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April 29, 2020

Submitted Electronically

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Dear Mr. Smith,

The Bond Dealers of America is pleased to submit comments on MSRB Notice 2020-02, "Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board" (the "Notice"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Notice sets out several potential changes to MSRB Rule A-3 related to Board membership. BDA agrees in principle with some of these potential amendments, and we oppose others, as detailed below.

Independence standard

The Notice addresses the issue of defining "no material business relationship" in the context of public representatives on the MSRB Board. Rule A-3 states that a public representative may not have been associated with a municipal securities dealer or municipal advisor and has no relationship with a regulated entity that would diminish their independent judgement. Beginning last year the Board has a policy but not a rule extending the period defining no material business relationship from two years to three. The Notice requests comment on extending that further to five years.

There is a trade off between providing for enough time to ensure director independence but not so much time that a director may no longer be "knowledgeable of matters related to the municipal securities market" as required by Rule A-3. Five years away from the industry and the market is too long for a Board member to be effective. We have spoken with former BDA members who, after leaving the industry, served on the MSRB Board. They believe that five years is too long to expect a Board member to have retained his or her knowledge and familiarity. Products, practices, and rules evolve quickly.

Also, there is no indication that the present two-year requirement in Rule A-3 has resulted in any issues related to director independence. We are not aware of any examples of public directors entangled by conflicts of interest or exhibiting diminished independent judgement or decision-making. There is not even an appearance of conflict of interest with a two-year separation. Both FINRA and the National Futures Association require that independent directors be away from the industry for only one year, and their boards maintain independent judgement.

We recommend that the MSRB maintain the 2-year separation provision in current Rule A-3. If the Board determines that a longer separation standard is necessary, it can implement a policy as in 2019.

Board size

The MSRB's Board is 21 members, 11 independent directors and 10 dealer and Municipal Advisor (MA) representatives. The Notice requests comment on reducing the Board size to 15 members, with 8 public and 7 industry members.

BDA believes a 21-member Board is too large. We support the proposal to reduce the Board size to 15 members. We also point out that the MSRB has not yet initiated its new Board member recruitment process for 2020, which typically begins in January. This strongly suggests that reducing the Board size is a foregone conclusion even before the comment period on the Notice closes, since the six directors whose terms will expire in September will leave the Board with the target 15 members if they are not replaced. We hope the MSRB has a contingency plan to recruit an additional six Board members before October in case the rule changes in the Notice are not finalized before then. Given that we are already well into the second quarter of 2020, and the virus crisis is disrupting processes everywhere, the MSRB should consider waiting a year until fiscal 2022 to implement any changes included in the Notice and beginning the process of recruiting 2021 directors as soon as possible.

Board composition

The Notice raises two potential rule changes related to Board composition. The first would specify that, with a 15-member Board and seven director seats reserved for dealer and MA representatives, at least two of the seven industry representatives must be non-dealer MAs. The second would specify that MAs who are also dealers but do not underwrite new-issue municipal securities would be eligible for one of the two MA seats on the Board.

BDA believes that reserving slots for MAs in excess of the statutory minimum is bad policy, especially now that MAs have been regulated for nearly 10 years, and the issues associated with MA regulation are well known to MSRB Board members and staff. If Congress had wanted to curtail the Board's discretion and require more favorable treatment of a particular regulated group, it could easily have done so. There is simply no reason to specify more seats for MAs than required in statute.

Rule A-3 should allow the Board flexibility to recruit industry representatives with the appropriate expertise to address the issues pending at the time, whether they are dealers or MAs. The Notice provides little justification for stipulating a minimum of two MA seats, stating only 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." If the minimum number of MA representatives were kept at the statutory requirement, nothing would stop the Board from recruiting a second, third, or fourth MA representative at any time. Rule A-3 should not limit the Board's flexibility in recruiting directors with the right expertise for the issues of the day.

