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April 15, 2020

ICI Files Comment Letter on MSRB's Draft Amendments to Rule A-3 on Membership on the Board

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TO: ICI Members

Municipal Securities Advisory Committee SUBJECTS: Municipal Securities RE: ICI Files Comment Letter on MSRB's Draft Amendments to Rule A-3 on Membership on the Board

As you know, the Municipal Securities Rulemaking Board is seeking comment on draft amendments to MSRB Rule A-3 regarding qualifications for board membership. Among other things, the amendments would tighten the independence standard required of “public representatives.” ICI has filed a comment letter opposing these amendments, which is attached and briefly summarized below.

As discussed in our comment letter, we believe the proposal is unnecessarily restrictive, inconsistent with the post-employment rules and restrictions for former federal government officials, and could severely decrease the opportunity for former employees of investment advisers, including advisers to registered investment companies, to serve on the Board.

Additionally, the MSRB is seeking comments on whether it should expand the definition of the Board’s municipal advisor category. The letter notes that we would support permitting a municipal advisor associated with a dealer to sit on the Board, provided the same opportunity is extended to the Board’s investor representative.

Independence Standard

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 15B(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) to require that a majority of MSRB board members be independent (“public representatives”), while the remainder be associated with a broker, dealer, municipal securities dealer, or municipal advisor (“regulated representatives”).

The MSRB defines a public representative as an individual who has “no material business relationship” with any municipal securities broker, municipal securities dealer, or municipal

advisor (“regulated entity”). The MSRB defines “no material business relationship” to mean the individual is not or was not “associated with” a regulated entity within the last two years. In addition, the individual must not have a relationship with any regulated entity that reasonably could affect his or her independent judgment or decision making.

According to the Notice, the MSRB has found that the Board’s public representatives have played an invaluable role, and the Board believes they have acted with the independence required by the Exchange Act, MSRB Rules, and their duties as public representatives, notwithstanding any such prior affiliation.

MSRB’s Proposal

Despite the invaluable role the public representatives have served and the MSRB’s two previous attempts (in 2013 and 2015) to enhance the representation of investors on its Board, the letter notes that the MSRB is now seeking comment on whether extending the separation period to five years (from two) would enhance the independence of public representatives who have prior regulated entity associations. The only justification proffered for this proposed change and apparent new concern over the independence of public representatives is that “some commentators have questioned whether a two-year separation period is sufficiently long.”

The letter states that we have serious concerns with this proposal. First and foremost, we note that it will unnecessarily impede the MSRB’s ability to identify and select individuals who represent investors and have significant knowledge of the municipal securities market to serve on the Board, especially since there is only one required investor representative position on the MSRB Board—for both retail and institutional investors. The MSRB also has offered no explanation for extending the period beyond two years.

A five-year separation period also is inconsistent with (and longer than) the post-employment rules and restrictions for former federal government officials in both the executive branch (including the SEC) and the legislative branch. For these reasons, the letter notes that we strongly oppose the proposed amendments to MSRB Rule A-3 that would extend the separation period to five years.

Municipal Advisor Definition

The MSRB also is considering a limited expansion of its definition of the municipal advisor category. Within the regulated representative category, at least one board member must be associated with a dealer that is a bank, at least one must be associated with a dealer that is not a bank, and at least one must be associated with a municipal advisor.

Currently, Rule A-3 provides that the required municipal advisor members must not be associated with dealers. The board is considering permitting—but not requiring—one municipal advisor representative to be associated with a broker, dealer, or municipal securities dealer, provided that such entity does not engage in underwriting the public distribution of municipal securities. The MSRB believes that such a requirement could facilitate their efforts to obtain the perspectives of the full range of municipal advisor firms.

We strongly supported the MSRB’s 2013 and 2015 proposals that would have allowed it to consider candidates who have the relevant municipal market knowledge and expertise to represent investors, but who technically have some association or corporate affiliation with a regulated entity, such as a broker-dealer. The letter notes that we therefore would

support permitting a municipal advisor associated with a dealer to sit on the Board, provided the same consideration is extended to the Board's investor representative.

Jane G. Heinrichs
Associate General Counsel

[Attachment \(in .pdf format\)](#)

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