: Response to Comments on File No. SR-MSRB-2011-11. The implementation of a regulatory regime for Municipal Advisors (MAs) was in the forefront of everyone's thoughts at that time. However, it was also acknowledged by the MSRB that after the initial rules were written there would continue to be the need for rulemaking associated with MAs, just as there was for broker dealers. As the Board stated in its comment letter:

> "While the statute requires that there be at least one municipal advisor representative on the Board, it is the view of the Board that no less than 30% of the members representing regulated entities should be municipal advisors that are not associated with broker-dealers or bank dealers, and, therefore, the MSRB does not agree with SIFMA's comment that this level of representation of municipal advisors is disproportionately large. Although the MSRB has made substantial progress in the development of rules for municipal advisors, its work is not complete. Indeed, over the years, it will continue to write rules that govern the conduct of municipal advisors and provide interpretive guidance on those rules, just as it has over the years for broker-dealers since it was created by Congress in 1975. Just as SIFMA considers it essential that broker-dealers and bank dealers participate in the development of rules that

affect them, the MSRB believes that it is essential that municipal advisors participate in the development of rules that affect them. The MSRB believes that allotting at least 30% of the regulated entity positions to municipal advisors that are not associated with broker-dealers or bank dealers will assist the Board in its rulemaking process and will inform its decisions regarding other municipal advisory activities while not detracting from the Board's ability to continue its existing rulemaking duties with respect to broker-dealer and bank activity in the municipal securities market."

Since the adoption of the core group of MA rules, the MSRB has continued to issue rules and interpretive guidance which impact the MA community. The MSRB has enacted new rules, established testing procedure and continuing education requirements which directly impact MAs. Additionally, in October 2018, the MSRB elevated the retrospective rule review to a strategic initiative and in 2020, indicated that Rule G-42 on the duties of municipal advisors would be one of the many rules to be re-examined. Additionally, the SEC currently has a proposal for conditional exemptive relief related to the role of MAs with the direct placement of municipal securities. These proposals have generated much debate among municipal finance participants and a review of the comment letters regarding these proposals clearly exposes the significant differences between the broker dealer and MA community.

It is also important to note that of the regulated members, MAs have a fiduciary duty to their clients and this certainly influences the lens thru which rulemaking is examined by the MA representatives. This perspective can be critical in assessing the impact on the execution of a MA's fiduciary duty within the rules and regulations which govern MAs. Therefore, reducing the number of MAs to less than 30% of the regulated members seriously limits that important perspective in the rulemaking process.

With respect to allowing a MA representative to be a broker dealer that does not engage in the underwriting securities, this should be only allowed if and only if, the complement of MAs continue to be 30% or 3 members. Under no conditions should a broker dealer or broker dealer affiliate that engages in underwriting be permitted to fill the MA position. To do so would effectively increase the underwriter representation on the Board at the expense of the MA community.

As the MSRB's letter so accurately predicted in 2011, the rule making process as it impacts the MA community continues. Consequently, MAs should have the same level of representation proposed and defended by the MSRB in 2011. Therefore, we cannot endorse stripping the MA community of the necessary representation to effectively participate in the rule making process by reducing the number of MAs on the Board to 2 representatives. The MSRB's stated desire to have easier and more efficient decision making should not be done at the expense of reducing the voice of the MA community.

Lastly, we would like to echo the remarks made on August 21, 2019 during SIFMAs "View from Washington" with MSRB Chair Gary Hall and President and Chief Executive Officer, Lynnette Kelly regarding the Retrospective Rule Review. Ms. Kelly stated: "When we put a rule in place, it is a living, breathing rule that needs constant care and attention." The municipal advisor community

is a diverse community and it is important to ensure the Board continues to receive input from the full range municipal advisory firms. Consequently, we can see no valid reason to reduce the presence of this vitally important voice on the board and we urge the Board to maintain the MA representation at 30% of the regulated members, regardless of the final decision on the size of the Board.

Thank you for the allowing us to submit our comments as it relates to maintaining the appropriate level of representation by the MA community on the MSRB.

Sincerely:

Kim M. Whelan
Co-President

Noreen P. White
Co-President

April 29, 2020

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: Request for Comment on Draft Amendments to MSRB Rule A-3 on Membership on the Board (2020-02)

To Whom It May Concern:

On behalf of ACRE, AFSCME, the AFL-CIO, the Americans for Financial Reform Education Fund, the Consumer Federation of America, and Public Citizen, thank you for the opportunity to comment on the above referenced Draft Amendments (the "Amendments") concerning the Municipal Securities Rulemaking Board's ("MSRB" or "Board") rules regarding Board membership and governance.

All of our organizations share a concern for the protection of municipal issuers from exploitation by large Wall Street banks and financial institutions that act as underwriters, advisers, and dealers in municipal finance markets. There is a long history of such exploitation in the municipal markets. Examples over the past two decades include the sale of complex derivatives by bank dealers which, far from reducing costs and risks to municipal issuers as advertised by dealers, ended up creating enormous additional costs for public borrowers. They also include the deep involvement of dealer banks in the largest municipal bankruptcies in U.S. history, such as Detroit, Jefferson County, and Puerto Rico.

MSRB regulated entities significantly contributed to and profited from these abusive transactions. But the MSRB did not sound the alarm in advance or use its regulatory powers to take action. This is true even though MSRB Rule G-17 has for many years imposed a 'fair dealing' standard for Wall Street dealers interacting with municipal clients. This standard has apparently been ignored in all too many recent cases, in ways that have created enormous costs to the public. The MSRB could have taken action to clarify and help to enforce this standard, to define unacceptable practices, and warn the market concerning them. But unfortunately, the record shows that all too often the Board, which should be the municipal market's watchdog, has been toothless and ineffective.

Current pressures on state and local budgets due to the pandemic crisis will make the MSRB's oversight role even more important. These pressures can lead profit-seeking dealers and advisers

to recommend excessively risky transactions to municipal entities desperate to escape fiscal burdens. Examples can include transactions such as pension obligation bonds, bond anticipation notes and capital appreciation bond transactions (such as the hundreds that followed the Great Recession), or other similar borrowings that seek to defer payments far into the future. The MSRB must be more effective than it has been in the past.

The Board's governance and membership selection process is at the heart of needed reform. The MSRB has gained a reputation as dominated by the sell-side intermediaries it is supposed to regulate -- banks and dealers that sell products that have all too often imposed unnecessary and sometimes ruinous costs on issuers. It was due to these concerns regarding sell-side dominance that Congress in the 2010 Dodd-Frank Act sought to reform Board governance by requiring that a majority of Board members be independent public members rather than from regulated entities, and explicitly required the Board to protect the interests of issuers and municipal entities.

Unfortunately, since the passage of the Dodd-Frank Act we have seen that Board governance has not been reformed in line with Congressional intention. Sixteen public members out of a total of thirty-six that were appointed between 2010-2011 to 2019-2020 have had significant past or recent connections or ties to MSRB regulated dealers or banks. This number does not include public investor members that spent significant time at investment advisory affiliates of broker-dealers. If we exclude fiscal year 2010-2011 from this calculation, a year when public members were still required to be approved by the Securities and Exchange Commission, fourteen public members out of a total of twenty eight, or half of all new public members, had such connections. A list of such Board members and details of their connections is appended to this comment. (This list is not intended to imply that any individual Board member lacks integrity or is unable to perform their duties, but simply to demonstrate the extent of connections between Board public representatives and regulated dealer banks).

If the normal process at the MSRB continues be that half of so-called independent members have significant professional ties to dealer banks, then the MSRB will clearly face barriers to acting as an independent watchdog that forcefully protects the public interest. Since the interest of dealer banks can be diametrically opposed to those of the municipal issuers who pay them, it is also clear that the MSRB will face conflicts in protecting the interests of issuers and municipal entities, as it is required to do. This policy will also lead to Board membership that continues to be marked by a striking lack of racial, socioeconomic, and viewpoint diversity as compared to the issuers and the public that are affected by its decisions. In requiring a majority of public representatives, Congress did not intend for the MSRB to simply shift its membership from currently employed bankers to recently retired bankers.

Now that members of Congress have taken an interest in the issue of MSRB independence, the Board is advancing these Amendments to address this long-standing issue. Unfortunately, taken as a whole the reforms in these Amendments appear inadequate to fully satisfy the statutory intent in the Dodd-Frank Act that the MSRB have a true public interest majority. There is one significant reform proposed here – the shift from a two year to a five year mandatory separation period for public members. We believe that this change would make a difference in shifting

Board membership to more effectively represent the public interest and we strongly support it. We support a number of other changes in the Amendments as well, but view these changes as more incremental in nature and unlikely to have a major impact.

We are also struck by elements that are missing from these Amendments, including a reconsideration of conflict of interest provisions. We believe that the Board needs to reconsider its approach to member qualifications at a much deeper level than is evident in these Amendments, including its interpretation of the statutory statement that members should be "knowledgeable of matters relating to the municipal securities markets". As discussed below, there is no reason an independent member needs to have previously worked for a regulated entity in order to be knowledgeable concerning the municipal markets. We particularly noted Question 2 in the Amendments, which asks "Would a public representative who has been away from the industry for five years continue to maintain sufficient municipal market knowledge to serve effectively"? The question reflects an implicit assumption that only recent "in the industry" experience working for a regulated entity gives knowledge of municipal markets. In our experience this attitude has been reflected in the assessment of new member applications.

We discuss several specific issues below.

Definition of "material business relationship": We strongly support the proposed expansion from a two to a five year separation period in the definition of "material business relationship" that determines qualification for independent member positions. This new requirement alone is far from a complete fix for issues around selection of independent members, but it is still a significant shift that would show the Board is attempting to address such issues. Arguments against the change to a five year separation period are unconvincing. As discussed below, there are in fact a very large number of qualified candidates for independent member positions who were not recently employed by banks or other regulated entities, or were never employed by such entities. A greater period of mandatory separation will help to produce members who have a whole-market and public interest perspective rather than a sell-side orientation and socialization.

However, given that the Board is re-examining the definition of material business relationships, we were surprised that there was no apparent effort to either clarify or expand the conflict of interest provisions in that definition. Rule A-3 currently states the following, with the bolded section referring to conflicts of interest:

> "The term "no material business relationship" means that, at a minimum, the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, **and that the individual does not have a relationship with any municipal securities broker, municipal securities dealer, or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual**."

However, as documented in the Appendix to this letter, several individuals have been appointed as independent members who would appear to have significant conflicts of interest by this or any definition. For example, Robert Cochran served as an independent member (and in fact the chair

of the independent members) but was the Managing Director and co-founder of the Build America Mutual Assurance Company. Although bond insurer fees are technically paid by issuers, the use of bond insurance and the selection of a bond insurer is almost always at the discretion or recommendation of MSRB regulated entities. This would seem to create a major conflict of interest that was not taken into account by the Board in selecting Mr. Cochran. This and other examples where conflict of interest provisions appear to have been ignored indicate a need for significant strengthening of conflict of interest protections in the selection of independent members. This issue is not addressed at all in these Amendments.

