

MEMO# 29174

July 13, 2015

ICI Files Comment Letter Supporting MSRB's Proposed Amendments to Rule A-3

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 17-15 RE: ICI FILES COMMENT LETTER SUPPORTING MSRB'S PROPOSED AMENDMENTS TO RULE A-3

As you know, the Municipal Securities Rulemaking Board is seeking comment on proposed amendments to MSRB Rule A-3 regarding qualifications for board membership.* The draft amendments modify the standard of independence required by the Securities Exchange Act of 1934 for the one public board member representing institutional or retail investors in municipal securities ("Investor Representative"). The current standard of independence will continue to apply to all other public board members. According to the MSRB, the draft amendments are designed to allow the MSRB to consider a broader group of applicants to serve in that board member position. Additionally, the MSRB is seeking comments on whether it should extend the length of board member service and remove or modify the requirement that the MSRB publish the names of all board applicants.

ICI's comment letter is attached and briefly summarized below.

ICI supports the MSRB's proposal to improve its ability to identify and select individuals who represent investors and have significant knowledge of the municipal securities market to serve on the MSRB Board. The letter notes that the proposal would increase the opportunity for employees of investment advisers, including advisers to registered investment companies ("fund advisers"), to serve on the MSRB Board. Additionally, ICI's letter supports efforts to extend the length of MSRB Board member service and remove or modify the requirement that the MSRB publish the names of all board applicants.

The twenty-one members of the MSRB Board are charged with the significant responsibility of protecting municipal entities, investors, and the public interest. Each representative should bring to the table experience and expertise to effectively serve the interests of their constituents. As a starting point, there is only one required Investor Representative position on the MSRB Board—for both retail and institutional investors. The letter notes that the proposed amendments offer the potential to improve the quality of representation for both institutional and retail investors, which would enhance the MSRB's ability to satisfy

its investor protection mandate.

The letter explains that the proposal's function-oriented approach would allow the MSRB to consider candidates who have the relevant municipal securities knowledge and expertise to represent investors, but who technically may have some association or corporate affiliation with a regulated entity. For example, the MSRB's rulemaking mandate increasingly requires the MSRB to engage in deliberations regarding highly complex issues relating to the structure and operation of the market, including how municipal securities are priced and transacted. As representatives of underlying fund retail and institutional investors, fund advisers invest in the municipal securities market on behalf of fund investors and interact with a variety of market participants. This provides a distinct and at times contrasting view of the municipal market and its structure compared to representatives or employees of regulated entities or other Public Representatives who represent other market participants, such as municipal issuers and insurers. In fact, the MSRB acknowledges that investment advisers with "buy-side" expertise and representative of investors (e.g., fund portfolio managers) could help the MSRB be as informed as possible on all aspects of the municipal securities markets, particularly with respect to current and future market structure initiatives.

The letter also notes that the proposal is appropriately limited in a manner consistent with the Securities Exchange Act. The modified standard of independence retains the prohibition on an individual having relationships with regulated entities that reasonably could affect his or her independent judgment or decision making. Specifically, the proposal would require the MSRB Board to undertake additional analysis to ensure that the Investor Representative does not have any material business relationship with a regulated entity. To help make this determination, the proposal includes a non-exhaustive list of specified factors for the board to consider. The factors are whether: (1) the revenue from the regulated entity accounts for a material portion of the revenues of the consolidated entity that includes the investment adviser; (2) the regulated entity facilitates the origination of municipal securities; and (3) the investment adviser has a fiduciary duty to the investment company or other investor clients.

The letter states that we support the inclusion of meaningful factors that would enable the MSRB Board to limit the pool of applicants to individuals who are truly independent of any regulated entity and representative of investors. For example, we agree that the amount of revenue from a regulated entity affiliated with an investment adviser is an important factor in determining whether the affiliation impairs independence. The source of that revenue, however, may be equally as important. Specifically, the letter notes that revenue derived from services provided to affiliated investment advisers and other affiliated entities may be less of a factor in determining whether an individual has a disqualifying nexus with a regulated entity, than revenue derived from third parties.

The letter also notes that the proposed third factor—"the investment adviser has a fiduciary duty to the investment company or other investor clients"—is not necessary because the first part of the proposed modified standard of independence only applies to investment advisers, which by law are fiduciaries.

For all of these reasons, the letter expresses our strong support for the proposed amendments to MSRB Rule A-3.

Other Issues Raised by MSRB

The MSRB also requests comment on whether it should extend the length of the board

member service, and, if so, in what manner. Currently, board members are divided into three seven-member classes who serve three-year, staggered terms and can only serve consecutive terms under special circumstances. The MSRB believes allowing members to serve on the board for longer than three years will improve the effectiveness of the board because board members typically take multiple years to fully understand the MSRB's rulemaking process and oversight obligations. The letter express our support for modifications to Rule A-3 that would allow board members to serve, for example, consecutive three-year terms without the special circumstances exception.

The letter also notes that we share the MSRB's concerns that the current requirement to publicly announce the names of all board member applicants deters applicants who are concerned that not being selected will negatively impact their professional career. As an alternative to removing the requirement, the MSRB is considering whether it should publish other identifying information, such as the names of the applicants' employer, to maintain the anonymity of the individual applicants. The letter notes our support for such an approach.

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[Attachment](#)

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