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March 30, 2020
**[Extended to
April 29, 2020 on
March 23, 2020]**

Category
Administration

Affected Rules
[Rule A-3](#)

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

**[Comment deadline extended on March 23, 2020.
See [Notice 2020-08](#)].**

Overview

The Municipal Securities Rulemaking Board (“MSRB” or “Board”) seeks comment from interested persons on draft amendments to MSRB Rule A-3, on membership on the board, designed to improve Board governance. The amendments would tighten the independence standard required of public representatives, reduce the size of the Board, impose a limit on the number of years a Board member may serve, require that Board committees responsible for assisting the Board in overseeing critical governance functions be led by public representatives, and make certain other changes described below. The draft amendments are the product of an in-depth review conducted by the Board’s Special Committee on Governance Review (the “Committee”).

Comments should be submitted no later than March 30, 2020 and may be submitted in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB’s website.¹

Questions about this notice should be directed to Jake Lesser, Associate General Counsel, or Sara Ahmadzai, Special Projects Manager, at 202-838-1500.



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¹ Comments generally are posted on the MSRB’s website without change. Personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

Background

The MSRB is a private self-regulatory organization (“SRO”) established in 1975 and required by the Securities Exchange Act of 1934 (“Exchange Act”) to adopt rules governing the municipal securities activities of brokers, dealers, municipal securities dealers (collectively, “dealers”) and municipal advisors. The MSRB’s statutory mission is to protect investors, municipal entities, obligated persons and the public interest, and to promote a fair and efficient municipal securities market.²

In addition to setting forth the MSRB’s regulatory responsibilities, the Exchange Act establishes basic requirements for the Board’s size and composition and requires the Board to adopt rules that establish “fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections.”³ As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”), the Exchange Act categorizes Board members in two broad groups: individuals who must be independent of any dealer or municipal advisor (“public representatives”) and individuals who must be associated with a dealer or municipal advisor (“regulated representatives”).⁴ 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.”⁵

Within the public representative category, at least one Board member must be representative of institutional or retail investors in municipal securities, at least one must be representative of municipal entities, and at least one must be a member of the public with knowledge of or experience in the municipal industry. 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.⁶

² See Exchange Act Section 15B.

³ Exchange Act Section 15B(b)(2)(B).

⁴ Exchange Act Section 15B(b)(1).

⁵ Exchange Act Sections 15B(b)(1), 15B(b)(2)(B)(iv).

⁶ Exchange Act Section 15B(b)(1).

In keeping with the SRO model for securities regulation, the Exchange Act, as amended by the Dodd-Frank Act, recognizes the benefits that a Board composed of both public and regulated representatives brings to regulation of the municipal securities market in the public interest.⁷ The Exchange Act requires Board members, both regulated and public, to be knowledgeable of the municipal securities market and collectively to carry out the Board's statutory mission to protect municipal entities, obligated persons, investors and the public interest. But while regulated representatives may bring specialized expertise to the regulation of a market with features and functions that are vastly different from those of other financial markets,⁸ public representatives may bring a broader perspective of the public interest. Striking the balance between the two perspectives – public and regulated – in the Dodd-Frank Act, Congress specified that the Board at all times must be majority public but that it also must be as evenly divided between public and regulated representatives as possible.⁹

The Dodd-Frank Act marked a significant shift in the Board's composition, mission and regulatory responsibilities. Before the Dodd-Frank Act, two-thirds of the Board's members were required to be associated with regulated entities; the Dodd-Frank Act required that a majority of the Board be public representatives.¹⁰ While its regulatory mandate has always required the Board to protect investors and the public interest, the Dodd-Frank Act added requirements that the Board protect municipal entities and obligated persons. The Dodd-Frank Act also expanded the Board's regulatory responsibilities to include establishing requirements for municipal advisors.¹¹

Since the enactment of the Dodd-Frank Act, the Board has elected public representatives with a range of backgrounds and experience. In addition to the statutorily specified municipal entity representatives and investors, they have included individuals with prior municipal securities regulated industry experience, academics and individuals with rating agency experience. In most years, municipal entity representation on the Board has exceeded the

⁷ For a discussion of the SRO model and the MSRB's regulatory structure, see MSRB, [Self-Regulation and the Municipal Securities Market](#) (2018).

⁸ See *id.*

⁹ See Exchange Act Section 15B(b)(2)(B)(i).

