



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.