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March 17, 2016

**Category**

Administration

**Affected Rules**

[Rule A-3](#)

## SEC Approves Amendments to MSRB Rule A-3, on Membership on the Board, to Lengthen the Term of Board Member Service

### Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on March 17, 2016, to amend MSRB Rule A-3, on membership on the Board, primarily to lengthen the term of Board member service.<sup>1</sup>

In the Exchange Act, Congress delegated authority to the MSRB to determine many aspects of the composition of its Board of Directors (“Board”) by rule, including the size of the Board and the length of the term of Board member service.<sup>2</sup> In accordance with this authority, the MSRB has amended Rule A-3 to lengthen the term of Board member service, change the number and size of Board classes, limit the number of consecutive terms a Board member can serve, and eliminate the requirement that there be at least one municipal advisor representative per class that is not associated with a dealer (“non-dealer municipal advisor”). Overall, based on its experience and expertise regarding its mission and activities, the MSRB believes that the amendments will ensure greater continuity and institutional knowledge on the Board from year to year, particularly through the rulemaking process, and increase overall efficiency, while maintaining the benefits of having a significant number of new Board members join the organization each year.

<sup>1</sup> See Securities Exchange Act of 1934 (“Exchange Act”) Release No. 77390 (Mar. 17, 2016), File No. SR-MSRB-2016-01 (Jan. 15, 2016).

<sup>2</sup> The Exchange Act provides that “[t]he members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board,” and that the rules of the Board “specify the length or lengths of terms members shall serve.” 15 U.S.C. 78o-4(b)(1), (b)(2)(B)(ii).



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The amendments became effective on March 17, 2016. Questions concerning this notice may be directed to Robert A. Fippinger, Chief Legal Officer, and Carl E. Tugberk, Assistant General Counsel, at 202-838-1500.

## Summary of Rule Changes

### Term Length and Number and Size of Classes

The amendments to Rule A-3 increase the term length of Board members from three years to four years and the number of Board classes from three to four—one class comprised of six members and three classes of five. The changes in the number of classes and their sizes ensure that the MSRB nominates and elects new members every year, maintains classes that are as evenly distributed in size as possible, and always has a Board composition that satisfies the statutorily-required position allocations.<sup>3</sup> As required by the Exchange Act and Rule A-3(a) and (b)(i), the classes will continue to be as evenly divided in number as possible between Public Representatives and Regulated Representatives, and the Board will continue to be majority public.

### Limitation on Consecutive Terms

The amendments to Rule A-3 also preclude any Board member from serving more than two consecutive terms—limiting the length of consecutive service to eight years in total.<sup>4</sup>

### Elimination of Requirement for One Non-Dealer Municipal Advisor Per Class

Additionally, the amendments to Rule A-3 eliminate the requirement that there be at least one non-dealer municipal advisor per class. Because the rule now provides for four classes, not eliminating the requirement would have created an unintended obligation that the Board always include four non-dealer municipal advisors, thus potentially diminishing representation of other regulated entities. This amendment does not affect the existing requirement in Rule A-3(a)(ii)(3) that, for the Board as a whole, “at least one, and not less than 30 percent of the total number of [R]egulated [R]epresentatives, shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer or municipal securities dealer.” Therefore, this amendment does not reduce the minimum requirement of three municipal advisors nor does it prohibit the MSRB from

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<sup>3</sup> See 15 U.S.C. 78o-4(b)(1), (b)(2)(B)(i).

<sup>4</sup> Board members may only serve consecutive terms under two limited scenarios: (1) by invitation from, and due to special circumstances as determined by, the Board; or (2) having filled a vacancy and, therefore, having served only a partial term. See MSRB Rule A-3(b)(i).

deciding to include more than three non-dealer municipal advisors on the Board.

## Transition Plan

To effectuate the change in term length and changes in the number and size of classes, the MSRB is implementing a transition plan, under which each Board member who was elected prior to, and whose term ends on or after the end of, the MSRB's fiscal year 2016<sup>5</sup> could be considered for a term extension not exceeding one year. This process will occur over fiscal years 2017, 2018 and 2019. The transition will proceed as follows: (1) for fiscal year 2017, one Public Representative from the Board class of 2016 (*i.e.*, members with terms ending on September 30, 2016) will receive a one-year extension and six other members will begin four-year terms; (2) for fiscal year 2018, one Public and two Regulated Representatives from the Board class of 2017 (*i.e.*, members with terms ending on September 30, 2017) each will receive a one-year extension and five other members will begin four-year terms; and (3) for fiscal year 2019, three Public and two Regulated Representatives from the Board class of 2018 (*i.e.*, members with terms ending on September 30, 2018) each will receive a one-year extension and five other members will begin four-year terms. In fiscal year 2020, no further extensions will be required and five members will begin four-year terms, completing the transition to four classes. From that point forward, the Board will repeatedly nominate and elect classes in the sequence of six, five, five, and five members.

March 18, 2016

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<sup>5</sup> The MSRB's fiscal year commences on October 1 of a given year and ends on September 30 of the following year.

## Text of Amendments\*

### Rule A-3: Membership on the Board

(a) No change.

(b) *Nomination and Election of Members.*

(i) Members shall be nominated and elected in accordance with the procedures specified by this rule. The 21 member Board shall be divided into ~~three~~ four classes, ~~each one~~ class being comprised of ~~seven~~ six members and three classes being comprised of five members, who serve ~~three~~ four-year terms. The classes shall be as evenly divided in number as possible between public representatives and regulated representatives, ~~and there shall be at least one municipal advisor representative per class that is not associated with a broker, dealer or municipal securities dealer.~~ The terms will be staggered and, each year, one class shall be nominated and elected to the Board of Directors. 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 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 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 succeeds himself or herself in office.

(ii)-(vii) No change.

(c)-(f) No change.

(g) *For purposes of this rule:*

(i) No change.

(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 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

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\* Underlining indicates new language; strikethrough denotes deletions.

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) No change.

~~(h) Transitional Provision for the Board's Fiscal Years 2013 and 2014.~~

~~(i) Notwithstanding any other provision of this rule, for the Board's fiscal years commencing October 1, 2012 and ending September 30, 2014, the Board shall transition to three staggered classes of seven Board members per class. During this transitional period, Board members who were elected prior to July 2011 and whose terms end on or after September 30, 2012 may be considered for term extensions not exceeding two years, in order to facilitate the transition to three staggered classes of seven Board members per class. Board members shall be nominated for term extensions by a Special Nominating Committee formed pursuant Rule A-6. The Board shall vote on each nominee for term extension prior to the end of fiscal year 2011.~~