

April 29, 2020

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

RE: Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board, 2020-02

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Request for Comment on Draft Amendments to MSRB Rule A-3: Membership on the Board, 2020-02.

The NFMA is a not-for-profit association with nearly 1,300 members in the United States, and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our Recommended Best Practices in Disclosure and White Papers are available on our website, www.nfma.org.

The NFMA's membership is diverse and consists of individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the municipal market. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms during their tenure on the board.

The following are the NFMA comments on the referenced draft amendments:

Independence Standard

1. What are the potential benefits of increasing the separation period to five years?

The separation period of five years is too long. As a general matter, it is the integrity and the stature of the individual chosen to be seated as a public representative that is the determinant



of independence. There is no palpable benefit beyond the current two-year separation period that would ensure greater independence beyond the two-year period. Qualified candidates would likely have lost touch with the market variables – particularly as the markets are evolving quickly – necessary to make an effective contribution. We recommend retaining the two-year period.

2. *What are the potential drawbacks of extending the separation period?*

See 1 above. Additionally, the practical reality of waiting five years to apply for Board membership could also reduce the pool of highly qualified applicants who might have moved on to other commitments.

3. *What is the ideal background for a public representative?*

The ideal background for a public representative includes a strong familiarity with the mechanics of the municipal bond market and investing therein. Individuals in certain areas of academia, industry associations, lawyers, workout specialists, and credit analysts could meet the statutory test. A particularly glaring absence over a long period of time has been that of credit analysts. We therefore recommend that at least one of the public member spots be reserved for Members from the following:

- A representative from a mutual fund family who analyzes municipal bonds for municipal bond portfolios, notwithstanding the fact that his or her firm may have a broker-dealer operation but whose primary business is not underwriting municipal securities.
- A representative from a mutual fund family whose primary activity is in the management of municipal bond portfolios or trading of bonds for those portfolios, notwithstanding the fact that his or her firm may have a broker-dealer operation but whose primary business is not underwriting municipal securities.
- A buy side analyst from a firm that is not a mutual fund.
- An insurance company.
- A bond counsel firm.
- A National Association of State Treasurers (NAST) member or other representative from state governments.
- A Government Finance Officers Association (GFOA) member representing local governments.

Ideally, we would urge the Board to consider a Board seat for an NFMA member (from the “slots” set forth above).

The NFMA strongly believes that in order for the Board to be more representative of market participants, it is incumbent on having better representation from the buy side, particularly mutual fund families and similar organizations. The proposed changes to the Board’s composition do not address this specific point. While it is true that the current member spot is



reserved for a buy side firm, the large mutual fund families are excluded from that seat. Mutual funds, in most cases, have broker dealer operations and are therefore definitionally excluded from the MSRB Board, while other institutional investors, such as a dedicated Separately Managed Accounts (SMA) entity, an insurance company, etc., would not be excluded. Since mutual funds, and, in turn, their retail shareholders, represent a major buyer element in the market, this is an important voice that remains missing from the Board. The NFMA suggests including them and waiving the broker/dealer rule in that case (similar to that being proposed for municipal advisors) so that the representatives of such firms can serve and the interests of their retail shareholders be considered. The exclusion of mutual fund buy side professionals from Board membership is unfortunate, and deprives the Board and the public of valuable market insight.

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?*

We believe that this is a cogent concern.

5. *Is a five-year separation period too long or too short? What is the optimal period of time?*

Given the concerns posited in question 4, we believe that retaining the two-year period is the best approach; five years is too long. If, ultimately, the decision is made to lengthen the separation period beyond two years, the NFMA could support up to a three-year separation, but this is not ideal. To be clear, however, our recommendation that buy side representatives be included among the public members relates to those currently working in the industry, not those that have retired.

Board Size

6. *What are the benefits of a reduction in Board size to fifteen members?*

A smaller Board could weaken the potential for balanced and broadened perspectives that we believe is crucial to the MSRB's effectiveness, particularly in light of the suggestions for term limits and lifetime service caps. Completion and implementation of the regulatory framework for Municipal Advisors does not change this mandate

The argument that a smaller Board would result in a cost savings is a specious argument given that the relatively nominal annual Board Member costs compared to salaries of key MSRB Executives. To make the day-to-day operations of the MSRB run more efficiently would produce a greater operational savings and should be implemented first, rather than reducing the size of the Board.



7. *What are the drawbacks of a reduction in Board size and how could those drawbacks be mitigated?*

Drawbacks include reduced diversity of views, market experience, and participation of individuals with different facets of market experience. In combination with term limits and lifetime service cap, the Board could become more transient in nature and suffer a loss in its institutional memory.

8. *Are there perspectives available with a Board size of 21 that would not be available with a Board size of 15?*

The answer to the question depends upon the Board committee established to review and accept the new Board members as agreed upon by the full Board. It will be up to the Board to determine what perspectives are available within the applicant pool. For sure, you will lose perspectives should the size of the Board be reduced. By definition by number, 21 to 15, you will have fewer perspectives just based upon the numbers alone. The MSRB has a broad mission to protect municipal securities investors, municipal entities and the public interest. This all but mandates a larger Board to support sufficiency of viewpoints that result in sound decision-making. It is likely that a larger Board could be less susceptible to a handful of viewpoints that could skew the conversation and make it easier to make recommendations arising from a less fulsome discussion.

