



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 ebroch@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,

A handwritten signature in black ink that reads "Emily S. Brock". The signature is written in a cursive, flowing style.

Emily Swenson Brock
Director, Federal Liaison Center