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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule A-3, on Membership on the Board

January 29, 2016

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 15, 2016, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 filed with the Commission a proposed rule change consisting of proposed amendments to Rule A-3, on membership on the Board, 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, 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”), delete an obsolete transition provision and provide a technical update to the name of a Board

¹ 15 U.S.C. 78s(b)(i).

² 17 CFR 240.19b-4.

committee (collectively, the “proposed rule change”). The MSRB requests that the proposed rule change be effective on the date of Commission approval.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx, at the MSRB’s principal office, 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 MSRB has prepared summaries, set forth in Sections 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 MSRB is the self-regulatory organization (“SRO”) created by Congress to establish regulation for the \$3.7 trillion municipal securities market, including rules governing the municipal securities activities of dealers and the municipal advisory activities of municipal advisors. The MSRB’s mission is to protect municipal entities, obligated persons, investors and the public interest, and to promote a fair and efficient municipal securities market. The Board is comprised of 21 members³ who, collectively, govern the MSRB to carry out its mission primarily by regulating dealers and municipal advisors, providing market transparency through

³ See MSRB Rule A-3(a).

its Electronic Municipal Market Access (EMMA®) website⁴ and conducting market leadership, outreach and education. The MSRB believes that increasing the term length for Board membership from three years to four years will improve the Board’s ability to fulfill this purpose.

Many general, and some more detailed, aspects of the Board’s composition are set forth in the Exchange Act.⁵ It categorizes the members of the Board into two broad groups: individuals who must be associated with a broker, dealer or municipal securities dealer (“dealer”) or municipal advisor (collectively, “Regulated Representatives”), and individuals who must be independent of any dealer or municipal advisor (“Public Representatives”).⁶ The Act then specifies that the number of Public Representatives must at all times exceed the number of Regulated Representatives,⁷ and sets minimum requirements for certain types of individuals to serve in the two groups.⁸

At the same time, Congress delegated authority to the MSRB to determine many aspects of Board composition by rule, including such important aspects as the size of the Board and the length of the term of Board member service.⁹ Currently, the Board is divided into three seven-

⁴ EMMA® is a registered trademark of the MSRB.

⁵ See 15 U.S.C. 78o-4(b)(1). Rule A-3 further establishes the Board’s composition.

⁶ See 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a)(i)-(ii).

⁷ See 15 U.S.C. 78o-4(b)(2)(B)(i).

⁸ See 15 U.S.C. 78o-4(b)(1); MSRB Rule A-3(a).

⁹ The 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).

member classes that serve staggered, three-year terms.¹⁰ Under this framework, total Board tenure typically is no more than three years because 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.¹¹

In June 2015, the MSRB published a request for comment on several Board governance matters, including whether the MSRB should consider, at a conceptual level, proposing amendments to modify the length of Board member service.¹² In response, the MSRB received nine comment letters that specifically addressed that issue.¹³ Most of the commenters generally supported the MSRB's consideration of modifying the length of Board member service, but they offered varying perspectives and approaches to the modification.

The MSRB carefully considered all of the comments received in response to the First Request for Comment and determined to publish a second request for comment on draft amendments to lengthen the term of Board member service from three years to four years.¹⁴ In response to the Second Request for Comment, the MSRB received five comment letters, all of which supported the increase.¹⁵ After carefully considering all of the comments received in response to both requests for comment, the MSRB determined to file this proposed rule change to increase Board member term length from three years to four years.

¹⁰ See MSRB Rule A-3(b)(i).

¹¹ Id.

¹² MSRB Notice 2015-08 (Jun. 11, 2015) ("First Request for Comment").

¹³ See infra note 28.

¹⁴ MSRB Notice 2015-18 (Oct. 5, 2015) ("Second Request for Comment").

¹⁵ See infra note 29.

The optimal term length for members of an organization depends to a great extent upon the particular characteristics of the organization, including the nature of its mission and its activities. It is necessarily a balance among numerous competing interests, such as the interests in continuity, institutional knowledge and membership experience, on the one hand, and the interest in the addition of new perspectives, on the other. To date, the MSRB has aimed to achieve this balance using a Board member term of three years, but it now believes that the desired balance could be better achieved using an incrementally longer Board member term of four years.