Approach to Independent Member Qualifications: More broadly, we believe that the Board needs to shift its underlying approach and attitude regarding the selection of independent members in order to prioritize genuine diversity of viewpoints and backgrounds and a clear and unconflicted commitment to the public interest. The Board already has a large number of representatives from regulated entities. These regulated entity representatives bring detailed and specialized knowledge of municipal markets and a perspective informed by the role of market intermediaries such as banks, dealers, and advisors. The goal of selecting independent representatives is not to replicate these contributions of regulated representatives with individuals who do not happen to currently work for a bank. It is instead to bring a broad view informed by all the goals and objectives of a well-functioning municipal finance market.

It is our belief that the Board instead tends to prioritize insider knowledge of technical elements of bond underwriting in ways that lead to a selection process which does not create the needed breadth of perspective and background in its membership. This is particularly evident in the Board's interpretation of the statutory statement that members should be "knowledgeable of matters relating to the municipal securities markets". Rather than interpreting this brief and general statutory statement in a manner that sharply restricts the potential pool of public representatives, the Board should interpret it more expansively and more in line with its plain meaning. Congress did not mandate that board members should be technical experts steeped in the current state of the art regarding bond underwriting processes. The statute instead simply specifies that new members should be "knowledgeable" of "matters relating to the municipal securities markets".

There are numerous pools of individuals who are knowledgeable about the municipal markets and motivated to serve the public interest but do not have a professional background in working for MSRB regulated entities. Examples of such groups are:

- ***Employees or elected officials at issuers who have not previously worked for banks or dealers***: There are numerous individuals who work for states and localities, have devoted their careers and lives to municipal budgetary issues, are knowledgeable about municipal finance markets, but have never worked for a bank.

- ***Academic experts in financial markets:*** There are many individuals who have strong expertise in the workings of financial markets, have published peer-reviewed articles on municipal securities markets, but have never worked for a bank.

- ***Community and labor activists and advocates:*** There are many individuals who, through activism or advocacy on issues ranging from local bond issuances to policies surrounding the municipal markets, have gained substantial knowledge concerning municipal markets, but have never worked for a bank.

These pools of candidates alone encompass many thousands of people who could be well qualified to serve as independent members of the MSRB, but do not have professional connections to a bank.

Thank you for your time and attention to our comments. Should you have questions, please reach out to Marcus Stanley at Americans for Financial Reform Education Fund at 202-674-9885 or marcus@ourfinancialsecurity.org, who can also connect you to relevant staff at other signatory organizations.

Sincerely,

Action Center on Race and the Economy (ACRE)

AFSCME

AFL-CIO

Americans for Financial Reform Education Fund

Consumer Federation of America

Public Citizen

APPENDIX – PUBLIC REPRESENTATIVE INDUSTRY TIES

List of new MSRB Public Board Members 2011-2019 with industry ties. Bios were current as of the date of appointment. Only includes public board members with clear references/ties to MSRB regulated investment banks in bio. Does not include public members that spent significant time at investment advisory affiliates of broker-dealers. In some years there were several public board members with industry ties – the ones listed below are just those who joined that year. Historical lists are at: http://www.msrb.org/About-MSRB/Governance/MSRB-Board-of-Directors/Former-Board-Members.aspx. Note that this list is not intended to imply that any individual Board member lacks integrity or is unable to perform their duties, but simply to list professional connections between Board public representatives and regulated dealers.

2010-2011

Robert Fippinger is a partner at Orrick, Herrington & Sutcliffe, which has a large practice area in public finance. Earlier he was a Partner and an Associate at Hawkins, Delafield & Wood. Mr. Fippinger is the author of a two-volume treatise, titled "The Securities Law of Public Finance" and has taught public finance and securities law as an adjunct professor at Yale Law School, New York University School of Law and Hofstra Law. (Mr. Fippinger's practice was representing regulated broker-dealers and SIFMA. MSRB reportedly justified him as a public member saying that less than 10% of revenue for Orrick came from representing broker-dealers).

Robert Jackman. Mr. Jackman was a municipal bond professional for 38 years at Bear Stearns & Co. After leaving Bear Stearns in 2006, Mr. Jackman turned his energy toward the Brooke Jackman Foundation. (only served two months before passing away).

2011-2012

http://www.msrb.org/News-and-Events/Press-Releases/2011/MSRB-Announces-Selection-of-Officers-and-New-Board-Members.aspx

Peter J. Taylor is the Executive Vice President and Chief Financial Officer of the University of California system. Prior to joining the University of California system, Mr. Taylor was a managing director at Barclays Capital and a managing director at Lehman Brothers. *From CSU bio*: "From 2009 - 2014, Taylor was Chief Financial Officer of the University of California system **after spending most of his career in investment banking**, as a Managing Director in municipal finance for Lehman Brothers and Barclays Capital." (Resigned May 2013)

http://www.msrb.org/News-and-Events/Press-Releases/2012/MSRB-Elects-New-Public-Board-Member.aspx

Kathleen A. McDonough. Ms. McDonough is a retired executive from Ambac Financial Group with nearly 30 years of experience in public finance and securities law. (Although issuers technically pay the fees of bond insurers like AMBAC, selection of bond insurers is 100% at the discretion of broker-dealers and municipal advisors).

2012-2013

http://www.msrb.org/News-and-Events/Press-Releases/2012/MSRB-Announces-New-Board-Members-for-Fiscal-Year-2013.aspx

Gene R. Saffold is an independent consultant on financial, strategic and operational matters. Prior to his current role, Mr. Saffold served as chief financial officer of the City of Chicago and previously was vice chairman - national accounts at J.P. Morgan Chase & Co., Inc. He also worked for Salomon Smith Barney, Inc. as managing director in the company's Midwest public finance group. (Served only one week before passing away unexpectedly.)

Robin L. Wiessmann is the former Treasurer of the Commonwealth of Pennsylvania. Prior to her position as the treasurer of Pennsylvania, Ms. Wiessmann was a founding principal and president of Artemis Capital Group, a woman-owned Wall Street investment bank. She was also a vice president at Goldman, Sachs & Company. Ms. Wiessmann is a current board member of the Met-Pro Corporation.

2013-2014

http://www.msrb.org/News-and-Events/Press-Releases/2013/MSRB-Announces-Selection-of-Officers-and-New-Board-Members-for-Fiscal-Year-2014.aspx

Robert P. Cochran is the Co-Managing Director and Chairman of the Board at Build America Mutual Assurance Company, which he co-founded. Prior to this position, Mr. Cochran was CEO and Chairman of the Board of Directors at Financial Security Assurance. (Although issuers technically pay the fees of bond insurers, selection of bond insurers is 100% at the discretion of broker-dealers and municipal advisors, creating a significant potential conflict of interest).

2014-2015

http://www.msrb.org/News-and-Events/Press-Releases/2014/MSRB-Announces-New-Officers-and-Board-Members-for-Fiscal-Year-2015.aspx

Robert Fippinger is Senior Counsel at Orrick, Herrington & Sutcliffe, which has a large practice area in public finance. He previously served as a partner at the firm. Earlier he was a Partner and an Associate at Hawkins, Delafield & Wood. Mr. Fippinger is the author of a two-volume treatise, titled "The Securities Law of Public Finance" and has taught public finance and securities law as an adjunct professor at Yale Law School, New York University School of Law and Hofstra Law.** (Mr. Fippinger's practice at Orrick, Herrington, & Sutcliffe was representing broker-dealers and SIFMA. MSRB reportedly justified him as a public member saying that less than 10% of revenue for Orrick as a whole came from representing broker-dealers).

Rita Sallis is a Principal at the Yucaipa Companies, where she is responsible for marketing, client servicing, investor relationship maintenance and deal sourcing. Prior to this role, Ms. Sallis was Deputy Comptroller and Chief Investment Officer for the City of New York, and Deputy Comptroller for Public Finance for the City of New York. Earlier she was a Managing Director at RBC Dain Rauscher/Artemis Capital Group, Inc., Vice President at WR Lazard & Co., and worked in investment banking for E.F. Hutton & Company. (Over 12 years)

2015-2016

http://www.msrb.org/News-and-Events/Press-Releases/2015/MSRB-Announces-New-Officers-and-Board-Members-for-Fiscal-Year-2016.aspx

Ronald Dieckman was until 2011 Senior Vice President and Director of the Public Finance and Municipal Bond Trading and Underwriting Department at J.J.B. Hilliard, W.L. Lyons. Mr. Dieckman worked for J.J.B. Hilliard, W.L. Lyons from 1977 to 2011 and held positions as Vice President of its municipal bond trading and underwriting department and as manager of the Ohio municipal bond trading and underwriting department.

Mark Kim is Chief Financial Officer at the District of Columbia Water and Sewer Authority (DC Water). Prior to his position at DC Water, Mr. Kim was Deputy Comptroller for Economic Development for the City of New York, where he directed the economic development agenda of the Office of the Comptroller, including oversight of several city agencies, asset management, and economic research and policy. He also served as Assistant Comptroller for Public Finance for the City of New York. Earlier he was Vice President at Fidelity Capital Markets, Vice President at Goldman, Sachs & Co. and Assistant Vice President at UBS Investment Bank.

Andrew Sanford joined The Chubb Corporation in 2013 as a Senior Vice President. He is the senior portfolio manager of municipal bond investments, overseeing a portfolio of approximately $20 billion. He is also a member of the Chubb Investment Department fixed income strategy team. Prior to joining Chubb, Mr. Sanford was a Managing Director at RBC Capital Markets where he managed the Tender Option Bond program and the Direct Purchase portfolio.

2016-2017

http://www.msrb.org/News-and-Events/Press-Releases/2016/MSRB-Announces-New-Officers-and-Board-Members-for-FY-2017.aspx

Robert Clarke Brown is Treasurer at Case Western Reserve University, where he manages the university's debt and swap portfolios, credit rating agency relationships, investor relations, and relationships with the financial industry. Prior to his role at Case Western Reserve, Mr. Brown was Capital Markets Advisor at the U.S. Department of Transportation where he assisted in the establishment the Transportation Infrastructure Finance and Innovation Act, the first federal credit enhancement program for surface transportation. Previously Mr. Brown managed the public finance department for Key Capital Markets, the investment banking subsidiary of KeyCorp. Earlier in his investment banking career, he was a senior investment banker in the transportation finance group at Lehman Brothers in New York.

2017-2018

http://www.msrb.org/News-and-Events/Press-Releases/2017/MSRB-Announces-New-Board-Members.aspx

Donna Simonetti is a former executive director at JP Morgan, where she was director of fixed income compliance. In that capacity, she advised the firm's public finance department on compliance issues regarding the sales, trading, underwriting and investment banking of municipal securities. Prior to joining JP Morgan in 2008, Ms. Simonetti was managing director principal at Bear Stearns and Co., Inc., where she oversaw compliance activities in the firm's municipal bond

and public finance departments. Previously she was a senior vice president and senior business analyst in the municipal capital markets division at First Albany Capital, which she joined in 1981 and earlier served as a municipal credit analyst and institutional municipal sales principal. Ms. Simonetti began her career as a municipal credit analyst at Fidelity Management and Research Company.