¹⁰ Prior to the Dodd-Frank Act, the Exchange Act required the Board to be composed of five public representatives, five broker-dealer representatives, and five bank representatives.

¹¹ See Exchange Act Section 15B(b)(2).

statutory minimum. The Board has also required, either by rule or by policy, that committees responsible for nominations, governance and audit be chaired by a public member.

The Exchange Act sets the number of Board members at 15 but provides that the rules of the Board “may increase the number of members which shall constitute the whole Board, provided that such number is an odd number.”¹² In response to the enactment of the Dodd-Frank Act, which established a new registration requirement and regulatory framework for municipal advisors, the Board increased the size of the Board to 21 members (11 public and 10 regulated). At the same time, the Board also provided for municipal advisor membership on the Board that was greater than the statutory minimum, requiring that at least 30% of the regulated representatives be associated with municipal advisors.¹³ These changes were designed to ensure the Board could achieve appropriately balanced representation and would have sufficient knowledge and expertise to implement the new municipal advisor regulatory framework without detracting from its ability to continue fulfilling its existing rulemaking responsibilities with respect to dealer activity.¹⁴

While its expanded duties with regard to the protection of municipal entities and the regulation of municipal advisors are ongoing, the Board has completed the rulemaking activity associated with implementation of the Dodd-Frank Act, including establishment of the municipal advisor regulatory regime. The Board is now in the midst of a multi-year retrospective review of its existing rules and related interpretations designed to ensure that they continue to serve their intended purposes and reflect the current state of the municipal securities market.¹⁵

In September 2019, the Board announced that it would examine its governance practices in order to more effectively protect municipal securities investors, issuers and the public interest.¹⁶ To conduct this review, the Board established the Committee, which consists of five public

¹² Exchange Act Sections 15B(b)(1), 15B(b)(2)(B)(iii).

¹³ As discussed below, Rule A-3 currently provides that these municipal advisors may not be associated with dealers.

¹⁴ See Exchange Act Release No. 65158 (Aug. 18, 2011); Exchange Act Release No. 63025 (Sept. 30, 2010).

¹⁵ See, e.g., [MSRB Notice 2019-04](#) (Feb. 5, 2019).

¹⁶ MSRB, “[MSRB to Begin FY 2020 with Focus on Governance](#)” (Sept. 23, 2019).

representatives, including the Committee Chair, and two regulated representatives. Based on that review, the Board is considering the amendments to MSRB Rule A-3 described below.¹⁷

Independence Standard

As noted above, the Exchange Act requires the Board to establish by rule “requirements regarding the independence of public representatives.”¹⁸ In 2010, the Board amended Rule A-3 to define the term “independent of any municipal securities broker, municipal securities dealer, or municipal advisor” to mean that an individual has “no material business relationship with” such an entity. The Board defined the term “no material business relationship” to mean, at a minimum, that:

- The individual is not, and within the last two years was not, associated with a dealer or municipal advisor; and
- The individual does not have a relationship with any dealer or municipal advisor, compensatory or otherwise, that reasonably could affect the individual’s independent judgment or decision making.

When it adopted this standard, the Board noted that a two-year separation period was longer than that imposed by other SROs with similar independence requirements and “strikes the right conservative balance of ensuring sufficient independence while not permanently restricting individuals who are knowledgeable about the market – a requirement for all members of the Board under the Dodd-Frank Act – from ever serving on the Board.”¹⁹ The Board further provided, in a policy revision in fiscal year 2019, that an individual who has been employed by a regulated entity within the prior three years does not qualify as a public representative due to a “material business relationship.”

¹⁷ The Committee will continue to meet for the rest of fiscal year 2020. In addition to evaluating the responses to this request for comment and making recommendations to the Board regarding proposed amendments to its governance rules, the Committee is also evaluating other governance requirements, including Board policies. Key governance policies and documents, including the Board’s Articles of Incorporation and By-Laws, Code of Ethics and Business Conduct, Conflicts of Interest Policy, and Whistleblower Policy and Complaint Handling Procedures, are available on the Board’s website at <http://msrb.org/About-MSRB/Governance.aspx>.

¹⁸ Exchange Act Section 15B(b)(2)(B)(iv).

¹⁹ Letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC, re: Response to Comments on File No. SR-MSRB-2010-08 (Sept. 23, 2010).