Based on its experience and the views repeatedly expressed by former Board members, the MSRB believes that members are capable of making significantly increasing contributions with each year that they become more fully acclimated to the role and work of the MSRB.¹⁶ The existence of such a multi-year “learning curve” is consistent with views expressed in a survey conducted by the Society of Corporate Secretaries and Governance Professionals of board members across a range of industries.¹⁷ A number of studies suggest that longer board member

¹⁶ The current, standard three-year term of Board member service is significantly shorter than the average tenure of over eight years that studies have shown for members of other boards. See Spencer Stuart Board Index 2014, 5, available at <https://www.spencerstuart.com/~media/pdf%20files/research%20and%20insight%20pdfs/ssbi2014web14nov2014.pdf%20target>; Governance Minutes by the Society of Corporate Secretaries and Governance Professionals – Director Tenure (February 26, 2014), available at <http://main.governanceprofessionals.org/governanceprofessionals/memberresources/resources/viewdocument/?DocumentKey=37b09de5-7404-4eab-bc70-10741cbf7138> (stating that average board member tenure is eight to ten years and that board members typically experience a three to four year learning curve) (“Governance Minutes”). Although this research focuses on corporate boards, the MSRB believes the learning curve and evolution of an individual director’s participation on and contributions to a corporate board are analogous to the experience of MSRB Board members as they gain more tenure.

¹⁷ See Governance Minutes, supra note 16.

tenures—to a point—are associated with superior governance.¹⁸ Overall, based on its experience and expertise regarding its mission and activities, the MSRB believes that having members serve on the Board for a fourth year would improve the continuity and institutional knowledge of the Board from year to year, as well as its overall efficiency and effectiveness due to the collective value of retaining several members who possess additional knowledge and experience from their service as MSRB Board members.

Greater continuity and institutional knowledge is very important for the MSRB rulemaking process. This process, particularly for rules that are complex or address unique problems, frequently spans multiple years from conception to full implementation.¹⁹ Even for rulemaking initiatives that can be completed in relatively less time, Board members have noted frequently that they are often able to engage more fully and effectively in the process after they have gained experience with the organization and have deeper knowledge of other, related rulemaking activities.

The MSRB believes that the proposed rule change would ensure greater continuity and institutional knowledge 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.

¹⁸ See, e.g., Nikos Vafeas, Length of Board Tenure and Outside Director Independence, 30 J. OF BUS. FIN. & ACCT. 1043 (2003); Lucian Arye Bebchuck, Jesse M. Fried, and David I. Walker, Managerial Power and Rent Extraction in the Design of Executive Compensation, 69 U. OF CHI. L. REV. 751 (2002).

¹⁹ For example, the MSRB began its current rulemaking initiative for Rule G-42, to establish core standards and duties for municipal advisors, in the fall of 2013, and will not be fully implemented until June of 2016. The MSRB's initiative for Rule G-18, to establish the first best-execution rule for transactions in municipal securities, began as early as the spring of 2013 and will continue to be in an implementation period until March of 2016.

Proposed Amendments to Rule A-3

The proposed rule change would lengthen the term of Board member service from three years to four years, and it would facilitate the new, longer term length by increasing the number of Board classes and adjusting their sizes. Additionally, the proposed rule change would limit the number of consecutive terms a Board member can serve to two, and would eliminate the requirement that there be at least one non-dealer municipal advisor per Board class. Finally, the proposed amendments would delete an obsolete provision from the rule.

All of the amendments included in the proposed rule change are to Rule A-3(b)(i). First, they would increase the Board member term length 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 would ensure that the MSRB nominates and elects new members every year, maintains classes that are as evenly distributed in size as possible, and has a Board composition that always satisfies the statutorily-required position allocations,²⁰ while resulting in a consistent and manageable rate of turnover from year to year. As required by the Exchange Act and Rule A-3(a) and (b)(i), the classes would continue to be as evenly divided in number as possible between Public Representatives and Regulated Representatives, while also being majority public.