2018-2019

http://www.msrb.org/News-and-Events/Press-Releases/2018/MSRB-Announces-New-Board-Members-For-Fiscal-Year-2019.aspx

2019-2020

Meredith Hathorn is a Managing Partner at Foley & Judell, L.L.P., practicing as bond counsel in public finance. Ms. Hathorn began her career at Foley & Judell, L.L.P., first working as a law clerk. She is the president of the Louisiana Chapter of Women in Public Finance and a member and prior Board member and secretary of the National Association of Bond Lawyers (NABL) and the American College of Bond Counsel. Ms. Hathorn has a bachelor's degree from Louisiana State University and juris doctor from Tulane University School of Law. (Unknown how much work the firm does as underwriters counsel)

Thalia Meehan is retired and a former portfolio manager and tax-exempt team leader at Putnam Investments. At Putnam Investments, Ms. Meehan built and managed a team of portfolio managers, traders and analysts. She began her career there as senior credit analyst and later worked as head of municipal credit research. Previously, Ms. Meehan worked as a financial analyst at the Colonial Group, Inc. in Boston, Massachusetts. She served on the MSRB's Investor Advisory Group in 2016. She is a board member of Boston Women in Public Finance and an independent director for Safety Insurance Group and Cambridge Bancorp. Ms. Meehan, a Chartered Financial Analyst, has a bachelor's degree in mathematics from Williams College.

http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-Announces-FY-2020-Leadership.aspx

Also of note is the background of the new independent municipal advisor representative. Under MSRB Rule A-3 (as approved by the SEC) "at least one, and not less than 30 percent of the total number of regulated representatives, shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer or municipal securities dealer." Ms. Toledo is apparently just more than two years out from her position at Wells.

Sonia Toledo is Managing Director at Frasca & Associates, LLC, serving as a municipal advisor to a range of large municipal securities issuers. At Frasca & Associates, Ms. Toledo has worked successfully to expand their business to general municipal finance. Prior to her current role, she worked as managing director in the Northeast Public Finance Region at Wells Fargo Securities. Before Wells Fargo Securities, Ms. Toledo served as a managing director at Lehman Brothers and later at another broker-dealer.

BDA Bond Dealers of America

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April 29, 2020

Submitted Electronically

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Dear Mr. Smith,

The Bond Dealers of America is pleased to submit comments on MSRB Notice 2020-02, "Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board" (the "Notice"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Notice sets out several potential changes to MSRB Rule A-3 related to Board membership. BDA agrees in principle with some of these potential amendments, and we oppose others, as detailed below.

Independence standard

The Notice addresses the issue of defining "no material business relationship" in the context of public representatives on the MSRB Board. Rule A-3 states that a public representative may not have been associated with a municipal securities dealer or municipal advisor and has no relationship with a regulated entity that would diminish their independent judgement. Beginning last year the Board has a policy but not a rule extending the period defining no material business relationship from two years to three. The Notice requests comment on extending that further to five years.

There is a trade off between providing for enough time to ensure director independence but not so much time that a director may no longer be "knowledgeable of matters related to the municipal securities market" as required by Rule A-3 Five years away from the industry and the market is too long for a Board member to be effective. We have spoken with former BDA members who, after leaving the industry, served on the MSRB Board. They believe that five years is too long to expect a Board member to have retained his or her knowledge and familiarity. Products, practices, and rules evolve quickly.

Also, there is no indication that the present two-year requirement in Rule A-3 has resulted in any issues related to director independence. We are not aware of any examples of public directors entangled by conflicts of interest or exhibiting diminished independent judgement or decision-making. There is not even an appearance of conflict of interest with a two-year separation. Both FINRA and the National Futures Association require that independent directors be away from the industry for only one year, and their boards maintain independent judgement.

We recommend that the MSRB maintain the 2-year separation provision in current Rule A-3. If the Board determines that a longer separation standard is necessary, it can implement a policy as in 2019.

Board size

The MSRB's Board is 21 members, 11 independent directors and 10 dealer and Municipal Advisor (MA) representatives. The Notice requests comment on reducing the Board size to 15 members, with 8 public and 7 industry members.

BDA believes a 21-member Board is too large. We support the proposal to reduce the Board size to 15 members. We also point out that the MSRB has not yet initiated its new Board member recruitment process for 2020, which typically begins in January. This strongly suggests that reducing the Board size is a foregone conclusion even before the comment period on the Notice closes, since the six directors whose terms will expire in September will leave the Board with the target 15 members if they are not replaced. We hope the MSRB has a contingency plan to recruit an additional six Board members before October in case the rule changes in the Notice are not finalized before then. Given that we are already well into the second quarter of 2020, and the virus crisis is disrupting processes everywhere, the MSRB should consider waiting a year until fiscal 2022 to implement any changes included in the Notice and beginning the process of recruiting 2021 directors as soon as possible.

Board composition

The Notice raises two potential rule changes related to Board composition. The first would specify that, with a 15-member Board and seven director seats reserved for dealer and MA representatives, at least two of the seven industry representatives must be non-dealer MAs. The second would specify that MAs who are also dealers but do not underwrite new-issue municipal securities would be eligible for one of the two MA seats on the Board.

BDA believes that reserving slots for MAs in excess of the statutory minimum is bad policy, especially now that MAs have been regulated for nearly 10 years, and the issues associated with MA regulation are well known to MSRB Board members and staff. If Congress had wanted to curtail the Board's discretion and require more favorable treatment of a particular regulated group, it could easily have done so. There is simply no reason to specify more seats for MAs than required in statute.

Rule A-3 should allow the Board flexibility to recruit industry representatives with the appropriate expertise to address the issues pending at the time, whether they are dealers or MAs. The Notice provides little justification for stipulating a minimum of two MA seats, stating only that "it remains appropriate, in light of the broad range of municipal advisors subject to MSRB regulation, to require municipal advisor representation greater than the statutory minimum." If the minimum number of MA representatives were kept at the statutory requirement, nothing would stop the Board from recruiting a second, third, or fourth MA representative at any time. Rule A-3 should not limit the Board's flexibility in recruiting directors with the right expertise for the issues of the day.

Eliminating the requirement for a greater number of MA seats than the law mandates is especially important if, as under the current Rule A-3, dealers who are also registered MAs are not permitted to fill the Board seats reserved for MAs. The Notice requests comment on whether representatives of dealers who are also MAs but do not underwrite new-issue municipal securities should be eligible for seats reserved for MAs.

First, the vast majority of dealer MAs active in the municipal market also underwrite municipal securities. There are very few examples of dealer MA firms who do not also underwrite municipals—we

are aware of only three—so a rule change of this nature, which would exclude dealer MAs who also underwrite, appears targeted. Second, dealers pay the vast majority of the MSRB's expenses. Around 80 percent of the MSRB's revenue is derived from fees paid by dealers. Third, it is inappropriate in general for the MSRB to exclude dealer MAs from the reserved MA Board seats. Three of the top ten MAs in the country are dealers.[1] Dealer MAs represent a unique business model, and the firms that are dually registered are fully subject to both dealer and MA rules. The distinct perspective of dealer MAs is a benefit to the Board's deliberations. If the MSRB moves forward with two Board seats dedicated to MAs, we urge you to consider reserving one of those slots for a dealer MA in order to ensure that the breadth of regulated businesses active in the market is fully representative. And we urge you to drop the requirement that eligible dealer MAs could not also underwrite municipal securities.

In addition to the changes related to Board composition detailed in the Notice, we recommend the MSRB consider a change to Rule A-3 or a comparable change in policy to specify a minimum number of issuer seats on the Board. In particular, we ask the MSRB to consider reserving one of the independent seats to a small issuer representative and another to a representative of a state 529 plan.

Member qualifications

The Notice proposes that Rule A-3 be amended so that directors would explicitly be required to be "individuals of integrity." BDA supports this proposal and we urge you to provide additional details on how that determination would be made.

Transition plan to reduce board size

The Notice requests comment on a proposed plan to transition to the structural Board changes discussed here. The transition plan involves, among other steps, extending the terms of six directors by one year. The directors with extended terms will have served for a total of five years when they leave the Board.

We generally support the Transition plan in the Notice. We reiterate that given the circumstances, We ask the MSRB to delay implementation of any changes in the Notice for one year until 2022.

Board terms

Current Rule A-3 specifies that no director can serve for more than eight years of total, combined service, which provides for directors to serve two consecutive four-year terms. The Notice proposes and requests comment on reducing the maximum time of service to six years. General practice would be for directors to serve a single term.

BDA generally supports limiting directors' total service time to six years. We agree with the MSRB that refreshing the Board contributes constructively to the MSRB's work. We do not believe that limiting directors to a single term and six years of total service would harm Board continuity or institutional knowledge.

[1] Aaron Weitzman, "Top muni financial advisors of 2019," *The Bond Buyer*, www.bondbuyer.com/list/top-municipal-financial-advisors-of-2019

Amendments to Board Nominations and Elections Provisions

The Notice states that the Board is considering changes to Rule A-3 related to the Board recruitment process, including no longer publishing the annual list of Board applicants. BDA supports the proposal to no longer publish the list of Board applicants. We ask that in the interest of transparency the MSRB consider making the list available to individuals on request.

BDA welcomes the opportunity to comment on the Notice. We ask that the MSRB consider the following points as it continues its work on governance.

- A five-year separation requirement for independent directors is too long.
- The MSRB should delay implementation of the changes included in the Notice until fiscal year 2022 and should begin recruiting the 2021 Board as soon as possible.
- Rule A-3 should not specify a minimum number of non-dealer MAs larger than required by statute. If the MSRB does specify two seats for MAs, one of those should be reserved for dealer MAs.
- Specify a minimum number of issuers among independent directors and reserve one seat for a small issuer representative.

***

Thank you for the opportunity to provide these comments. We look forward to the opportunity discuss our concerns with you.

Sincerely,

Mike Nicholas
Chief Executive Officer
Bond Dealers of America

Government Finance Officers Association
660 North Capitol Street, Suite 410
Washington, D.C. 20001 202.393.8467

April 29, 2020

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Release No. 2020-02

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) appreciates the opportunity to comment on proposed changes to the Municipal Securities Rulemaking Board's (MSRB/Board) Rule A-3, related to the Board Membership, Standard of Independence for Public Board Members, the length of Board member service and publication of the names of Board applicants. GFOA has commented in the past on Rule A-3 and subsequent interpretative guidance, as the MSRB's work in this area is very important to municipal securities issuers. The GFOA represents over 21,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking conducted in this sector.

Our primary concern regarding the entire proposed amendments to A-3 is issuer representation. The Exchange Act states that there must be "at least one" issuer on the Board. We continue to advocate for additional issuer representation, which the Board has incorporated in recent years. However, under this proposal, we are concerned that there would only be one issuer represented on the Board in the next fiscal year (2020-21). This is especially concerning at such a critical time of economic disruption and recovery at the state and local government level.

The issuer community is vast and diverse and a similar representation on the MSRB Board would benefit the Board's consideration while fulfilling its mission. While a state level issuer may provide exceptional input on a host of matters that the MSRB is addressing, a state representative may not have the same perspectives and experiences as issuers from cities, counties, conduits and other types of issuers that comprise a majority of the issuer community. This same logic also works in the reverse whereas an issuer from a smaller government may not be able to represent sufficiently the experiences and views of a larger or state entity. Therefore, it is imperative for the MSRB to exceed the "at least one" issuer standard. As we suggested in 2010, if the Board size is maintained at 21 members (11 public), it should be comprised of 4 issuers, 4 investors, and 3 general public members. If the Board membership is 15 then the public members should be represented by 3 issuers, 3 investors, and 2 general public members.

Comments on the specific recommendations of the proposal contained within.