Eliminating the requirement for a greater number of MA seats than the law mandates is especially important if, as under the current Rule A-3, dealers who are also registered MAs are not permitted to fill the Board seats reserved for MAs. The Notice requests comment on whether representatives of dealers who are also MAs but do not underwrite new-issue municipal securities should be eligible for seats reserved for MAs.

First, the vast majority of dealer MAs active in the municipal market also underwrite municipal securities. There are very few examples of dealer MA firms who do not also underwrite municipals—we

are aware of only three—so a rule change of this nature, which would exclude dealer MAs who also underwrite, appears targeted. Second, dealers pay the vast majority of the MSRB’s expenses. Around 80 percent of the MSRB’s revenue is derived from fees paid by dealers. Third, it is inappropriate in general for the MSRB to exclude dealer MAs from the reserved MA Board seats. Three of the top ten MAs in the country are dealers.¹ Dealer MAs represent a unique business model, and the firms that are dually registered are fully subject to both dealer and MA rules. The distinct perspective of dealer MAs is a benefit to the Board’s deliberations. If the MSRB moves forward with two Board seats dedicated to MAs, we urge you to consider reserving one of those slots for a dealer MA in order to ensure that the breadth of regulated businesses active in the market is fully representative. And we urge you to drop the requirement that eligible dealer MAs could not also underwrite municipal securities.

In addition to the changes related to Board composition detailed in the Notice, we recommend the MSRB consider a change to Rule A-3 or a comparable change in policy to specify a minimum number of issuer seats on the Board. In particular, we ask the MSRB to consider reserving one of the independent seats to a small issuer representative and another to a representative of a state 529 plan.

Member qualifications

The Notice proposes that Rule A-3 be amended so that directors would explicitly be required to be “individuals of integrity.” BDA supports this proposal and we urge you to provide additional details on how that determination would be made.

Transition plan to reduce board size

The Notice requests comment on a proposed plan to transition to the structural Board changes discussed here. The transition plan involves, among other steps, extending the terms of six directors by one year. The directors with extended terms will have served for a total of five years when they leave the Board.

We generally support the Transition plan in the Notice. We reiterate that given the circumstances, We ask the MSRB to delay implementation of any changes in the Notice for one year until 2022.

Board terms

Current Rule A-3 specifies that no director can serve for more than eight years of total, combined service, which provides for directors to serve two consecutive four-year terms. The Notice proposes and requests comment on reducing the maximum time of service to six years. General practice would be for directors to serve a single term.

BDA generally supports limiting directors’ total service time to six years. We agree with the MSRB that refreshing the Board contributes constructively to the MSRB’s work. We do not believe that limiting directors to a single term and six years of total service would harm Board continuity or institutional knowledge.

¹ Aaron Weitzman, “Top muni financial advisors of 2019,” *The Bond Buyer*, www.bondbuyer.com/list/top-municipal-financial-advisors-of-2019

Amendments to Board Nominations and Elections Provisions

The Notice states that the Board is considering changes to Rule A-3 related to the Board recruitment process, including no longer publishing the annual list of Board applicants. BDA supports the proposal to no longer publish the list of Board applicants. We ask that in the interest of transparency the MSRB consider making the list available to individuals on request.

BDA welcomes the opportunity to comment on the Notice. We ask that the MSRB consider the following points as it continues its work on governance.

- A five-year separation requirement for independent directors is too long.
- The MSRB should delay implementation of the changes included in the Notice until fiscal year 2022 and should begin recruiting the 2021 Board as soon as possible.
- Rule A-3 should not specify a minimum number of non-dealer MAs larger than required by statute. If the MSRB does specify two seats for MAs, one of those should be reserved for dealer MAs.
- Specify a minimum number of issuers among independent directors and reserve one seat for a small issuer representative.

Thank you for the opportunity to provide these comments. We look forward to the opportunity discuss our concerns with you.

Sincerely,

A handwritten signature in blue ink that reads "Mike Nicholas". The signature is written in a cursive, flowing style.

Mike Nicholas
Chief Executive Officer
Bond Dealers of America