Second, no Board member could serve more than two consecutive terms—eight years in total—which could only occur under the special circumstances exception. This added provision would ensure that the special circumstances exception is not overused, mitigate some commenters' concerns of Board members becoming too dominant and unduly influential,²¹

²⁰ See supra notes 6-8.

²¹ See infra Section C, Increase in Term Length – Limits.

assure appropriate turnover of Board membership and help maintain a robust pool of applicants for Board service. The MSRB believes this modification will reflect good corporate governance as applied to the particular characteristics of the MSRB.

Third, the proposed rule change would eliminate the requirement that there be at least one non-dealer municipal advisor.²² Because the draft amendments would result in four classes, not eliminating this requirement would create an unintended obligation that the Board always include four non-dealer municipal advisors, thus potentially diminishing representation of other regulated entities. The proposed rule change would 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, nothing in this change would reduce the minimum required representation of municipal advisors nor would it prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the Board. All other provisions in Rule A-3(b)(i) would remain unchanged.

To effectuate the changes in term length and the number and size of classes, the MSRB would implement 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 2016,²³ could be considered for a term extension not exceeding one year. This process would occur over fiscal years 2017, 2018 and 2019. The transition would proceed as follows: (1) for fiscal year 2017, one Public Representative from the Board class of 2016 (i.e., members who began a three-year term on

²² See MSRB Rule A-3(b)(i).

²³ The MSRB’s fiscal year commences on October 1 of a given year and ends on September 30 of the following year.

October 1, 2013) would receive a one-year extension and six new members would join the Board; (2) for fiscal year 2018, one Public and two Regulated Representatives from the Board class of 2017 (i.e., members who began a three-year term on October 1, 2014) each would receive a one-year extension and five new members would join the Board; and (3) for fiscal year 2019, three Public and two Regulated Representatives from the Board class of 2018 (i.e., members who began a three-year term on October 1, 2015) each would receive a one-year extension and five new members would join the Board. The full Board would vote by ballot on all members eligible for term extensions to determine who receives them. The selection of Board members whose terms would be extended would be in compliance with the statutorily-required compositional requirements of the Board, and the Board would continue to consist of 21 members with a majority of Public Representatives.²⁴ In fiscal year 2020, no further extensions would be required and five new members would join the Board, completing the transition to four classes. From that point forward, the Board would repeatedly nominate and elect classes in the sequence of six, five, five, and five members. While there are numerous possible combinations of the number of Board classes and the number of members in each class, the MSRB believes this specific combination would achieve the transition expeditiously and efficiently while minimizing any disruption from the changes.

MSRB Rule A-3(h) currently describes the transition process the MSRB used to increase its Board size from 15 to 21 members during its fiscal years 2013 and 2014, and to be in compliance with new requirements established by the Dodd-Frank Wall Street Reform and

²⁴ See supra notes 3 and 6-8.

Consumer Protection Act of 2010.²⁵ The proposed rule change would delete this provision from Rule A-3 because that process has been completed and the provision is, therefore, obsolete.²⁶

Finally, MSRB Rule A-3(g)(ii) makes reference to the “Nominating Committee,” which is now called the “Nominating and Governance Committee.” Accordingly, the proposed rule change would update the reference to the current name of the committee.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(B) of the Act, which provides that the MSRB’s rules shall:

establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of [P]ublic [R]epresentatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules —

(i) shall provide that the number of [P]ublic [R]epresentatives of the Board shall at all times exceed the total number of [R]egulated [R]epresentatives and that the membership shall at all times be as evenly divided in number as possible between [P]ublic [R]epresentatives and [R]egulated [R]epresentatives;

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

²⁵ See Pub. L. No. 111-203, 124 Stat. 1376; Exchange Act Rel. No. 65424 (Sept. 28, 2011), 76 FR 61407 (Oct. 4, 2011) (SR-MSRB-2011-11) (approving the MSRB’s establishment of a Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve staggered three-year terms).