Independence Standard and Separation Period GFOA supports the MSRB's proposal to extend the separation period from two to five years. As we have noted in several A-3 comment letters in the past, we believe that qualifications for public board membership are already quite lenient. For example, the rule currently allows individuals with the balance of a 20 or 30-year career practicing as a broker/dealer or municipal advisor, upon a two-year break, are suddenly considered eligible for public board membership. To be clear, hundreds of marketplace individuals could contribute well to the Board. Unfortunately, the two-year standard permits individuals who have committed their entire career as a regulated individual to become public members if they are retired or working outside of the private sector for only 730 days. We have seen this practice in the MSRB board member selection process and has contributed to an imbalance in perceived public representation.

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 is an ongoing problem.

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 criterion, 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. A candidate who as recently as two years ago worked for a regulated party should not qualify as a member of the public.

Board Composition The *Dodd-Frank Act* represented a critical change in the MSRB and therefore we believe that the composition of its Board under Rule A-3 is of great importance. Specifically, the MSRB must ensure that there is adequate issuer representation in light of the well-established MSRB mission to protect municipal entities and obligated persons in addition to investors. While the law states that the Board must be comprised of 'at least' one issuer and 'at least' one investor, it is important that that the MSRB goes beyond those standards in order to fulfill its mission to have a majority public board. As the MSRB determines the composition of future boards, these numbers – as a percentage of the total number of board members – should not be altered (e.g., a 21-member board should be comprised of 4 issuers, 4 investors, and 3 general public members; a 15-member board should be represented by 3 issuers, 3 investors, and 2 general public members). We also suggest that qualified representatives of various-sized state and local governments to ensure a balanced representation of the issuer community should fill the issuer positions.

Board Terms GFOA respects the MSRB's desire to focus on tenures and representation during the transition of the board composition. GFOA encourages the MSRB to consider judiciously issuer representation throughout the process. (As noted above, our members are concerned that in the transition, the issuer representation will be limited to a single issuer member in 2020-2021). Upon completion of the transition period, maintaining a single four-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 its' work to satisfy the mission of the organization.

The MSRB receives numerous applications for membership consideration. Because of this, we believe that having a limit on any individual to serve one term is appropriate. We also support maintaining a 4-year Board term. Circumstances for 2-year extensions, such as unscheduled vacancies, should be monitored and documented and should not exceed a single occurrence per member. The GFOA supports a lifetime limit on Board service.

Nomination and Governance Committee Transparency Over the years GFOA Debt Committee Chairs have weighed in officially and in conversation with the MSRB on the need to incorporate transparency of its internal workings to the marketplace. This includes items such as Board agendas – which we are pleased to see now publicly distributed prior to the meetings, a call to have Board minutes publically available, and to allow public attendance at Board meetings. As such, the MSRB's processes – either through adherence to language in Rule A-3 or subsequent policies at the Committee level - should be more transparent so that the industry can better understand and have confidence in the decisions made throughout the nomination and governance committee processes.

Publicizing Board Member Applicant Names GFOA has called frequently for transparency in this process. Each year, many qualified candidates submit applications – a large pool for the MSRB from which to choose. However, we are aware of many individuals in both the public and private sectors that are denied continually 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.

Thank you again for the opportunity to comment. Please feel free to contact me at ebrock@gfoa.org or (202) 393-8467 if you have any questions or would like to discuss any of the information provided in this letter.

Sincerely,

Emily Swenson Brock
Director, Federal Liaison Center

INVESTMENT COMPANY INSTITUTE

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202/326-5800 www.ici.org

April 15, 2020

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: Request for Comment on Draft Amendments to MSRB Rule A-3 on Membership on the Board (2020-02)

Dear Mr. Smith:

The Investment Company Institute[1] opposes the Municipal Securities Rulemaking Board's draft amendments to MSRB Rule A-3 that would change the criteria for Board membership.[2] The amendments would tighten the independence standard required of public representatives. As discussed below, we believe the proposal is unnecessarily restrictive, inconsistent with the post-employment rules and restrictions for former federal government officials, and could severely decrease the opportunity for former employees of investment advisers, including advisers to registered investment companies ("fund advisers"), to serve on the Board.[3]

Additionally, the MSRB is seeking comments on whether it should expand the definition of the Board's municipal advisor category. We would support permitting a municipal advisor associated with a dealer

[1]The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$24.1 trillion in the United States, serving more than 100 million US shareholders, and US$7.7 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] MSRB Regulatory Notice 2020-02 (January 28, 2020) ("Notice"), available at http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2020-02.ashx??n=1.

[3] Fund advisers are active participants in the $3.9 trillion municipal securities markets, providing the means through which many retail and institutional investors participate in these markets. Of the $3.9 trillion outstanding in the municipal securities markets as of year-end 2019, mutual funds and other registered investment companies held 29 percent.

to sit on the Board, *provided* the same opportunity is extended to the Board's investor representative, as discussed below.

Independence Standard

Background

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B(b)(1) of the Securities Exchange Act of 1934 ("Securities Exchange Act") to require that a majority of MSRB Board members be independent ("public representatives"), while the remainder be associated with a broker, dealer, municipal securities dealer, or municipal advisor ("regulated representatives"). The Securities Exchange Act requires the Board to establish by rule requirements regarding the independence of public representatives and provides that all Board members—whether public or regulated representatives—must be "knowledgeable of matters related to the municipal securities market."

In 2010, the MSRB amended Rule A-3 to define a public representative as an individual who has "no material business relationship" with any municipal securities broker, municipal securities dealer, or municipal advisor ("regulated entity"). The MSRB defined "no material business relationship" to mean the individual is not or was not "associated with" a regulated entity within the last two years. In addition, the individual must not have a relationship with any regulated entity that reasonably could affect his or her independent judgment or decision making.

In the decade since the MSRB adopted the independence standard, the Board has elected public representatives that meet both the independence standard in Rule A-3 and the statutory standard of "knowledgeable of matters related to the municipal securities market," including public representatives who gained the requisite market knowledge through prior affiliations with regulated entities that ended, at least two years before their service on the Board began.

According to the Notice, the MSRB has found that the Board's public representatives have played an invaluable role, and the Board believes they have acted with the independence required by the Exchange Act, MSRB Rules, and their duties as public representatives, notwithstanding any such prior affiliation.[4]

Indeed, on at least two occasions, the MSRB has expressed concern that the existing test for evaluating materiality of a business relationship has precluded consideration of otherwise viable candidates. In

[4] Notice at 6.

2013[5] and again in 2015,[6] the MSRB proposed amendments that would permit it to consider candidates for the Board who have the relevant municipal market knowledge and expertise to represent investors, but who technically may have some association or corporate affiliation with a regulated entity.

MSRB's Proposal

Despite the invaluable role the public representatives have served and the MSRB's previous attempts to enhance the representation of investors on its Board, the MSRB is now seeking comment on whether extending the separation period to five years (from two) would enhance the independence of public representatives who have prior regulated entity associations. It also is considering whether the longer separation period is necessary to better avoid any appearance of a conflict of interest without significantly decreasing the pool of individuals with sufficient municipal market knowledge to serve effectively as public representatives. But the only justification proffered for this proposed change and apparent new concern over the independence of public representatives is that "some commentators have questioned whether a two-year separation period is sufficiently long."[7]

We have serious concerns with this proposal. First and foremost, we strongly believe it will unnecessarily impede the MSRB's ability to identify and select individuals who represent investors and have significant knowledge of the municipal securities market to serve on the Board.

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[5] In July 2013, the MSRB proposed to amend MSRB Rule A-3 to provide a more function-oriented approach to defining independence for all public representatives. *See* Exchange Act Release No. 70004 (July 18, 2013). After some commenters expressed concern with the 2013 proposal, the MSRB withdrew the filing with plans to further increase its efforts to identify well-qualified applicants to serve on the MSRB Board, and gain additional experience operating under the existing standard. Commenters opposing the 2013 proposed amendments suggested that the amendments were not consistent with the Securities Exchange Act's mandate that public representatives be independent of regulated entities. In contrast, ICI submitted a letter expressing support for the 2013 proposal, noting that the proposed amendments would improve the quality of representation for both institutional and retail investors on the MSRB Board. *See* Letter from Dorothy Donohue, Deputy General Counsel-Securities Regulation, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (September 18, 2013), *available at* https://www.iciglobal.org/pdf/27584.pdf.

[6] After gaining additional experience applying the current standard and finding that the existing test for evaluating materiality of a business relationship was overly restrictive, in 2015 the MSRB proposed an alternative definition of "no material business relationship" to determine whether the public Board member representing institutional or retail investors in municipal securities ("investor representative") is independent. This modified standard of independence would have applied to just one investor representative. The MSRB explained that the proposed amendments were tailored to allow employees and other representatives of investment advisers—who serve the interests of the adviser's clients, rather than the regulated entities—to serve as the MSRB investor representative. The MSRB received 15 comment letters on this proposal. Nine commenters, including ICI and four former MSRB Board members, submitted letters expressing support for the 2015 proposal. *See e.g.*, Letter from Dorothy Donohue, Deputy General Counsel-Securities Regulation, Investment Company Institute, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (July 13, 2015).

[7] Notice at 6.

The MSRB Board members are charged with the significant responsibility of protecting municipal entities, investors, and the public interest. Each representative should bring to the table experience and expertise to effectively serve the interests of their constituents. As a starting point, there is only one required investor representative position on the MSRB Board—for both retail and institutional investors. The pool of applicants is further narrowed by the "associated with" language within the public representative definition, as described above.

As we stated in our 2015 comment letter, the MSRB's rulemaking mandate increasingly requires the MSRB to engage in deliberations regarding highly complex issues relating to the structure and operation of the market, including how municipal securities are priced and transacted. As representatives of underlying fund retail and institutional investors, fund advisers invest in the municipal securities market on behalf of fund investors and interact with a variety of market participants. This provides a distinct and at times contrasting view of the municipal market and its structure compared to representatives or employees of regulated entities or other public representatives who represent other market participants, such as municipal issuers and insurers. In fact, in the 2015 Notice, the MSRB acknowledged that investment advisers with "buy-side" expertise and representative of investors (*e.g.*, fund portfolio managers) could help the MSRB be as informed as possible on all aspects of the municipal securities markets, particularly with respect to current and future market structure initiatives. Indeed, we maintain it is essential that institutional buy-side firms, such as fund advisers, be represented on the MSRB Board and that the regulations that limit that participation be removed.

Extending the separation period to five years will simply make it more challenging to find qualified candidates who continue to maintain sufficient municipal market knowledge to serve effectively as the investor representative position on the MSRB Board. Other than a vague comment that "some commentators have questioned whether a two-year separation period is sufficiently long," the MSRB has offered no explanation for extending the period beyond two years.

A five-year separation period also is inconsistent with the post-employment rules and restrictions for former federal government officials. For example, former executive branch employees and officials may not "switch sides" for two years in relation to a "particular matter" involving "specific parties" if the matter was under the employee or official's official responsibility. Former SEC employees are generally subject to these same executive branch post-employment restrictions. Members of the US House of Representatives are prohibited from lobbying or making advocacy communications to either House of Congress or any legislative branch employee for one year after the individual leaves the House. Members of the US Senate are prohibited from lobbying or making advocacy communications to either House of Congress or any legislative branch employee, for two years after the individual leaves the Senate.