In the decade that has passed since the MSRB adopted the independence standard, the Board each year 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 markets.”²⁰ Some, but by no means all, of these public representatives gained the requisite market knowledge through prior affiliations with regulated entities that ended, as required by Rule A-3, at least two years before their service on the Board began. 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.

Since the independence standard was first proposed, however, some commentators have questioned whether a two-year separation period is sufficiently long. The Board is considering whether a longer separation period would enhance the independence of public representatives who have prior regulated entity associations and 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. Specifically, the Board seeks comment on the potential effects of extending the separation period to five years.²¹

Questions

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?
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”?
3. What is the ideal background to make a public representative “a member of the public with knowledge of or experience in the

²⁰ Exchange Act Section 15B(B)(1).

²¹ Any such change would be applicable to Board members elected on or after the effective date of the required amendments to Rule A-3.

municipal industry”? What types of individuals, other than those with a prior regulated entity association, could meet that statutory test?

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

Board Size

The Exchange Act establishes a 15-member Board but permits the MSRB to increase the size, provided that:

- The number of Board members is an odd number;
- A majority of the Board is composed of public representatives; and
- The Board is as closely divided in number as possible between public and regulated representatives.²²

As discussed above, the Board amended Rule A-3 to expand the size of the Board to 21 members in order to provide additional flexibility in achieving balance among its members and to broaden the range of Board-member perspectives as it sought to implement the Dodd-Frank Act. While acknowledging that a larger Board would entail higher costs than a smaller Board, the SEC found, in approving the Board’s rule change, that it would allow greater representation of the interests of the various sectors of the municipal securities market and would not be inconsistent with industry norms.²³

While the larger Board size was particularly valuable during the period of heightened rulemaking activity required to implement the Dodd-Frank Act, that rulemaking activity is now complete. Thus, the Board believes that it can return to the statutorily prescribed Board size of 15, and the attendant efficiency and lower cost of such a smaller Board, without decreasing its

²² Exchange Act Sections 15B(b)(1), 15B(b)(2)(B). While the Dodd-Frank Act added the requirement for a majority of the Board to be comprised of public representatives, the Exchange Act has permitted the Board to increase its size ever since the MSRB was established in 1975.

²³ See Exchange Act Release No. 65424 (Sept. 28, 2011).

ability to discharge its expanded responsibilities under the Exchange Act, as amended by the Dodd-Frank Act.

In light of the Exchange Act's dual requirements that the Board be majority public and that the membership be as evenly divided as possible between regulated and public representatives, a 15-member Board would be composed of eight public representatives and seven regulated representatives.²⁴

Questions

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

Board Composition

The Exchange Act requires that the Board include at least one member from each of the regulated categories and of each of the types of public representatives. Rule A-3 tracks those Exchange Act requirements for Board composition in every respect except one: it requires that municipal advisor representation be greater than the statutory minimum.²⁵ Specifically, Rule A-3 provides:

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.

The Board believes that the composition requirements currently in Rule A-3 remain appropriate in the main, but it is considering two adjustments to the municipal advisor requirement.

First, with a Board size of 15 members, the current Rule A-3 requirement that not less than 30% of the regulated representatives be associated with

²⁴ See Exchange Act Section 15B(b)(2)(B)(i).

²⁵ The draft amendments include provisions concerning Board member changes in employment or other circumstances, including those that result in a conflict with Board composition requirements and require removal from the Board. These matters are currently covered by Board policies.

municipal advisors would no longer be appropriate as it would require reserving three of the seven regulated slots for municipal advisor representatives. At the same time, the Board believes 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. Therefore, the Board is considering requiring that the Board's regulated representatives include at least two municipal advisors.

Second, the Board is considering a limited expansion of its definition of the municipal advisor category. 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 dealer, provided that the dealer does not engage in underwriting the public distribution of municipal securities. Such a requirement could facilitate the Board's efforts to obtain the perspectives of the full range of municipal advisor firms.

The Board seeks comment on the potential effects of these changes to the Board composition requirements, including whether they will provide for appropriate representation of the full range of municipal advisors subject to Board regulation in the context of the contemplated reduction in Board size without depriving the Board of adequate representation of independent municipal advisors.

Questions

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?
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?
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?

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

Member Qualifications

Rule A-3 tracks the Exchange Act requirement that all Board members must be knowledgeable of matters related to the municipal securities markets. In its processes for the nomination and election of new members, the Board has consistently sought candidates of demonstrated personal and professional integrity. In order to further convey to the public the seriousness with which the Board conducts its elections and bolster public confidence in its process, the Board believes codifying the requirement that members be individuals of integrity in its qualifications under Rule A-3 is appropriate.