²⁶ In the Second Request for Comment, the MSRB included draft amendments to MSRB Rule A-3(h)(i) to include the transition plan. Since that plan is fully described herein and the inclusion of rule text that duplicates that description would become obsolete and eventually require a proposed rule change to be removed from the rulebook, the MSRB does not believe it should be included.

Specifically, the MSRB believes the increase of the term length from three to four years, the change in the number and size of Board classes from three classes of seven members to one class of six and three classes of five, and the elimination of the requirement that there be one non-dealer municipal advisor per class are consistent with the Exchange Act in that the composition of the Board would continue to satisfy all of the statutory requirements.²⁷ In particular, the number of Public Representatives would continue to exceed the total number of Regulated Representatives and the classes would continue to be as evenly divided in number as possible between Public and Regulated Representatives. Further, the proposed rule change specifies the length of term that Board members would serve — four years, which, for the reasons discussed earlier, the MSRB believes will improve the effectiveness and efficiency of the Board.

The MSRB also believes the limitation of consecutive terms to two, totaling a maximum of eight years of consecutive service, is consistent with the Exchange Act in that it specifies the length of term that Board members can serve when the MSRB invokes the special circumstances exception.

Further, the MSRB believes the proposed deletion of the transition process described in MSRB Rule A-3(h) is consistent with the Exchange Act because removing the obsolete provision would improve the clarity and readability of the rule. The MSRB also believes the proposed update to the reference to the “Nominating and Governance Committee” in MSRB Rule A-3(g)(ii) is consistent with the Act because it promotes the accuracy of the rule in regard to a reference to a component of the Board’s governance structure.

²⁷ See supra notes 5-8.

Finally, none of the amendments in the proposed rule change alters the number of members that constitutes the whole Board or the requirements regarding the independence of Public Representatives.

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

Section 15B(b)(2)(C) of the Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it is concerned solely with the administration of the SRO.

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

The MSRB received nine comment letters specifically addressing the issue of whether to modify the length of Board member service in the First Request for Comment²⁸ and five comment letters in response to the Second Request for Comment.²⁹ The comment letters are summarized below by topic.

²⁸ See letters from: Jerry Gold ("Gold"), dated July 17, 2015; Dustin McDonald, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), dated July 20, 2015; Dorothy Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute ("ICI"), dated July 13, 2015; Bob Lamb ("Lamb"), President, Lamont Financial Services Corporation, dated July 7, 2015; Terri Heaton, President, National Association of Municipal Advisors ("NAMA"), dated July 13, 2015; Lisa S. Good, Executive Director, National Federation of Municipal Analysts ("NFMA"), dated July 13, 2015; Benjamin S. Thompson ("Thompson"), Managing Principal and Chief Executive Officer, Samson Capital Advisors, dated July 7, 2015; Rick A. Fleming, Investor Advocate, SEC ("SEC Investor Advocate"), dated July 13, 2015; and Michael Decker, Managing Director, Securities Industry and Financial Markets Association ("SIFMA"), dated July 13, 2015. Lamb and Thompson are former Board members.

²⁹ See letters from: Michael Nicholas, Chief Executive Officer, Bond Dealers of America (BDA), dated November 19, 2015; Stephen Heaney ("Heaney"), dated November 10, 2015; NAMA, dated November 19, 2015; SEC Investor Advocate, dated October 29,

Increase in Term Length – General

As noted above, all of the comments in response to the Second Request for Comment supported increasing the length of Board member service from three years to four years.³⁰ Notably, the SEC Investor Advocate agreed with the MSRB that lengthening the term would improve continuity and institutional knowledge of the Board from year to year, while retaining the benefits of the regular addition of new members, and that the amendments proposed are a reasonable approach to achieving that goal. More specifically, he noted that the increased term length would give Board members, particularly Public Representatives,³¹ more time to develop the institutional knowledge and experience required for fully engaged and effective oversight of the MSRB, which he believes would be in the best interest of investors because it may lessen what he considered to be the Board's natural dependence upon Regulated Representatives,³² who he presumed have greater experience on certain issues. To this point, Heaney, a former Board member who served for four years due to the Board's transition from 15 to 21 members, believes the MSRB would benefit significantly from the added stability and continuity, as he believes his

2015; and SIFMA, dated November 19, 2015. Heaney is a former Board member, who served a four-year term under a previous transition period between October 1, 2009, and September 30, 2013.