For all of these reasons, we strongly oppose the proposed amendments to MSRB Rule A-3 that would extend the separation period to five years.

Municipal Advisor Definition

The MSRB also is considering a limited expansion of its definition of the municipal advisor category. As noted above, within the regulated representative category, at least one board member must be associated with a dealer that is a bank, at least one must be associated with a dealer that is not a bank, and at least one must be associated with a municipal advisor.

Currently, Rule A-3 provides that the required municipal advisor members must not be associated with dealers. Accordingly, individuals associated with municipal advisor firms that have a dealer affiliate to facilitate their advisory businesses do not qualify for the required municipal advisor member positions. The board is considering permitting—but not requiring—one municipal advisor representative to be associated with a broker, dealer, or municipal securities dealer, provided that such entity does not engage in underwriting the public distribution of municipal securities. The MSRB believes that such a requirement could facilitate their efforts to obtain the perspectives of the full range of municipal advisor firms.

As noted above, we strongly supported the MSRB's 2013 and 2015 proposals that would have allowed it to consider candidates who have the relevant municipal market knowledge and expertise to represent investors, but who technically have some association or corporate affiliation with a regulated entity, such as a broker-dealer. We therefore would support permitting a municipal advisor associated with a dealer to sit on the Board, *provided* the same consideration is extended to the Board's investor representative.

* * * *

We look forward to working with the MSRB as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 218-3563 or Jane Heinrichs, Associate General Counsel, at (202) 371-5410.

Sincerely,

/s/ Dorothy Donohue

Dorothy Donohue
Deputy General Counsel—Securities Regulation

cc: Nanette D. Lawson, Interim CEO, CFO, and Treasurer
Municipal Securities Rulemaking Board

Rebecca Olsen, Director
Office of Municipal Securities
Securities and Exchange Commission

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

April 29, 2020

Mr. Ronald Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20004

RE: MSRB Notice 2020-02; MSRB Rule A-3

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on MSRB Notice 2020-02 regarding MSRB Rule A-3. NAMA represents independent municipal advisory firms and municipal advisors (MA) from around the country and we believe the rules governing the selection and composition of the Board are important not only to our members but also to a well-functioning municipal securities market.

We have taken the opportunity to answer the questions in the Notice. However, the matters of most importance to our members are raised in questions 9-12.

1. What are the potential benefits of increasing the separation period to five years? Would the additional time ensure greater independence? Would it better guard against an appearance of a lack of independence?

NAMA has commented in the past that there needs to be a greater separation period than the current two years, before previously regulated parties should be able to be considered public members. We believe that remains to be the case. Similar to comments NAMA (then NAIPFA) made in 2013, we believe that a five-year separation period will ensure greater independence for public board members.

2. What are the potential drawbacks of extending the separation period? Would a public representative who has been away from the industry for five years continue to maintain sufficient municipal market knowledge to serve effectively and to be "a member of the public with knowledge of or experience in the municipal industry"?

Prior regulated industry experience should not be thought of as a prerequisite to being selected as a public member and prior affiliation as regulated parties should be an exception for public members.

We would comment though that the selection process, aside from the Rule, should be more robust. The selection committee should make an effort to ensure that individuals who may be separated from being a regulated entity – by new professional positions or retirement – can truly come to the table representing a "public" point of view and seek individuals who have municipal market experience without being associated

with a regulated entity throughout their career. The standard of "knowledge or experience in the municipal industry" should be interpreted to include those persons who have a depth of knowledge about the ways in which municipal issuers or investors interact with regulated entities in practice as well as persons that have expertise representing the public interest in any market or governmental finance context.

3. What is the ideal background to make a public representative "a member of the public with knowledge of or experience in the municipal industry"? What types of individuals, other than those with a prior regulated entity association, could meet that statutory test?

There would seem to be a large pool of candidates to choose from, just by looking at the list of candidate applications that the MSRB receives each year. The number of qualified issuer representatives alone could easily fill all available public spots on the Board in any given year. Additionally, the selection committee could reach out to market participants for their ideas, as well as suggest to those professionals whom they already know and believe would make for good candidates to consider applying. Part of the statutory mission of the MSRB is to protect the public interest and the MSRB has noted that "public representatives may bring a broader perspective of the public interest" that complements the more specialized expertise of regulated members. It is the broad public interest perspective that could be enhanced going forward.

4. Would individuals who qualify as independent under the current independence standard accept other opportunities, including some that would be disqualifying, rather than wait five years to serve as a public representative on the MSRB?

It would be up to the individual candidates to determine if board membership or other professional opportunities are right for them. Again, prior regulated industry experience should not be thought of as a prerequisite to being selected as a public member.

5. If a five-year separation period is either too long or too short, what is the optimal period of time?

Five years is an appropriate separation period.

6. What are the benefits of a reduction in Board size to 15 members?

As with any type of board, it is likely that a smaller sized entity is easier to manage on a host of fronts. Thus, we understand the interest in reducing the number of members. However, we are concerned that by doing so the Board will lose valuable expertise and input from a variety of professionals who will assist with MSRB decision and rule making, and we question whether the trade-off between overall board size and management thereof outweighs the need to have a variety of professionals represented on the Board that reflect that great diversity within the community of municipal securities professionals.

If indeed the Board size is reduced, it is vital that both in Rulemaking and in policies and procedures that the MSRB develop a better approach to attract public members that represent a variety of viewpoints based on region, firm or issuer size, or other relevant factors.

7. What are the drawbacks of a reduction in Board size to 15 members? How could those drawbacks be mitigated?

The drawback per the proposal would be the dilution of some market participant representation on the Board.

8. Are there perspectives available to the Board today, with a Board size of 21, that would not be available with a Board size of 15?

In addition to our concerns related to MA representation which are discussed below, we continue to believe what our organization raised previously in 2010 and 2013, that the Board needs to ensure adequate issuer representation. Under the current proposal, issuer representation would be "at least one" and if indeed the Rule is approved in time to take effect in October, 2020, then for FY21 under the proposed transition plan there would only be one issuer on the Board. The MSRB should look to include additional issuers, as that universe is particularly diverse and especially look to local government representatives, as local governments are the largest issuer constituency. This concern for diverse perspectives also applies to investors, municipal advisors, and even broker-dealers who may represent important regional and/or small firm perspectives that differ from those of major national firms. Board implementation of the Rule should make provision so that these various constituencies are equitably represented.

9. If the Board is reduced to 15 members, should the Board replace the requirement that at least 30% of the regulated representatives be municipal advisor representatives with a requirement that there be at least two municipal advisor representatives?

NAMA suggests that the number of MAs represented as regulated Board members be kept at three members, regardless of the ultimate size of the Board. That would still provide a majority of regulated entity members to be from banks and broker-dealers.

There are many reasons to maintain the three seats for MAs. First, there is great diversity within the MA profession - for instance firm size, firm location, firm expertise – that should be represented on the Board as rulemaking continues to develop and the MSRB addresses other market issues. Second, as MAs represent and have a fiduciary duty to their municipal entity clients, the combination of a reduced number of MAs and a reduced number of issuers on the Board, the availability for fair representation, experience, and input from those on the issuer side of a transaction would be reduced to 20% from the current 28% (3 MAs and 3 issuer representatives). The issues that the MSRB will be addressing in the future more than likely will impact issuers, especially as it relates to disclosure and the EMMA portal. Having sufficient representation from these parties and those who represent them would be helpful in these endeavors. Third, per the question below, if the MSRB accepts MA Board members from broker-dealer/MA firms that do not have an underwriting business, it would be important to have those members be in addition to more than one other MA Board representative, especially for the reason noted above – there is great diversity within MA firms and the clients they represent. If the MSRB proposal of two MA Board seats is approved, along with allowing firms with a dealer affiliate (that do not engage in underwriting), we would raise concern that half of the MA representatives would be from those types of firms that only represent a handful, at most two, of MA firms. That would mean that one seat would be available for individuals from the nearly 400 other independent MA firms, where again we note there is great diversity and that diversity should be represented on the MSRB Board. A reduction in MA representation is also particular concerning as the representation levels of securities firms and banks would remain at around 70% either with a 21- or 15-member Board.

Additionally, when you look back at the thirty-year period when broker-dealer rules were developed prior to the *Dodd Frank Act*, the Board structure had a majority of regulated broker-dealers from securities firms and the banking community. In fact, these entities typically represented 2/3 of the Board, with just 5 public representatives out of the 15 members. As such, for three decades of broker-dealer rule development, there was a wide array of broker-dealers at the table to craft rules applicable to them. With the advent of MA regulations, and development of MSRB rulemaking for these professionals, MA representation has been much

smaller (less than 15% of the total Board) than what was afforded to the broker-dealer community at the critical time of new and revised rulemaking for these professionals. As MA rulemaking continues to mature, it is essential that there is adequate MA representation at the Board level. Therefore, we again strongly suggest that MA representation be maintained at the "at least 30% of regulated entities" level regardless of the overall size of the Board.

10. If the Board permits municipal advisor members from firms with a dealer affiliate to serve in one of the two required municipal advisor slots, should it limit such firms, as the draft rule does, to those that do not engage in underwriting the public distribution of municipal securities?

We do not oppose having individuals from dealer affiliated MA firms that do not engage in underwriting be considered for MA Board positions, but as noted above believe that this should be in conjunction with allowing for three MA board seats. In no event should an MA seat be filled by a firm with a dealer affiliate that engages in underwriting. It is also important to note that broadening the permissible types of MAs that could be considered to include a dealer affiliate is appropriate because the MA positions are regulated member positions and not public member positions. We would continue to oppose allowing affiliates of regulated entities to serve as public members.

11. What are the potential effects of permitting a municipal advisor who is associated with a non-underwriter dealer to serve in one of the two required municipal advisor slots?

Our main concern is that these types of firms represent a very small percentage of the overall MA firm community. By singling them out to satisfy half of the MA Board representation, it would be imperative to maintain three MA Board seats or, at the very least, not single out these firms to have half of the MA Board representation.

12. Could the proposed changes deprive the Board of adequate representation of independent municipal advisors?

We are very concerned that the diversity of independent MA firms would not be represented on the Board under the proposed rulemaking. As the MSRB continues to develop and revise MA rules, it will be essential for MAs to be at the table and be able to share their varied experiences and needs with their colleagues in order to ensure that rulemaking can be well executed in theory and in practice.

13. Are the Board's stated goals for the transition plan appropriate? If not, what should the goals be?

The stated goals are appropriate.

14. Is a transition plan that uses term extensions preferable to one in which new members are elected for different term lengths? Are there other approaches to transitioning to a smaller Board size and new class structure that the Board should consider?

While we have concerns about adjusting the number of Board members downward, extending the terms of current members who would otherwise roll off is appropriate for a certain amount of time during a transition period. However, if it appears that the board size will not be reduced, then the MSRB should instigate a candidate and vetting process as soon as possible so that new Board members could be in place for terms beginning the next fiscal year (October, 2020).

15. Would considering Board member extensions as part of the annual nominations process help address any challenges to Board composition that may arise during the transition period?

Please see our answer to #14 above.

16. How should the Board evaluate the tradeoffs inherent in further limiting the amount of time a Board member may serve? Would a limit equivalent to one complete term plus two years serve the Board's purpose of further refreshing the perspectives available to the Board?