Transition Plan to Reduced Board Size

Currently, the Board is composed of three classes of five members and one class of six members, with each Board member serving a four-year term. In fiscal year 2020, the class of six members is in its fourth year of service, with the result that there will be 15 returning members after the six fourth-year members complete their terms on September 30, 2020. Those 15 returning members will meet the Board composition requirements set out in the draft rule. Accordingly, if the Board determines to reduce the size of the Board, it would plan to implement the change by electing no new members for fiscal year 2021, and thus it would achieve the new Board size of 15 in the first fiscal year. A transition plan would be necessary, however, to change the class sizes to three classes of four members and one class of three members.

Just as the Board has chosen to move promptly to the new Board size, in considering alternative transition plans, the Board's preference is for a plan that will effect the changes expeditiously while minimizing any risk of disruption to MSRB governance, programs and operations. Specifically, the Board is considering a three-year transition plan, at the conclusion of which the Board would have three classes of four members and one class of three members. Each of the new Board classes would have the same number of public and regulated representatives except for the class of three, which would have two public representatives. All Board members elected during the transition would be appointed to four-year terms. The Board would resume electing new members, in accordance with the transition plan, for a four-member class with terms commencing in fiscal year 2022.

During the transition the Board would grant one-year term extensions to four public representatives and two regulated representatives, as follows:

- One public representative whose term would otherwise end on September 30, 2021;

- One public representative and one regulated representative whose terms would otherwise end on September 30, 2022; and
- Two public representatives and one regulated representative whose terms would otherwise end on September 30, 2023.

Board members would be considered for extensions as part of the Board's annual nominations process, so that overall Board composition, resulting from existing member extensions and new member elections, would be considered holistically.

In developing its preferred approach, the Board considered a range of alternative transition plans that resulted from different combinations of the following factors:

- Number of new Board members elected in each year of the transition;
- Length of the transition period;
- Term lengths for new Board members elected during the transition; and
- Number and length of term extensions granted.

Each of the other combinations of these factors the Board evaluated would increase the length of the transition period. Some would result in a greater number of term extensions while others would require the appointment of multiple new Board members to terms of less than four years during the transition. In contrast, the approach the Board selected minimizes both the time necessary to complete the transition and the number of Board members whose terms would need to be extended.

While extending Board terms for some current members could be viewed as not aligned with the general policy thrust of the draft rule to limit Board service, it should be noted that all the extensions would be for just one year, so that an extended member's total service would be five years – less than the maximum service of six years the draft rule permits. As a practical matter, in order to effect a transition from three classes of five members and one class of six members to three classes of four members and one class of three members, the Board must either grant some Board members extensions or elect some new members for terms that are shorter or longer than four years. Given these alternatives, the Board believes that granting a limited number of extensions is preferable.

Questions

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

Terms

The Exchange Act provides that Board members "shall serve as members for a term of 3 years or for such other terms as specified by the rules of the Board."²⁶ In 2016, the Board determined to lengthen the terms to four years and, at the same time, increased the number of Board classes from three to four and limited to two the number of consecutive terms that a Board member could serve. The purpose of these changes was to ensure greater continuity and institutional knowledge on the Board while maintaining the benefits of having a significant number of new Board members join the Board each year.²⁷

As part of its governance review, the Committee considered whether any adjustments were appropriate to these provisions, which were implemented only three years ago. Based on that review, the Board believes that the four-year term is providing the benefits the Board sought when it adopted it. Specifically, the fourth year allows members to bring to bear considerable expertise gained through Board service. The greater Board expertise, in turn, benefits the municipal markets and the public interest through better-informed policymaking. Accordingly, the Board is not considering changes to the length of the Board term.

At the same time, the Board continues to believe that regularly refreshing the Board with new members has a salutary effect. Accordingly, the Board is considering further limiting the amount of time that any individual may serve. The draft amendments would remove the current maximum of two consecutive terms, provide that a Board member could serve for a total of no

²⁶ Exchange Act Section 15B(b)(1).

²⁷ [MSRB Notice 2016-10](#) (Mar. 18, 2016).

more than six years, and prohibit a Board member who had reached the six-year limit from returning to the Board, even after a period away. The six-year maximum service provision would effectively limit a Board member to one complete term while still enabling the Board to fill an unscheduled vacancy expeditiously by electing an existing or former Board member to serve a partial term.

