



Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

September 13, 2011

In regard to File Number SR-MSRB-2011-11

Dear Ms. Murphy,

The Securities Industry and Financial Markets Association¹ (“SIFMA”) is pleased to comment on File Number SR-MSRB-2011-11 (Release Number 34-65158, the “MSRB proposal”), related to the Municipal Securities Rulemaking Board’s (“MSRB”) Notice of Filing Amendments to Rule A-3, on Membership on the Board.

SIFMA appreciates the MSRB’s examination of the size and structure of its Board in the wake of the enactment of the Dodd–Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, the “Dodd-Frank Act”), which mandates the most significant restructuring of the MSRB Board since the creation of the MSRB in 1975. However, we object to two elements of the MSRB’s proposal:

- We oppose a permanent Board of 21 members. We feel such a Board is too big, would result in problems filling the “public” seats with qualified members, and would impose unnecessary costs.
- We also oppose the MSRB’s proposal to mandate that at least 30 percent of “regulated” members of the Board be representatives of non-dealer municipal advisor firms. There is no comparable minimum for representatives of dealers or dealer banks, and the MSRB has offered no justification for this provision.

Background

The Dodd-Frank Act made several changes to the statutory provisions governing the MSRB Board. Section 975(b) of the Dodd-Frank Act specifies that the MSRB Board must be comprised of 15 members “or such other number of members as specified by rules of the Board.” Section 975(b) also specifies that a majority of the members of the MSRB Board must be “independent of

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

any municipal securities broker, municipal securities dealer, or municipal advisor,” referred to as “public representatives,” and a minority must be “associated with a broker, dealer, municipal securities dealer, or municipal advisor,” referred to as “regulated representatives.” Of the public representatives, at least one must be a representative of municipal securities investors, at least one must be a representative of a municipal entity, and at least one must be a “member of the public with knowledge of or experience in the municipal industry.” Of the regulated representatives, at least one must be associated with a non-bank dealer, at least one with a bank dealer and at least one with a municipal advisor.

On September 30, 2010 the SEC approved transitional amendments to MSRB Rule A-3: Membership on the Board (SEC Release No. 34-63025). These changes established a Board of 21 members comprised of 11 public representatives and 10 regulated representatives. Under the transitional rule, of the 11 public representatives, at least one must be a representative of municipal securities investors, at least one must be a representative of a municipal entity, and one must be “a member of the public with knowledge of or experience in the municipal industry.” Of the 10 regulated representatives, at least one must be associated with a non-bank municipal securities dealer, at least one with a bank dealer and “at least one, and not less than 30 percent of the total number of regulated representatives” with non-dealer advisors. On September 22, 2010 SIFMA filed a comment letter (the “transitional comment letter”) with the SEC on the MSRB’s transitional rule proposal.² The current MSRB proposal would amend MSRB Rule A-3 essentially to make permanent the transitional changes adopted last year.

Board size

SIFMA feels that a permanent MSRB Board of 21 members is too large for several reasons. First, 21 members exceeds the statutory minimum Board size. In our view, any deviation from the Board size referenced in statute should be for compelling reasons, and the MSRB has not provided a strong justification for a Board this large. The MSRB has argued merely that the current 21-member transitional Board “is working effectively” and that all constituencies “are appropriately represented by Board members who are able to provide input into the development of Board agendas and participate actively in deliberations.”

More importantly, we believe that a Board that includes 11 public representatives will create challenges in terms of recruiting candidates for Board seats with sufficient knowledge and expertise in the municipal securities market so as to contribute effectively in the Board’s discussions. The municipal securities market is a niche sector of the capital markets, with many unique and idiosyncratic characteristics. Many members of the public who otherwise are knowledgeable on the financial markets may not have sufficient “knowledge of or experience in the municipal industry” to contribute effectively.

Finally, we believe that a Board of 21 members would impose unnecessary costs on the MSRB. There are marginal costs associated with a larger Board attributable to travel and related expenses for Board meetings and other events. The MSRB has said in other contexts that its resources are strained,³ and in January 2011 the MSRB imposed substantial new assessments on its dealer

² Letter from Michael Decker, Managing Director, SIFMA, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, “In reference to File Number SR-MSRB-2010-08,” September 22, 2010, <http://www.sifma.org/workarea/downloadasset.aspx?id=21105>.

³ See MSRB Notice 2010-41, September 30, 2010. The MSRB discussed its “revenue shortfall” and stated that “First, the expenses of the MSRB are increasing and additional revenue is necessary in order to meet projected expenses associated with ongoing operations. Second, the MSRB needs additional revenue to

members.⁴ Given the MSRB's strained finances, we feel strongly that resources are better directed to key initiatives to improve the functioning of the market than to maintaining a larger Board.

In our transitional comment letter, we supported a 21-member Board as a transitional matter. However, we also urged the MSRB to restore the Board to 15 members in the future.

Regulated representatives

The MSRB has proposed, consistent with the current transitional Rule A-3, that of the regulated representatives on the Board, "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 30-percent minimum for non-dealer advisor representatives on the Board significantly exceeds the statutory minimum, which states only that each regulated constituency—dealers, banks and advisors—have at least one representative each on the Board.

The MSRB has offered no justification for establishing a higher minimum representation for non-dealer advisors than for any other constituency. Indeed, the only explanation the MSRB offers at all is that "providing a minimum number of non-dealer municipal advisors—at least 30% of the regulated representatives—is reasonable, and consistent with the Exchange Act." Why is it necessary to establish a minimum for non-dealer advisors above the statutory minimum but no comparable minimum for dealers, dealer banks, investors, municipal entities or public members of the Board? If the Board feels it is important to maintain a certain level of representation for non-dealer advisors, why can the Board not effect that practice through the annual nominating process? What is it about non-dealer advisors that affords that constituency special treatment in Rule A-3? The MSRB does not address any of these questions in its proposal. The MSRB did not provide any more fulsome explanation of this provision last year when it proposed transitional Rule A-3.

In our transitional comment letter last year, we did not oppose "as a transitional matter" the provision mandating that at least 30% of the regulated representatives be associated with non-dealer advisors. As we stated at the time, however, "we would oppose any permanent rule or policy which specified a minimum portion of regulated Board members be comprised of advisors in excess of what is mandated in statute."

Given that the MSRB has provided no reason or argument for why it is necessary to mandate that 30 percent of regulated representatives should be associated with non-dealer advisors, we urge the SEC to reject that provision of the MSRB proposal.

Summary

We recognize the need for the MSRB to establish permanent rules governing its Board size and structure so that the Board's composition meets the requirements of the Dodd-Frank Act and so

cover anticipated expenses associated with its new regulatory responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"). Third, the MSRB needs additional revenue to replace aging and outdated information technology software and hardware. In particular, funding is needed to ensure the operational integrity of the MSRB's information systems, retire and update computer hardware and software, and conduct ongoing risk management including business continuity activities and system maintenance."

⁴ See MSRB Notice 2010-62, December 30, 2010.

that it provides for appropriate discourse and deliberations. However, the MSRB has provided little justification for a 21-member Board and no justification at all for the requirement that at least 30 percent of regulated representatives be associated with non-dealer advisors. We urge the SEC to reject those two elements of the MSRB's proposal.

We appreciate the opportunity to present our views. Please contact us if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "M. Decker", with a stylized, cursive script.

Michael Decker
Managing Director and Co-Head of Municipal Securities

cc: Lawrence Sandor, Senior Associate General Counsel, MSRB