³⁰ In response to the First Request for Comment, Thompson believed that a longer Board member term could allow the Board to leverage accumulated knowledge more effectively than the current three-year term length. Gold was generally opposed to the lengthening of Board member service, and GFOA stated that the current single three-year terms ensure consistent turnover and the introduction of new perspectives on the Board. Neither Gold nor GFOA commented in response to the Second Request for Comment, which contained the specific draft amendments to increase the term length from three years to four years.

³¹ See MSRB Rule A-3(a)(i) (defining a Public Representative as an individual “independent of any municipal securities broker, municipal securities dealer, or municipal advisor”).

³² See MSRB Rule A-3(a)(ii) (defining a Regulated Representative as an individual “associated with a broker, dealer, municipal securities dealer, or municipal advisor”).

extra year enabled him to contribute more than he would have otherwise been able to in a three-year term. BDA believes that a four-year term is an acceptable balance and that having an extra year to serve on the Board would promote continuity of knowledge and ensure appropriate overlap among those working on rule proposals and other changes that affect how the municipal securities market operates. Finally, the SEC Investor Advocate believes the proposed term length of four years is appropriate when compared to the structure of similar organizations with a mission to protect investors, all with board member terms in the range of three to five years.³³

Increase in Term Length – Limits

SIFMA supported the increase in term length from three to four years and believes the change would improve continuity and institutional knowledge of the Board from year to year. However, SIFMA is concerned that serving more than one term could create an environment in which one or more Board members with multiple terms of service could become too dominant in Board deliberations and have undue influence, particularly considering that the Board has a majority of Public Representatives, who SIFMA suggested may not have significant market or industry experience. Accordingly, SIFMA urged the Board to consider further specifying or limiting the circumstances under which a Board member may serve more than four years by: (1) more explicitly defining the special circumstances exception allowing consecutive terms;³⁴ (2)

³³ The SEC Investor Advocate made the comparison to the term lengths of members of the Financial Industry Regulatory Authority (“FINRA”), the Public Company Accounting and Oversight Board (“PCAOB”), the SEC, and the SEC’s Investor Advisory Committee.

³⁴ See MSRB Rule A-3(b)(i) (“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.”).

imposing a maximum lifetime limit on Board service;³⁵ or (3) specifying that when a Board member, who has already served a full term is retained or recalled to fill a sudden vacancy, that the member's extended term be temporary for only as long as necessary to recruit a qualified, permanent new member to fill the vacancy.

First, the MSRB does not believe it should more explicitly define the special circumstances exception, which the Commission approved in January 2011.³⁶ In its filing, the MSRB noted a Board member possessing special expertise needed by the Board that is not possessed by other Board members or generally by persons in the pool of potential candidates for Board membership as an example of how the exception would be applied. Given that the Commission found the current provision to be consistent with the Exchange Act, and that the MSRB has only applied it twice for the purpose of maintaining the special expertise of a member, with the use for that purpose being consistent with the MSRB's explanation in the filing, the MSRB does not believe any additional specificity is needed in the rule.³⁷

Second, the MSRB does not believe it is appropriate to impose a maximum lifetime limit on Board service, as it would limit the pool of applicants to serve on the Board from year to year. The pool of applicants from which the MSRB can consider and select new Board members is already limited by the statutory requirement that each Board member be "knowledgeable of matters related to the municipal securities markets,"³⁸ and, as recognized by the SEC Investor

³⁵ In response to the First Request for Comment, SIFMA stated that there should be a lifetime cap of four years of Board service, limiting any member to one term only.