The circumstances in which a term would be extended by two years, deserves clarification. If the goal is to maintain continuity and processes with individuals who have prior experience with the Board, that can be understood. However, opportunities to have new market participants and their perspectives be part of the Board is also important and should be considered.

17. Would permitting only one complete term have negative effects on Board continuity and institutional knowledge?

As noted previously, there are many market participants in all sectors that could be considered for the Board. As such there would be no material negative effects of having a one complete term standard for Board members.

18. Should the Board apply such a lifetime limit on Board service? Are there circumstances in which a Board member who returns to service after a time away would better serve the public interest than a new Board member? If so, are these circumstances sufficiently frequent or compelling to outweigh the benefits of a lifetime limit on Board service?

While the intent of allowing past Board members to return and serve could be of interest and interesting, we believe that there are many candidates that the MSRB could choose from who have not served and should be considered. As such, Board service should be limited to one term as a lifetime limit.

19. Would retaining the existing detailed requirements relating to the Nominating and Governance Committee in Rule A-3 provide benefits to the municipal market and public interest, or can the objectives of those requirements be achieved through Board policies?

A combination of rulemaking and Board policies should be utilized to ensure a process that is considerate and fair to market participants and candidates. We do not see a need to reduce the current detailed requirements in Rule A-3, but if key issues are addressed in policies instead, we would not object. However, those policies should be freely available to the public so that the MSRB's compliance with its own policies could be evaluated.

20. Does the requirement to publicize the names of applicants for Board membership deter people from applying for Board membership, and would eliminating it increase the number of qualified applicants? Are there other approaches that would provide transparency about the applicant pool while mitigating such unintended consequences?

We do not believe that publicizing the names of applicants deters individuals from applying and allows for appropriate transparency.

21. Are there other changes, beyond those described here, that would improve Board governance and further promote the Board's mission that the Board should consider?

As noted previously, ensuring that the amended Rule and subsequent policies are in place, publicly available and utilized is important. For instance, in the proposal the MSRB further discusses the "knowledge standard" requirement for public member applicants. As written, this standard is very subjective and, in the past, has been too narrowly interpreted at the Board and Committee levels. Even the questions above presume that a public member would have prior experience as a regulated entity instead of current or past experience as an issuer, an investor, other unregulated market participants, or a person versed in protection of the public interest. We recommend that the MSRB look to place within the Rule explicit language related to the interplay between regulated entities with specialized industry expertise and public members with broad knowledge of the public interest.

All Board members should be subject to approval by the SEC. While we would support having this provision revisited after some period of time, in the near term it is important for there be some mechanism for independent oversight of the Board selection process. Such action would be similar to procedures that were in place for public Board members prior to enactment of the *Dodd Frank Act*.

The Board should also consider reviewing and possibly revising term extensions, conflicts of interest and code of conduct policies as part of a public process.

Thank you for the opportunity to comment on these important matters. We would welcome the opportunity to further discuss our comments with MSRB Board members and/or staff at their convenience.

Sincerely,

Susan Gaffney
Executive Director

National Association of State
Auditors, Comptrollers
and Treasurers

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April 30, 2020

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Notice 2020-08: Amendments to MSRB Rule A-3 - Membership on the Board

On behalf of the National Association of State Auditors, Comptrollers and Treasurers, we appreciate the opportunity to provide our thoughts on the Municipal Securities Rulemaking Board's proposed amendment to Rule A-3 – Membership on the Board. The MSRB has designed the proposal in an attempt to improve Board governance by tightening the independence standard required of public representatives, reducing the size of the Board and imposing a limit on the number of years a Board member can serve.

As a representative of the issuer community, we appreciate MSRB reviewing its governance structure with the aim of assuring its public members are independent. The Exchange Act requires the Board to establish by rule requirements regarding the independence of public representatives and provides that all Board members – whether public or regulated representatives – must be "knowledgeable of matters related to the municipal securities market."

The MSRB's appointment of public issuers is an important component of assuring that Board members are "knowledgeable of matters related to the municipal securities market." It is also important that these individuals are active public sector entity members to assure that their knowledge is current with existing practice and issues in the market. We applaud the MSRB for appointing more public sector entity representatives than required in past years, but we do have ongoing concerns about the decreasing number of active public sector entity members serving on the Board. We believe that a reduction in the number of Board members will further reduce this needed perspective and request that any changes positively consider the need for balanced representation, recognizing the knowledge and unique perspective of public sector entity Board members. The issuer community is diverse and merits more than one seat on the MSRB Board in order to represent the vast differences among issuers.

Our responses to the specific questions posed in the exposure draft follow:

1. What are the potential benefits of increasing the separation period to five years? Would the additional time ensure greater independence? Would it be better guard against an appearance of a lack of independence?

We believe that some increase in separation period from prior service at a regulated entity is needed; however, a five-year period may be excessive, with no additional safeguards achieved in relation to independence. It is our understanding that in order for regulators to achieve an appropriate level of compliance and oversight, they must spend less time out of the industry. Therefore, we advocate for a three-year period. The complexities and the importance of increasing individual ownerships of the municipal bonds call for people involved in regulating this industry to have constant knowledge for proper monitoring and oversight. Five years of separation could be viewed as a lengthy time for a market that serves as a mechanism for more than 50,000 state and local government units to raise money for a variety of public purposes, such as water and sewer systems, schools, highways and public buildings.

2. What are the potential drawbacks of extending the separation period? Would a public representative who has been away from the industry for five years continue to maintain sufficient municipal market knowledge to serve effectively and to be "a member of the public with knowledge of or experience in the municipal industry?"

   A separation period of three years from prior service at a regulated entity may be a better balance between knowledge of the industry and the appearance of independence by public representatives. With almost continual changes in the municipal securities market, an extended absence from the industry may prevent continuity of the appropriate level of knowledge for effective service on a regulatory board.

3. What is the ideal background to make a public representative "a member of the public with knowledge of or experience in the municipal industry?" What types of individuals, other than those with a prior regulated entity association could meet that statutory test?

   We have no specific comment on the ideal background of a public representative. We would, however, reiterate that public entity members have current knowledge of the market and recommend more than the one public entity member.

4. Would individuals who qualify as independent under the current independence standard accept other opportunities, including some that would be disqualifying, rather than wait five years to serve as a public representative on the MSRB?

   We have no information or comment on the likelihood of individuals accepting other opportunities during the five-year period.

5. If a five-year separation period is either too long or too short, what is the optimal period of time?

We believe three years may be a more appropriate separation period.

6. What are the benefits of a reduction in Board size to 15 members?

While the proposal points out that the Board may achieve a reduction in cost associated with a smaller board, a smaller board may hamper perspectives by further limiting the number of individuals in each class of membership.

What are the drawbacks of a reduction in Board size to 15 members? How could those drawbacks be mitigated?

As with any reduction in Board size or diversity, the level of knowledge and expertise will decline, allowing for more industry influence. If MSRB transitions to 15 members, a robust ethics and independence policy may mitigate some of the drawbacks.

7. Are there perspectives available to the Board today, with a Board size of 21, that would not be available with a Board size of 15?

As highlighted above, fewer Board members will decrease the knowledge base and could open the board to more unintended influence. We also believe a larger Board further assures that members are "knowledgeable of matters related to the municipal securities market."

8. If the Board is reduced to 15 members, should the Board replace the requirement that at least 30 percent of the regulated representatives be municipal advisor representatives with a requirement that there be at least two municipal advisor representatives?

Yes, two municipal advisor representatives among the seven regulated representatives should provide appropriate knowledge and representation to the Board.

9. If the Board permits municipal advisor members from firms with a dealer affiliate to serve in one of the two required municipal advisor slots, should it limit such firms, as the draft rule does, to those that do not engage in underwriting the public distribution of municipal securities?

Yes, to maintain the appearance of independence, limiting the two required municipal advisor slots to one with dealer affiliation is appropriate.

10. What are the potential effects of permitting a municipal advisor who is associated with a non-underwriter dealer to serve in one of the two required municipal advisor slots?

We have no information or comment on the potential effects of permitting a municipal advisor who is associated with a non-underwriter dealer to serve in one of the two required municipal advisor slots.

11. Could the proposed changes deprive the Board of adequate representation of independent municipal advisors?

    We have no information or comment on the negative impact on the Board as it relates to independent municipal advisors.

12. Are the Board's stated goals for the transition plan appropriate? If not, what should the goals be?

    The board's goals in the transition plan to reduce the number of Board members are appropriate.

13. Is a transition plan that uses term extensions preferable to one in which new members are elected for different term lengths? Are there other approaches to transitioning to a smaller Board size and new class structure that the Board should consider?

    We see no preferable method for the transformation of the Board membership classes and term length beyond those expressed in the amendment.

14. Would considering Board member extensions as part of the annual nominations process help address any challenges to Board composition that may arise during the transition period?

    Transparency in action should be a Board priority. As such, member extensions determined during annual meetings would be the most appropriate method to address the challenges during transition.

15. How should the Board evaluate the tradeoffs inherent in further limiting the amount of time a Board member may serve? Would a limit equivalent to one complete term plus two years serve the Board's purpose of further refreshing the perspectives available to the Board?

    We see no other evaluation, beyond the analysis described within the amendment, for evaluating the tradeoffs of limiting the amount of time a Board member serves. We do believe that the Board's goal of refreshing the perspectives available to the Board is a positive move that also allows for quick replacement of members, if needed.

16. Would permitting only one complete term have negative effects on Board continuity and institutional knowledge?

    We do not believe that members serving only one complete term will have a negative effect on members' knowledge or skill. The need to maintain fresh perspectives and current knowledge necessitates short membership terms.

17. Should the Board apply such a lifetime limit on Board service? Are there circumstances in which a Board member who returns to service after a time away would better serve the public interest than a new Board member? If so, are these circumstances sufficiently frequent or compelling to outweigh the benefits of a lifetime limit on Board service?

    We have no information or comment on a life limit not otherwise discussed above.

18. Would retaining the existing detailed requirements relating to the Nominating and Governance Committee in Rule A-3 provide benefits to the municipal market and public interest, or can the objectives of those requirements be achieved through Board policies?

    We believe that allowing Board flexibility in establishing policy by committee is the most effective and resilient method over the long-term nature of Board rules.

19. Does the requirement to publicize the names of applicants for Board membership deter people from applying for Board membership, and would eliminating it increase the number of qualified applicants? Are there other approaches that would provide transparency about the applicant pool while mitigating such unintended consequences?

    We are concerned that eliminating the publication of the names of Board applicants could significantly diminish transparency in the nominating process. Publication of the names of Board applicants contributes to transparency by shedding light on the nominating process and removes any perceived doubt regarding the subjective nature of the Board appointment.

20. Are there other changes, beyond those described here, that would improve Board governance and further promote the Board's mission that the Board should consider?

    We would stress that the need for transparency to be the main objective of any changes considered. MSRB has strived to bring needed transparency to its Board activities by publicly distributing agendas prior to the meetings and making minutes publicly available. We would stress that other activities including those done through committee be transparent to further bolster confidence in MSRB's actions.

National Association of State
Auditors, Comptrollers
and Treasurers

Thank you for the opportunity to provide comments on the proposal. We are certain that MSRB will weigh the benefit of changing the current structure with the need to adequately represent a robust and diverse set of Board members. Should you have any questions or desire further information, please feel free to contact NASACT's representative in Washington, Cornelia Chebinou, at (202) 624-5451.