To effect these changes, the Board would also amend Rule A-3 to permit a Board member filling a vacancy to serve for any part of an unexpired term, rather than requiring such a Board member to serve for the entire unexpired portion. Because of the need to fill unscheduled vacancies quickly, the Board has in some such cases elected a former Board member or extended the term of a sitting member, rather than conducting the comprehensive search process it uses in its regular nominating process.²⁸ Permitting the Board to fill an unscheduled vacancy with a member who would serve for only a partial term (*i.e.*, a part of the unexpired portion of the term) would ensure the Board was able to operate with a full complement of members while minimizing membership on the Board of persons who were not elected during the annual nominating process.

Questions

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

²⁸ Rule A-3(d) provides that “[v]acancies on the Board shall be filled by vote of the members of the Board,” and states, in the final sentence, that the term “vacancies on the Board” includes a vacancy resulting from the resignation of a Board member prior to the commencement of his or her term. The draft rule deletes this final sentence to clarify that the term includes all vacancies that arise prior to conclusion of a term for any reason.

Amendments to Board Nominations and Elections Provisions

In the course of its review, the Committee also identified certain changes that could improve governance by retaining for the Board the flexibility to determine certain matters by Board policy or resolution rather than by rule. Specifically, Rule A-3 includes a detailed description of the composition, responsibilities and processes of the Board's Nominating and Governance Committee. No other Board committee is described in the Board's rules; rather, these committees are provided for in other governing documents, such as charters, resolutions and policies.

The Nominating and Governance Committee serves an especially important role in Board governance because it is delegated the responsibility for the processes by which the Board refreshes its membership. While the Board believes that some of the detail included in Rule A-3 could unnecessarily impede its flexibility to respond appropriately to changing circumstances, the Board continues to believe that certain essential features of this committee should be established by Board rule, rather than solely in other governing documents, such as policies.

Accordingly, the Board is considering changes that would preserve these features while removing overly prescriptive detail. The draft amendments under consideration would remove references to the "Nominating and Governance Committee" and replace them with references to a committee charged with the nominating process. The draft amendments preserve the substantive requirements that the committee responsible for the nominating process be: (1) composed of a majority of public representatives, (2) chaired by a public representative, and (3) representative of the Board's membership, but remove the more detailed requirements.

The draft amendments retain provisions describing the annual nominations and elections processes, including publication of a notice, the submission of nominations by the committee to the Board, and the Board's acceptance or rejection of each nominee. The draft amendments include an update to the notice publication requirements, which the Board believes have become antiquated. Specifically, the Board replaced the requirement to publish the notice seeking applications for Board positions "in a financial journal having national circulation among members of the municipal securities industry and in a separate financial journal having general national circulation" with the more general requirement to publish the notice "by means reasonably designed to provide broad dissemination to the public."

While the draft amendments retain a requirement that the Board make available on its website the names of all applicants who agreed to be considered by the nominations committee, the Board is reconsidering

whether this provision should be included in a final rule. While this provision is intended to increase transparency, the Board believes that it may also deter applications by qualified individuals who may be concerned that a failure to be selected will negatively affect their reputations.

Questions

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?
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?
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?

Public Representative Committee Chairs

The proposed amendments would give the Board greater flexibility in establishing its committee structure through governance mechanisms such as charters and policies. It could, for example, continue to have a committee responsible for both nominations and governance, or it could establish a separate committee on governance, freeing the nominating committee to focus on identifying, recruiting and vetting new members.

The Board believes that irrespective of the committee structure the Board from time to time may establish, responsibility for both nominations and governance should continue to be in a committee or committees chaired by a public representative. Current Board policy requires that the audit committee also be chaired by a public representative. In light of the importance of public representative leadership of the audit committee to the Board's corporate governance system, the Board believes this requirement should be included in the Board's rules.