For these reasons, we recommend that the Board not seek to reduce the Board size at this time.

Board Composition

9. *If the Board size is reduced, should it replace the requirement that at least 30% of the regulated representatives be municipal advisor representatives with at least two municipal advisor representatives?*

Should the Board size be reduced to 15 members, NFMA would support a maximum of two municipal advisor representatives

10. *Should municipal advisor members with a broker-dealer affiliate be allowed to serve in one of the two municipal advisor slots?*

We have no objection to this **with the stipulation that the buy side representatives are afforded the same provisions.**

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 municipal advisor slots?*

We will defer to our industry colleagues in the municipal advisor community for this.



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

We will defer to our industry colleagues in the municipal advisor community for this.

Reduced Board Size

13. *Are the transition goals appropriate?*

We understand the transition goals – but do not believe that a reduction in the Board size is warranted at this time.

14. *Are term extensions preferable to different term lengths?*

If a reduction in the size of the Board is implemented, limited extensions to specific current Board Members in order to move through a timely transition period is preferable to the election of new members for varying terms. The latter option would be disruptive to the continuity of Board decision-making throughout the transition period.

15. *Would considering Board member extensions as part of the annual nominations process help address any challenges to Board composition that may arise?*

It is unclear if this question is limited to the transition process or otherwise. Unless throughout the transition process a Board Member is no longer able to complete his/her term thereby causing a gap in the knowledge and expertise associated with that individual or if there is a loss of the majority public member, it is unlikely that it would be necessary to consider Board extensions during the annual nominations process.

Terms

16. *How should the Board evaluate the trade-offs inherent in further limiting the amount of time a Board member may serve?*

If the Board term is limited in conjunction with an increase in the separation period prior to application, there needs to be a level of comfort that the caliber and quantity of historical applications will continue in future. Also, if the experience has been for Members to serve two consecutive four-year terms, will Members limited to a six-year term have a sufficient ramp-up period to develop the acumen necessary to master complex regulations? How might the on-Boarding process have to change?

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



Given the complexity and expanse of regulations and deliberations by the Board, a single four-year term might not be optimal in the context of Board continuity and institutional knowledge. As proposed, we are unclear if the Member would be making a commitment for a total of six years of service or just for four years with a potential for two years of additional Board service and suggest that this be clarified.

18. Should the Board apply a lifetime service limit?

We believe that such a limit would be ill-advised. We can envision a situation where a former Board member (e.g., a buy side mutual fund analyst once the restrictions on such an individual's service are eliminated) can fill a different role (e.g., after retirement). To the extent that that individual is the best candidate among the applicants, it seems disadvantageous to disqualify him or her because of an arbitrary lifetime service limit.

If concerns remain that the acceptance of a former Board member creates a perception that their participation would limit new perspectives, a policy could be written to create a cooling-off period for reapplication by any former Board Member.

Nominations and Elections Provisions

19. Would retaining the existing detailed requirements related to the Nominating and Governance Committee benefit the market or can the objectives of those requirements be achieved through Board policies?

We will defer to the Board's judgment in this matter.

20. Does the requirement to publicize the name of applicants deter people from applying? Are there other approaches that provide transparency about the applicant pool while mitigating the unintended consequences of publicizing the names of applicants?

We appreciate the transparency afforded in reporting the names of applicants; we note that there have been many applicants each year for the available spots, so this transparency does not appear to be a problem. This requirement should be continued in the final rule.

21. Are there other changes that the Board should consider?

- The NFMA appreciates that the MSRB is sensitive to the concerns of constituencies outside of its purview. At this point in time, the MSRB has the opportunity to implement an institutional reset as it pertains to leadership, finances, and operations. We believe that the proposed changes to the Board should be undertaken in conjunction with an incoming CEO and not simply present him or her with a fait accompli. The existing Board construct is not broken. The proposed changes (reduction in number would produce an imbalance of market perspectives, term limits, and lifetime cap) have the potential to weaken the Board and potentially alter the



governing dynamic vis-à-vis a new CEO. Therefore, we would urge that any changes to the MSRB Board only be implemented after selection of and consultation with the new CEO.

- We recommend that one of the broker dealer or bank representative slots be reserved for a professional primarily engaged in the analysis of municipal securities (commonly called a sell side analyst or a desk analyst).
- We respect the effort to reduce the MSRB's reserves to a reasonable level and reduce the transaction fees imposed.
- The NFMA takes no issue with the Board seeking greater flexibility in establishing its committee structure through governance mechanisms such as charters and policies. That said, to preserve transparency, the rationale supporting all proposed amendments should be posted to the MSRB website and be easily found to all who access the MSRB's website. The NFMA could support the Board's inclusion in its rules that a public representative be required to chair its governance, nominations and audit committees.

The NFMA appreciates the opportunity to comment on the draft amendments to Rule A-3 and would be happy to speak with MSRB staff about them at your convenience.

Sincerely,

/s/ Nicole Byrd

Nicole Byrd
NFMA Chair