Sincerely,

Beth Pearce
President, NASACT
State Treasurer, Vermont

April 28, 2020

VIA Portal Submission:
http://www.msrb.org/CommentForm.aspx

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board (MSRB)
1300 I ("Eye") Street, NW | Suite 1000
Washington, DC 20005

RE: Response to Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board (MSRB 2020-02)

Dear Mr. Smith,

On behalf of the nation's State Treasurers and state financial officials we represent, we appreciate this opportunity to provide comments in response to the Municipal Securities Rulemaking Board's draft amendments to Rule A-3 (MSRB 2020-02). State governments are among the largest issuers of municipal securities and therefore have an integral relationship with the MSRB. We wish to provide feedback on your proposed changes but also want to emphasize several general concerns and considerations regarding the future of the MSRB Board.

Independence Standard
While we do not have a specific stance on the proposal to extend the time a public sector representative must be removed from a regulated entity from two to five years, we generally welcome and applaud the MSRB's continued dedication to ensuring that public sector representatives be sufficiently independent from a regulated entity.

Board Size, Composition and Leadership: Ensure Adequate Issuer Representation
As the main regulator in the municipal securities space, the MSRB Board is tasked with promulgating rules that have major and direct implications for municipal issuers. Furthermore, the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) expanded the MSRB's mission to protect municipal issuers. The need for adequate representation of active issuers on the Board remains a top priority for our members. While the existing rule mandates a minimum of one issuer, the MSRB has traditionally included more than one issuer representative in recent years. We now caution that the reduction in size would result in one Board seat available to an active issuer, thus diminishing and diluting critical issuer voices on the Board. Our market is large and diverse, and as such, an effective rulemaking body should

include more than one issuer to accommodate the broad range of issuer voices that exist in our space. Specifically, the MSRB should continue to prioritize the inclusion of a State Treasurer on the Board at all times, but should also include additional active issuers, including those from local governments and other issuer entities.

In addition, the MSRB should strive to ensure that all public sector representatives are currently or recently active in our market. The MSRB is tasked with selecting Board members who are knowledgeable of the municipal securities market. Given the rate of change in our markets, we also wish to stress the importance that Board members be actively involved in it.

Inclusion of 529 (College Savings) Plan Expertise
Many State Treasurers also oversee the administration of their state's respective 529 (college savings) plans. While some plans are sold and managed directly by state offices, others are sold through private dealers or managed by municipal advisors. As such, brokers, dealers and municipal advisors for state 529 plans are subject to MSRB rules. We fear that the reduction in Board size will result in a diminished level of expertise on issues relating to college savings plans. We again stress that the MSRB consider and address these challenges prior to advancing a reduction in Board size. We also urge the MSRB to seek Board participants for existing seats, including those from the issuer community, who have a proficient knowledge of 529 college savings plans.

Above all else, we close by reemphasizing the need for a diverse array of active issuers on the Board in the future. I have asked our policy director, Brian Egan (brian@statetreasurers.org | 202-630-1880), to answer any questions you may have relating to this letter or otherwise. Thank you for your consideration, as well as your continued willingness to hear directly from issuers. Please stay well during these challenging times.

Sincerely,

Shaun Snyder
Executive Director
National Association of State Treasurers

CC: Nanette D. Lawson, Interim Chief Executive Officer
Jake Lesser, Associate General Counsel
Sara Ahmadzai, Special Projects Manager
Rebecca Olsen, Director of Municipal Securities, Securities and Exchange Commission

NATIONAL FEDERATION
of MUNICIPAL ANALYSTS

April 29, 2020

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, D.C. 20005

RE: Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board, 2020-02

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board, 2020-02.

The NFMA is a not-for-profit association with nearly 1,300 members in the United States, and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our Recommended Best Practices in Disclosure and White Papers are available on our website, www.nfma.org.

The NFMA's membership is diverse and consists of individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the municipal market. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms during their tenure on the board.

The following are the NFMA comments on the referenced draft amendments:

Independence Standard

1. *What are the potential benefits of increasing the separation period to five years?*

   The separation period of five years is too long. As a general matter, it is the integrity and the stature of the individual chosen to be seated as a public representative that is the determinant

of independence. There is no palpable benefit beyond the current two-year separation period that would ensure greater independence beyond the two-year period. Qualified candidates would likely have lost touch with the market variables – particularly as the markets are evolving quickly – necessary to make an effective contribution. We recommend retaining the two-year period.

2. *What are the potential drawbacks of extending the separation period?*

See 1 above. Additionally, the practical reality of waiting five years to apply for Board membership could also reduce the pool of highly qualified applicants who might have moved on to other commitments.

3. *What is the ideal background for a public representative?*

The ideal background for a public representative includes a strong familiarity with the mechanics of the municipal bond market and investing therein. Individuals in certain areas of academia, industry associations, lawyers, workout specialists, and credit analysts could meet the statutory test. A particularly glaring absence over a long period of time has been that of credit analysts. We therefore recommend that at least one of the public member spots be reserved for Members from the following:

- A representative from a mutual fund family who analyzes municipal bonds for municipal bond portfolios, notwithstanding the fact that his or her firm may have a broker-dealer operation but whose primary business is not underwriting municipal securities.
- A representative from a mutual fund family whose primary activity is in the management of municipal bond portfolios or trading of bonds for those portfolios, notwithstanding the fact that his or her firm may have a broker-dealer operation but whose primary business is not underwriting municipal securities.
- A buy side analyst from a firm that is not a mutual fund.
- An insurance company.
- A bond counsel firm.
- A National Association of State Treasurers (NAST) member or other representative from state governments.
- A Government Finance Officers Association (GFOA) member representing local governments.

Ideally, we would urge the Board to consider a Board seat for an NFMA member (from the "slots" set forth above).

The NFMA strongly believes that in order for the Board to be more representative of market participants, it is incumbent on having better representation from the buy side, particularly mutual fund families and similar organizations. The proposed changes to the Board's composition do not address this specific point. While it is true that the current member spot is

reserved for a buy side firm, the large mutual fund families are excluded from that seat. Mutual funds, in most cases, have broker dealer operations and are therefore definitionally excluded from the MSRB Board, while other institutional investors, such as a dedicated Separately Managed Accounts (SMA) entity, an insurance company, etc., would not be excluded. Since mutual funds, and, in turn, their retail shareholders, represent a major buyer element in the market, this is an important voice that remains missing from the Board. The NFMA suggests including them and waiving the broker/dealer rule in that case (similar to that being proposed for municipal advisors) so that the representatives of such firms can serve and the interests of their retail shareholders be considered. The exclusion of mutual fund buy side professionals from Board membership is unfortunate, and deprives the Board and the public of valuable market insight.

4. *Would individuals who qualify as independent under the current independence standard accept other opportunities, including some that would be disqualifying, rather than wait five years to serve as a public representative?*

   We believe that this is a cogent concern.

5. *Is a five-year separation period too long or too short? What is the optimal period of time?*

   Given the concerns posited in question 4, we believe that retaining the two-year period is the best approach; five years is too long. If, ultimately, the decision is made to lengthen the separation period beyond two years, the NFMA could support up to a three-year separation, but this is not ideal. To be clear, however, our recommendation that buy side representatives be included among the public members relates to those currently working in the industry, not those that have retired.

Board Size

6. *What are the benefits of a reduction in Board size to fifteen members?*

   A smaller Board could weaken the potential for balanced and broadened perspectives that we believe is crucial to the MSRB's effectiveness, particularly in light of the suggestions for term limits and lifetime service caps. Completion and implementation of the regulatory framework for Municipal Advisors does not change this mandate

   The argument that a smaller Board would result in a cost savings is a specious argument given that the relatively nominal annual Board Member costs compared to salaries of key MSRB Executives. To make the day-to-day operations of the MSRB run more efficiently would produce a greater operational savings and should be implemented first, rather than reducing the size of the Board.

7. *What are the drawbacks of a reduction in Board size and how could those drawbacks be mitigated?*

   Drawbacks include reduced diversity of views, market experience, and participation of individuals with different facets of market experience. In combination with term limits and lifetime service cap, the Board could become more transient in nature and suffer a loss in its institutional memory.

8. *Are there perspectives available with a Board size of 21 that would not be available with a Board size of 15?*

   The answer to the question depends upon the Board committee established to review and accept the new Board members as agreed upon by the full Board. It will be up to the Board to determine what perspectives are available within the applicant pool. For sure, you will lose perspectives should the size of the Board be reduced. By definition by number, 21 to 15, you will have fewer perspectives just based upon the numbers alone. The MSRB has a broad mission to protect municipal securities investors, municipal entities and the public interest. This all but mandates a larger Board to support sufficiency of viewpoints that result in sound decision-making. It is likely that a larger Board could be less susceptible to a handful of viewpoints that could skew the conversation and make it easier to make recommendations arising from a less fulsome discussion.

   For these reasons, we recommend that the Board not seek to reduce the Board size at this time.

Board Composition

9. *If the Board size is reduced, should it replace the requirement that at least 30% of the regulated representatives be municipal advisor representatives with at least two municipal advisor representatives?*

   Should the Board size be reduced to 15 members, NFMA would support a maximum of two municipal advisor representatives

10. *Should municipal advisor members with a broker-dealer affiliate be allowed to serve in one of the two municipal advisor slots?*

    We have no objection to this **with the stipulation that the buy side representatives are afforded the same provisions.**

11. *What are the potential effects of permitting a municipal advisor who is associated with a non-underwriter dealer to serve in one of the two municipal advisor slots?*

    We will defer to our industry colleagues in the municipal advisor community for this.

12. *Could the proposed changes deprive the Board of adequate representation of independent municipal advisors?*

    We will defer to our industry colleagues in the municipal advisor community for this.

Reduced Board Size

13. *Are the transition goals appropriate?*

    We understand the transition goals – but do not believe that a reduction in the Board size is warranted at this time.

14. *Are term extensions preferable to different term lengths?*

    If a reduction in the size of the Board is implemented, limited extensions to specific current Board Members in order to move through a timely transition period is preferable to the election of new members for varying terms. The latter option would be disruptive to the continuity of Board decision-making throughout the transition period.

15. *Would considering Board member extensions as part of the annual nominations process help address any challenges to Board composition that may arise?*

    It is unclear if this question is limited to the transition process or otherwise. Unless throughout the transition process a Board Member is no longer able to complete his/her term thereby causing a gap in the knowledge and expertise associated with that individual or if there is a loss of the majority public member, it is unlikely that it would be necessary to consider Board extensions during the annual nominations process.

Terms

16. *How should the Board evaluate the trade-offs inherent in further limiting the amount of time a Board member may serve?*

    If the Board term is limited in conjunction with an increase in the separation period prior to application, there needs to be a level of comfort that the caliber and quantity of historical applications will continue in future. Also, if the experience has been for Members to serve two consecutive four-year terms, will Members limited to a six-year term have a sufficient ramp-up period to develop the acumen necessary to master complex regulations? How might the on-Boarding process have to change?

17. *Would permitting only one term have negative effects on continuity and institutional knowledge?*

Given the complexity and expanse of regulations and deliberations by the Board, a single four-year term might not be optimal in the context of Board continuity and institutional knowledge. As proposed, we are unclear if the Member would be making a commitment for a total of six years of service or just for four years with a potential for two years of additional Board service and suggest that this be clarified.