January 28, 2020

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Text of Draft Amendments*

Rule A-3, ~~Membership on the~~ The Board: Composition, Elections, Committee Chairs

(a) *Number and Representation.* The Board shall consist of ~~24~~ 15 members who are individuals of integrity and knowledgeable of matters related to the municipal securities markets and are:

(i) **Public Representatives.** ~~Eleven~~ Eight individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, of which:

(1) at least one shall be representative of institutional or retail investors in municipal securities;

(2) at least one shall be representative of municipal entities; and

(3) at least one shall be a member of the public with knowledge of or experience in the municipal industry; and

(ii) **Regulated Representatives.** ~~Ten~~ Seven individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, of which:

(1) at least one shall be associated with and representative of brokers, dealers or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks;

(2) at least one shall be associated with and representative of municipal securities dealers that are banks or subsidiaries or departments or divisions of banks; and

(3) at least ~~one, and not less than 30 percent of the total number of regulated representatives,~~ two shall be associated with and representative of municipal advisors ~~and shall not~~ no more than one of whom may be associated with a broker, dealer or municipal securities dealer, provided that such broker, dealer, or municipal securities dealer does not engage in underwriting the public distribution of municipal securities.

(b) *Nomination and Election of Members.*

(i) Members shall be nominated and elected in accordance with the procedures specified by this rule. The ~~24~~ 15 member Board shall be divided into four classes, one class being comprised of ~~six~~ three members and three classes being comprised of ~~five~~ four members, who serve four-year terms. The classes shall be as evenly divided in number as possible between public representatives and regulated representatives. The terms will be staggered and, each year, one class shall be nominated and elected to the Board. The terms of office of all members of the Board shall commence on October 1 of the year in which elected and shall terminate on September 30 of the year in which their terms expire. A member may not serve more than six years consecutive terms, unless special circumstances warrant that the member be nominated for a successive term or because the member served only a partial term as a

* Underlining indicates new language; strikethrough denotes deletions.

~~result of filling a vacancy pursuant to section (d) of this rule, and a member may not serve more than two terms consecutively. No broker-dealer representative, bank representative, or municipal advisor representative may be succeeded in office by any person associated with the broker, dealer, municipal securities dealer, or municipal advisor with which such member was associated at the expiration of such member's term except in the case of a Board member who serves a partial term as a result of filing a vacancy pursuant to section (d) of this rule and succeeds himself or herself in office.~~

~~(ii) Candidates for Board membership shall be nominated by a committee. A majority of the committee shall be public representatives and the committee shall be representative of the Board's membership. (the "Nominating and Governance Committee") consisting of six public Board members and five Board members representing entities regulated by the MSRB. Among the six public Board members, at least one but no more than three shall be representative of institutional or retail investors in municipal securities, at least one but no more than three shall be representative of municipal entities, and at least one but no more than three shall be members of the public with knowledge of or experience in the municipal industry and not representative of investors or municipal entities. Among the representatives of entities regulated by the MSRB, at least one but no more than two shall be associated with and representative of brokers, dealers or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks, at least one but no more than two shall be associated with and representative of municipal securities dealers that are banks or subsidiaries or departments or divisions of banks, and at least one but no more than two shall be associated with and representative of municipal advisors and shall not be associated with brokers, dealers or municipal securities dealers. The Chair of the Nominating and Governance Committee shall be a public member. In appointing persons to serve on the Nominating and Governance Committee, factors to be considered include, without limitation, diversity in the geographic location, size and type of brokers, dealers, municipal securities dealers, and municipal advisors represented on such Committee.~~

~~(iii) The Nominating and Governance Committee (1) The committee shall publish a notice in a financial journal having national circulation among members of the municipal securities industry and in a separate financial journal having general national circulation by means reasonably designed to provide broad dissemination to the public soliciting applicants for the positions on the Board to be filled in such year.~~

~~(2) The notice shall require that an application be submitted which includes the category of representative for which the person is applying, the person's background and qualifications for membership on the Board and, if applicable, information concerning such person's association with any broker, dealer, municipal securities dealer, municipal advisor, municipal entity, or institutional investor. The ~~Nominating and Governance Committee~~ committee shall accept applications pursuant to such notice for a period of at least 30 days. Any interested member of the public, whether or not associated with a broker, dealer, municipal securities dealer, municipal advisor, municipal entity, or institutional investor, may submit an application to the committee ~~Nominating and Governance Committee~~.~~

~~(iv) The committee ~~Nominating and Governance Committee~~ shall nominate one person for each of the Board positions to be filled and shall submit the nominees to the Board for approval. In making such nominations, the committee ~~Nominating and Governance Committee~~ shall take into consideration such~~

factors as, without limitation, diversity in the geographic location, size and type of brokers, dealers, municipal securities dealers, and municipal advisors represented on the Board, as well as the background, experience, and knowledge of the municipal securities markets of the public Board members. Each nomination shall include the category of representative for which such person is nominated, the nominee's qualifications to serve as a member of the Board, and information concerning the nominee's association, if any, with a broker, dealer, municipal securities dealer, municipal advisor, municipal entity, or institutional investor. The names of the nominees shall be confidential.

