



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.



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

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