



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,

A handwritten signature in black ink that reads "Susan Gaffney". The signature is written in a cursive, flowing style.

Susan Gaffney
Executive Director