

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62827; File No. SR-MSRB-2010-08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendments to Rule A-3, on Membership on the Board To Comply With the Dodd-Frank Wall Street Reform and Consumer Protection Act

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 27, 2010, the Municipal Securities Rulemaking Board (“Board” or “MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has requested accelerated effectiveness pursuant to Section 19(b)(2) of the Act.³ The Board seeks accelerated effectiveness of the rule change in order to implement the Board composition requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”), which has an effective date of October 1, 2010. The rule change must be effective prior to the effective date of the relevant provision of the Dodd-Frank Act so that the Board may elect a new Board for the 2011 fiscal year that complies with the Board composition provisions of the Dodd-Frank Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of amendments to Rule A-3, on membership on the Board, in order to facilitate the change in the composition of the Board to comply with the Dodd-Frank Act. The MSRB has requested that the proposed rule change be made effective on an accelerated basis.

The text of the proposed rule change is available on the MSRB’s Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx> and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make such changes to MSRB Rule A-3 as are necessary and appropriate prior to the election of new Board members for the fiscal year commencing on October 1, 2010 (fiscal year 2011), in order to comply with the Dodd-Frank Act and, more specifically, those provisions of the Dodd-Frank Act governing the nomination, election, and composition of the Board. On July 21, 2010, the Dodd-Frank Act was signed into law by President Obama. This comprehensive financial reform legislation contains various provisions that affect the governance and mandate of the MSRB. The effective date of these provisions is October 1, 2010, which coincides with the first day of the MSRB’s 2011 fiscal year.

The Dodd-Frank Act provides that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives, that the membership must be as evenly divided in number as possible between public and regulated representatives, and that the members be knowledgeable of matters related to the municipal securities markets.

As for the public members, at least one 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. As for regulated representatives, at least one must be associated with and representative of broker-dealers, at least one must be associated with and representative of bank dealers, and at least one must be associated with a municipal advisor. For the first time, the MSRB has been authorized to promulgate rules governing the conduct

of municipal advisors who must be fairly represented on the Board.

Although Section 975(b) of the Dodd-Frank Act provides that the Board shall be composed of 15 members, the same section permits the Board to increase the number of Board members, so long as the total membership is an odd number. It also requires that the public members be independent, as defined by the Board, of entities regulated by the MSRB.

In order to implement these terms of the Dodd-Frank Act by the effective date of October 1, 2010, the MSRB proposes a rule change to add sections (h) and (i) to Rule A-3. Section (h) defines certain terms consistent with the Dodd-Frank Act, including the term “independent of any municipal securities broker, municipal securities dealer, or municipal advisor,” which is similar to the independence definition used by other self-regulatory organizations. The term “independent of any municipal securities broker, municipal securities dealer, or municipal advisor” would mean 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,” in turn, would mean 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. The Board, or by delegation its Nominating 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.

Section (i) is a transitional provision intended to effectuate the relevant governance provisions of the Dodd-Frank Act by increasing the Board from 15 members to 21 members, who are knowledgeable of matters related to the municipal securities markets, 11 of whom will be independent, public representatives and 10 of whom will be regulated representatives, as of October 1, 2010. Of the 11 public members, at least one will be representative of institutional or retail investors, at least one will be representative of municipal entities, and at least one will be a member of the public with knowledge of or experience in the municipal industry.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(2).

Of the 10 regulated representatives, at least one will be associated with and representative of broker-dealers, at least one will be associated with and representative of bank dealers, and at least one, and not less than 30% of the total number of regulated representatives, will be associated with and representative of municipal advisors. The Board believes that such composition is fair to each regulated constituency and to the public.

In order to achieve this composition, the Board must elect 11 new members—eight public representatives and three municipal advisor representatives—prior to the start of the 2011 fiscal year. Although the Board had previously published a notice under the existing provisions of paragraph (a)(iii)(c) of Rule A-3 soliciting nominations of Board candidates for fiscal year 2011, in order to ensure a fair nomination process, the transition rule provides for a second publication, on or after enactment of the Dodd-Frank Act, of a notice in a national financial journal soliciting nominations for municipal advisor candidates, with the Nominating Committee accepting recommendations pursuant to such notice for a period of at least 14 days from the date of publication.⁴

Finally, the rule change provides that, in fiscal year 2011, the Board will amend Rule A-3(c) and make other changes consistent with the Act and the Dodd-Frank Act.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b) of the Act, as amended by the Dodd-Frank Act, in that it conforms the composition of the Board to the requirements of the Dodd-Frank Act as more fully described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it provides for fair representation on the Board of public representatives, broker dealer representatives, bank dealer representatives and municipal advisor representatives.

⁴ The MSRB published such additional notice on July 22, 2010, pursuant to which it received a number of additional recommendations for persons to serve as municipal advisor representatives on the Board.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission seeks comments on all aspects of the MSRB's proposed rule change, including the proposed composition of the MSRB Board and whether the number and proportion of public representatives, broker-dealer representatives, bank representatives, and advisor representatives is appropriate. Because the MSRB, under the Dodd-Frank Act, now will be proposing and adopting rules with respect to the activities of two distinct categories of market participants—municipal securities dealers and municipal securities advisors—is the proposed structure of the MSRB Board designed to assure that the interests of each are appropriately represented, and that a fair and effective regulatory regime will be implemented both for municipal securities dealers and municipal securities advisors? Are there alternative Board structures or other governance arrangements that would better achieve these goals? Is increasing the size of the MSRB Board the appropriate way to accommodate the new representation required by the Dodd-Frank Act, or should the new representation be accomplished by reconstituting the current Board? Will increasing the size of the MSRB Board negatively impact its ability to operate effectively? Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2010-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2010-08 and should be submitted on or before September 22, 2010.⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,
Deputy Secretary.

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⁵ The Commission believes that a 14-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

⁶ 17 CFR 200.30-3(a)(12).