³⁶ See Exchange Act Release No. 63764 (Jan. 25, 2011), 76 FR 5417 (Jan. 31, 2011) (SR-MSRB-2010-17) (approving amendments to MSRB Rule A-3, including the special circumstances exception).

³⁷ The MSRB notes that no other commenters raised this issue.

³⁸ See 15 U.S.C. 78o-4(b)(1).

Advocate in response to the First Request for Comment, it can be a challenge to find talented and qualified people who are willing to devote time and energy to serve on the Board. Given those constraints, a lifetime cap, particularly one of only four years (i.e., one term) as SIFMA has suggested, may hinder the MSRB's ability to select from a robust pool of applicants. This problem could be exacerbated over time as additional Board members reach the end of their service and lose future eligibility under such a cap. The MSRB believes that former Board members may be highly qualified to serve on the Board with the benefit of their prior service, and they should not be precluded from consideration because of it. Additionally, several organizations with analogous investor-protection missions have no maximum lifetime limit on member service (e.g., FINRA governors, PCAOB members, SEC commissioners, and the SEC Investor Advisory Committee members). In light of all of the above, the MSRB is not including a lifetime cap on service in the proposed amendments as suggested by SIFMA.

Finally, the MSRB does not believe it should specify that, when a Board member, who has already served a full term is retained or recalled to fill a sudden vacancy, the member's extended term be temporary for only as long as necessary to recruit a qualified, permanent new member to fill the vacancy. Since a Board member can only be retained under the special circumstances exception, the first part of SIFMA's suggestion is more of a critique of that exception and/or the MSRB's use of it. As noted above, however, the special circumstances exception has been approved by the Commission. Further, depending on the nature and timing of a vacancy on the Board, it may be more efficient for the MSRB to recall a former Board member. In particular, for vacancies that occur in the middle of a fiscal year or in the middle to end of a vacating Board member's term, the amount of time and resources required to find, select and onboard a new member typically would be significantly greater than the time and resources

required to do the same for a former Board member. This disparity in efficiency would be even greater when compared to a two-part process in which a former Board member is temporarily seated and, after a short period, replaced by a new Board member. Additionally, the temporary status of the former Board member could potentially limit his or her effectiveness on the Board. Accordingly, the MSRB believes it is in the best interest of the organization to continue to have the flexibility to select from among former Board members, as well as from among all other sources, to fill a vacancy for the remainder of a vacating Board member's term.

While the MSRB does not support specifying or limiting the circumstances under which a Board member may serve more than four years in any of the ways SIFMA suggested, the proposed rule change would limit the number of consecutive terms a Board member can serve to two, which could only occur when the MSRB invokes the special circumstances exception, to address the general concern among commenters about unduly long tenures. There is empirical evidence to suggest very long board tenures are associated with weaker corporate governance and less favorable organizational performance.³⁹ Additionally, in response to the First Request for Comment, several commenters expressed concerns similar to SIFMA's. Specifically, GFOA opposed two consecutive three-year terms, NFMA was concerned that a six-year or longer term would limit the opportunity to bring "fresh ideas" to the Board, and ICI stated that it would support consecutive three-year terms if there was no longer a special circumstances exception that could create a term greater than six years.⁴⁰

To address these concerns, the MSRB believes that Board members should be limited to two consecutive terms when the special circumstances exception is invoked. By doing this, under

³⁹ See supra note 18.

⁴⁰ The MSRB notes that, in response to the First Request for Comment, the SEC Investor Advocate and Lamb supported consecutive three-year terms without any qualification.

the proposed rule change, no Board member could serve more than eight years consecutively. This added provision would ensure that the special circumstances exception is not overused, mitigate the concern of Board members becoming too dominant and unduly influential, assure appropriate turnover of Board membership and help maintain a robust pool of applicants for Board service. As noted, the MSRB believes this modification reflects good corporate governance as applied to the particular characteristics of the MSRB.