(v) The Board shall accept or reject each nominee submitted by the committee Nominating and Governance Committee. If the Board rejects a nominee, the committee Nominating and Governance Committee shall propose another nominee for Board consideration.

~~(vi) Upon completion of the procedures for nomination and election of new Board members, the Board will announce the names of the new members not later than October 1 of each year. The names of all applicants who agreed to be considered by the committee Nominating and Governance Committee shall be made available on the Board's website no later than one week after the announcement of the names of new Board members for the following fiscal year.~~

~~(vii) The Nominating and Governance Committee shall also be responsible for assisting the Board in fulfilling its oversight responsibilities regarding the effectiveness of the Board's corporate governance system.~~

(c) *Resignation and Removal of Members.*

(i) A member may resign from the Board by submitting a written notice of resignation to the Chair of the Board which shall specify the effective date of such member's resignation. In no event shall such date be more than 30 days from the date of delivery of such notice to the Chair. If no date is specified, the resignation shall become effective immediately upon its delivery to the Chair.

~~(ii) In the event~~ If the Board ~~shall~~ finds that any member has willfully violated any provision of the Act, any rule or regulation of the Commission thereunder, or any rule of the Board or has abused his or her authority or has otherwise acted, or failed to act, so as to affect adversely the public interest or the best interests of the Board, the Board may, upon the affirmative vote of two-thirds of the whole Board (which shall include the affirmative vote of at least one public representative, one broker-dealer representative, one bank representative and one municipal advisor representative), remove such member from the Board office.

(iii) If a member's change in employment or other circumstances results in a conflict with the requirements of subsection (a)(i) or (a)(ii) or section (f), the member shall be disqualified from serving on the Board as of the date of the change. If the Board determines that a member's change in employment or other circumstances does not result in disqualification pursuant to this paragraph but changes the category of representative in which the Board member serves, the member will be retained on the Board only upon a vote of a majority of the other members.

(d) *Vacancies.* Vacancies on the Board shall be filled by vote of the members of the Board. Any person so elected to fill a vacancy shall serve for the ~~term, or any unexpired portion, or any part thereof,~~ of the term, for which such person's predecessor was elected, provided that no member may serve for more than six years, including any partial term. ~~For purposes of this rule, the term "vacancies on the Board" shall include any vacancy resulting from the resignation of any person duly elected to the Board prior to the commencement of his or her term.~~

(e) *Compensation and Expenses.* The Board may provide for reasonable compensation of the MSRB Chair, ~~Committee Chairs~~ committee chairs, members of the Board, and members of any committee ~~Committee~~, including committees ~~Committees~~ made up entirely of non-Board members. The Board also may provide for reimbursement of actual and reasonable expenses incurred by such persons in connection with the business of the MSRB.

(f) *Affiliations.* Two persons associated with the same broker, dealer, municipal securities dealer or municipal advisor shall not serve as members of the Board at the same time.

(g) Public representative committee chairs. The chair of the committee responsible for nominations shall be a public representative. In addition, the chair of any other committee established in accordance with Rule A-6 that is responsible for assisting the Board in fulfilling its oversight responsibilities regarding the effectiveness of the Board's corporate governance system or its internal and external auditing shall be a public representative.

(gh) For purposes of this rule:

(i) the term "Dodd-Frank Act" means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

(ii) the term "independent of any municipal securities broker, municipal securities dealer, or municipal advisor" means that the individual has "no material business relationship" with any municipal securities broker, municipal securities dealer, or municipal advisor. The term "no material business relationship" means that, at a minimum, the individual is not and, within the last ~~two~~ five 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. The Board, ~~or by delegation its Nominating and Governance Committee,~~ may determine that additional circumstances involving the individual constitute a "material business relationship" with a municipal securities broker, municipal securities dealer, or municipal advisor.

(iii) the terms "municipal advisor" and "municipal entity" have the meanings set forth in Section 975(e) of the Dodd-Frank Act.

(i) Transition. The amendment to subsection (h)(ii) shall apply only to individuals who are elected after the date on which the amendment is effective.