18. *Should the Board apply a lifetime service limit?*

We believe that such a limit would be ill-advised. We can envision a situation where a former Board member (e.g., a buy side mutual fund analyst once the restrictions on such an individual's service are eliminated) can fill a different role (e.g., after retirement). To the extent that that individual is the best candidate among the applicants, it seems disadvantageous to disqualify him or her because of an arbitrary lifetime service limit.

If concerns remain that the acceptance of a former Board member creates a perception that their participation would limit new perspectives, a policy could be written to create a cooling-off period for reapplication by any former Board Member.

Nominations and Elections Provisions

19. *Would retaining the existing detailed requirements related to the Nominating and Governance Committee benefit the market or can the objectives of those requirements be achieved through Board policies?*

We will defer to the Board's judgment in this matter.

20. *Does the requirement to publicize the name of applicants deter people from applying? Are there other approaches that provide transparency about the applicant pool while mitigating the unintended consequences of publicizing the names of applicants?*

We appreciate the transparency afforded in reporting the names of applicants; we note that there have been many applicants each year for the available spots, so this transparency does not appear to be a problem. This requirement should be continued in the final rule.

21. *Are there other changes that the Board should consider?*

- The NFMA appreciates that the MSRB is sensitive to the concerns of constituencies outside of its purview. At this point in time, the MSRB has the opportunity to implement an institutional reset as it pertains to leadership, finances, and operations. We believe that the proposed changes to the Board should be undertaken in conjunction with an incoming CEO and not simply present him or her with a fait accompli. The existing Board construct is not broken. The proposed changes (reduction in number would produce an imbalance of market perspectives, term limits, and lifetime cap) have the potential to weaken the Board and potentially alter the

governing dynamic vis-à-vis a new CEO. Therefore, we would urge that any changes to the MSRB Board only be implemented after selection of and consultation with the new CEO.

- We recommend that one of the broker dealer or bank representative slots be reserved for a professional primarily engaged in the analysis of municipal securities (commonly called a sell side analyst or a desk analyst).
- We respect the effort to reduce the MSRB's reserves to a reasonable level and reduce the transaction fees imposed.
- The NFMA takes no issue with the Board seeking greater flexibility in establishing its committee structure through governance mechanisms such as charters and policies. That said, to preserve transparency, the rationale supporting all proposed amendments should be posted to the MSRB website and be easily found to all who access the MSRB's website. The NFMA could support the Board's inclusion in its rules that a public representative be required to chair its governance, nominations and audit committees.

The NFMA appreciates the opportunity to comment on the draft amendments to Rule A-3 and would be happy to speak with MSRB staff about them at your convenience.

Sincerely,

/s/ Nicole Byrd

Nicole Byrd
NFMA Chair

April 29, 2020

VIA ELECTRONIC SUBMISSION

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2020-02 – Amendments to MSRB Rule A-3: Membership on the Board

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") proposed amendments to MSRB Rule A-3 governing membership on the MSRB's Board. We welcome the MSRB's review of its governance with a view to better protecting investors, issuers, and the public interest. This goal can be achieved by a Board that is truly representative and knowledgeable of the municipal securities market.

I. Board Composition

We strongly object to the proposal to reserve two seats on the Board for municipal advisors and to further qualify the type of municipal advisor that can fill a seat. This proposal not only gives municipal advisors outsized representation compared to other regulated categories, but it also favors certain types of municipal advisors over others. First, reserving two seats for municipal advisors on a smaller Board reflects neither the MSRB's membership nor the municipal securities market. Dealers firms, for example, employ tens of thousands of individuals who are licensed to transact in municipal securities (including Series 51, 52, and 53 holders) engaged in municipal securities-related activities and those that support them, while the number of licensed municipal advisors (Series 50 and 54 holders) and those that support them represent are a mere fraction of that number. Like municipal advisors, dealers engage in a broad range of

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

activities too, but they have just one reserved seat per category. Dealers are also subject to the whole gambit of the MSRB's rulebook for the broad range of activities they engage in and they pay the majority of the MSRB's regulatory fees, unlike municipal advisors. Equal representation on the Board is vital to ensure that all regulated entities have a fair say in their regulation. This results in better regulation and more effective compliance that ultimately benefits the municipal securities market.

Second, placing qualifications on the type of municipal advisor that may serve on the Board, like the proposal to limit a seat to advisors with a related non-underwriting dealer, favors certain advisors over others and it is very targeted. In practice, less than a handful of advisors fit that profile, in contrast to the multitude of dual-registrant municipal advisors who are affiliated with full-service dealers. It limits the perspectives of municipal advisors as well as ignores the MSRB registrants that are dually-registered and for whom municipal advisory services represent a significant part of their overall business. We believe that any individual who holds a Series 50 or 54 should be able to serve in the municipal advisor slot regardless of the type of municipal advisor they are associated with.

Above all, as a matter of good governance, the Board should exercise its flexibility to consider and solicit Board participation by an individual's area of expertise, not their association with a regulated class. We believe that the Board should be composed of members that have different backgrounds and experiences and represent various functions within the municipal securities market. We suggest that, on the industry side, the Board could benefit from having with members with public finance banking, compliance, operations, institutional and retail trading, or underwriting experience; whereas, on the public side, the Board could benefit from members from the issuer community, a buy-side investor, or a municipal analyst, for example.

II. Independence Standard

We also object to the proposal to increase the separation period for the Board's public representatives to five years from two years as unnecessary and with significant drawbacks. This is a solution in search of a problem. As the MSRB acknowledges, no one has questioned the independence, and value brought to the Board, of the current public representatives who were previously associated with regulated entities.[2] A longer separation will never fully address commentators' perceptions of a revolving door between the Board and the industry, and the MSRB will run the real risk of a smaller pool of eligible candidates who are not incentivized to return to public service and who may not retain the knowledge of a dynamic industry, particularly as technology changes firms' operations. The MSRB is already ahead of similarly-situated SROs in the securities industry, including FINRA, that do not have separation periods.[3] That being said, should the MSRB articulate reasons beyond addressing perceptions why a longer separation period is necessary, we believe that a three-year period would balance out the

[2] MSRB Notice 2020-02 (Jan. 28, 2020) at 6.
[3] FINRA By-Laws Art. I(tt).

perceptions of independence with the requisite need for public representatives to be knowledgeable of the municipal industry.

III. Other Comments

In general, we support the proposal to reduce the Board's size to 15 from 21 members. A smaller Board is more manageable and no longer necessary that significant Dodd-Frank related rulemaking has been completed. While we agreed with the transition plan to reduce the Board size, we would have preferred that the MSRB seek public comment prior to proposing a transition plan that it is essentially going to implement. Lastly, we do not see the value in a lifetime cap on membership terms. An alternative to achieve the MSRB's stated goals might be to prohibit a Board member from serving in the same class as his or her previous term.

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Thank you for considering SIFMA's comments on proposed changes to the MSRB's Board. If any questions regarding the foregoing, please contact the undersigned at (212) 313-1130 or lnorwood@sifma.org, or (202) 962-7300 or bcanepa@sifma.org, respectively.

Sincerely,

Leslie M. Norwood
Managing Director
and Associate General Counsel

Bernard V. Canepa
Vice President
and Assistant General Counsel

Steve Apfelbacher **Robert Lamb**
Renee Boicourt **Nathaniel Singer**
Marianne Edmonds **Noreen White**

April 29, 2020

Mr. Ronald W. Smith
Corporate Secretary
Municipal securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: Request for Comment on Draft Amendments to MSRB Rule A-3 on Membership on the Board (2020-02)

Dear Mr. Smith:

As former members of the MSRB we appreciate the opportunity to have input into the decision making of the current Board. Our comments are based on our collective experience as post Dodd Frank Board members and municipal advisor practitioners.

We recognize that the legislation filed by Senator Kennedy has prompted a review of the separation period that is applied to public representatives. We agree that a longer separation period will reduce the likelihood of an appearance of conflict of interest between a newly minted public representative's public designation and prior status as a regulated party. Based on our experience as Board members involved in the identification of new board members, we believe that a longer separation period will reduce the pool of qualified public representative applicants. Nonetheless, the perception of a conflict is serious enough to warrant a longer separation period.

The Board has also proposed that the number of MAs be reduced from three to two. We do not agree with this proposal and submit that three MAs are required to adequately represent the diversity and interests of the MA community and their clients.

As Board members who served from 2010 through 2019, we had expected the intense workload required to include municipal advisors in the regulatory framework would be complete by now. The events of the last two years indicate we were wrong. Discussions of G-34 and G-23 are but two of the ongoing conversations that impact municipal advisors. Amendments are being discussed to address the proposed exemptive order for municipal advisors under consideration by the SEC. The debate surrounding the SEC's Proposed Exemptive Order has exposed significant differences between broker-dealers and municipal advisors. Independent municipal advisors must be at the table in order to present their views. The Board composition proposed by the amendment reduces MA representation from at least 30% of the regulated members (three of ten) to two of seven. The Board has also proposed that a MA representative can be associated with a dealer, provided that the dealer does not engage in underwriting the public distribution of municipal securities. These changes will weaken the voice of independent municipal advisors.

Simply put, the diverse nature of the municipal advisor community cannot be represented by two representatives on a 15-member Board. A-3 recognizes the difference between non-bank and bank broker-dealers, we ask that the broad and different nature of our MA businesses also be considered.

As the Board stated in its September 2011 response to comment letters from SIFMA and others:

> While the statute requires that there be at least one municipal advisor representative on the Board, it is the view of the Board that no less than 30% of the members representing regulated entities should be municipal advisors that are not associated with broker-dealers or bank dealers, and, therefore, the MSRB does not agree with SIFMA's comment that this level of representation of municipal advisors is disproportionately large. Although the MSRB has made substantial progress in the development of rules for municipal advisors, its work is not complete. Indeed, over the years, it will continue to write rules that govern the conduct of municipal advisors and provide interpretive guidance on those rules, just as it has over the years for broker-dealers since it was created by Congress in 1975. Just as SIFMA considers it essential that broker-dealers and bank dealers participate in the development of rules that affect them, the MSRB believes that it is essential that municipal advisors participate in the development of rules that affect them. The MSRB believes that allotting at least 30% of the regulated entity positions to municipal advisors that are not associated with broker-dealers or bank dealers will assist the Board in its rulemaking process…and will inform its decisions regarding other municipal advisory activities while not detracting from the Board's ability to continue its existing rulemaking duties with respect to broker-dealer and bank activity in the municipal securities market.[1]

As active participants in the municipal market we appreciate the opportunity to submit this comment letter to preserve fair and adequate representation of the municipal advisor community.

Sincerely,

Steve Apfelbacher
Board Member, October 2014 - September 2017

Renee Boicourt
Board Member, October 2016 - September 2018

Marianne Edmonds
Board Member, October 2012 - September 2015

Robert Lamb
Board Member, October 2010 - September 2013
Vice Chair, October 2011 - September 2012

Nathaniel Singer
Board Member, October 2013 - September 2016
Chair, October 2015 - September 2015

Noreen White
Board Member, October 2010 - September 2014

[1] MSRB letter to SEC dated 9/19/2011 re: File No. SR-MSRB-2011-11