Increase in Term Length – Training

However, BDA encouraged the MSRB to consider instituting a robust, formalized training program for all incoming Board members in their first year of service to maximize the benefits of the proposed fourth year of service. Similarly, in a comment letter in response to the First Request for Comment, NAMA, which “does not object” to the increase in term length, suggested that the MSRB could devote extensive staff time and other resources to expedite the learning curve for Board members. These comments address internal MSRB matters and do not suggest any revision to the language of the amendments in the proposed rule change.

Additionally, the MSRB already allocates significant resources to educating new Board members as part of a robust and dedicated orientation process that begins prior to the commencement of their terms and focuses on organizational and other substantive matters, including, but not limited to, rulemaking and other large initiatives. The MSRB also already routinely revises and improves this process with the benefit of each successive experience orienting new Board members.

Number and Size of Board Classes

In response to the Second Request for Comment, none of the commenters specifically addressed the proposed change from three classes of seven Board members to one class of six

members and three classes of five. In response to the First Request for Comment, SIFMA suggested the same structure. The MSRB continues to believe the proposed rule change is appropriate and, in light of the absence of any concern among the commenters, is not making any revision to the proposal in this respect.

Elimination of the Requirement That There Be at Least One Non-Dealer Municipal Advisor Representative Per Board Class

In response to the Second Request for Comment, only BDA commented on the proposed elimination of the requirement that there be at least one non-dealer municipal advisor representative per Board class. BDA supported this adjustment because it is its preference to ensure the number of dealer-affiliated regulated entities on the Board is as robust as possible. Given that no commenter opposed the change and that it would neither reduce the representation of municipal advisors nor preclude the MSRB from deciding to include more than three non-dealer municipal advisor representatives on the Board, the MSRB is not making any change to the proposal in this regard.

Transition Plan

BDA supported the transition plan to the new term lengths proposed by the MSRB in the Second Request for Comment. In particular, it supported the part of the plan under which a special nominating committee comprised only of Board members not being considered for extensions would nominate the Board members who would receive one-year extensions to be voted on by the full Board. BDA believes that approach to be fair in that members on the special committee providing nominations for term extensions would not be eligible for a longer term, and that it would reduce any potential for self-dealing. SIFMA supported the plan because no existing Board member would serve for more than four years under the transition plan.

After considering this part of the plan further, the MSRB believes it is a better approach to have the full Board vote by ballot on all members eligible for extensions. First, given that 18 of the 21 Board members would be eligible for an extension, it would be difficult for the MSRB to constitute a special committee that is a fair representation of the entire Board. Additionally, despite the change in the process, the ultimate authority of the full Board to determine who would receive an extension is unchanged—under the special committee nomination process, the Board could vote down every nomination until the member, whom the Board would support for an extended term, was nominated. Finally, the MSRB believes that any concerns BDA might have with the potential for conflicts of interest and/or self-dealing under the new process are mitigated because the size of the Board – 21 members – and the large number of members eligible for an extension make it more difficult for any one member to inappropriately affect the outcome of the election.

Miscellaneous

In response to both requests for comment, NAMA stated that the MSRB should consider returning the size of the Board to 15 members. Additionally, NAMA suggested that, if there are term extensions for Board members, the rule amendments should address term lengths for leadership positions and the point in a Board member's term at which he or she becomes eligible for such positions. In response to the First Request for Comment, SIFMA suggested that making a Board member eligible to serve as vice chair in the third year of a four-year term, and as chair in the fourth year, would strengthen the leadership of the Board, as those individuals would be oriented fully to MSRB issues and processes at those points in their tenures. Lastly, Thompson believed the MSRB should consider reviewing the single-year term of the chair. Lamb believed the single-year term of the chair should remain unchanged.

The recommendations regarding Board size, and term lengths and eligibility for leadership positions on the Board, are beyond the scope of the issues presented in both requests for comment. Therefore, the MSRB is not considering such matters at this time.

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 of 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 such 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. 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-2016-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MSRB-2016- 01. 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 website (<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 website 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 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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-2016-01 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, pursuant to delegated authority.⁴¹

Robert W. Errett
Deputy Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

