



## Consumer Federation of America

August 14, 2013

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-MSRB-2013-06**

Dear Secretary Murphy:

I am writing on behalf of the Consumer Federation of America (CFA) to express our opposition SR-MSRB-2013-06, “Proposed Rule Change Consisting of Amendments to MSRB Rule A-3, on Membership on the Board, to Modify the Standard of Independence for Public Board Members.” The proposed change is entirely unjustified. It would not only potentially undermine the independence of the Municipal Securities Rulemaking Board (MSRB), it would set an unacceptable precedent by defining industry representatives as appropriate candidates to fill “public” slots on similar regulatory boards.

CFA strongly supports the changes made in the Dodd-Frank Wall Street Reform and Consumer Protection Act to the membership rules for the MSRB. Specifically, Section 975 of the Dodd-Frank Act amends Section 15B(b)(1) of the Securities Exchange Act of 1934 to require that a majority of the Board members be “independent of any municipal securities broker, municipal securities dealer, or municipal advisor.” By requiring a majority of independent or “Public Members,” Congress intended to ensure that the Board would exercise its decision-making powers in the public interest, rather than in the interest of regulated financial entities.

In 2010, the Commission approved a rule defining the standard of independence for Public Members.<sup>1</sup> In accordance with the statutory language of the Dodd-Frank Act, this rule required that a Public Member “is not, and within the last two years was not, associated” with a regulated municipal entity.<sup>2</sup> This is a clear and straightforward standard and, along with the further stipulation that a Public Member not have a current relationship with a regulated entity, constitutes a reasonable standard for the independence of Public Members.

We are frankly disturbed that the Commission is now considering this proposal to weaken the 2010 standard. The Notice proposes to significantly narrow the standard for “no material relationship” with a regulated municipal securities broker, dealer, or advisor to specify simply that the individual is not, and within the past two years has not been, “an officer, director (other

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<sup>1</sup> Securities and Exchange Commission, Release No. 34-63025; File No. SR-MSRB-2010-08, (Sept. 30, 2010).

<sup>2</sup> *Id.*, at 5-6.

than an independent director), an employee, or a controlling person of any municipal securities broker, municipal securities dealer, or municipal advisor.”<sup>3</sup> This change would permit so-called Independent Members to be a current employee of a corporate entity that included a municipal securities broker, dealer, or advisor as a subsidiary or affiliate, so long as the individual was not a current or recent employee of the specific subsidiary directly regulated by the MSRB. We do not believe the additional language that prohibits the individual from having “a relationship with any municipal 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” offers sufficient protection. It is a subjective standard that could easily be abused.

CFA urges retention of the 2010 standard. In requiring a majority of Public Members, Congress did not intend the MSRB to be dominated by employees of financial entities with interests in MSRB regulations. By permitting MSRB Public Members to be employees of banks or dealers with a subsidiary or affiliate active in the municipal market, the change proposed in this Notice would run directly contrary to Congressional intent and to the public interest in an independent Board. Section 975(b) of the Dodd-Frank Act specifically defines those MSRB members who are not Public Members to be “individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor.” This provides irrefutable evidence that Congress did not intend Public Members to be associated with regulated entities.

The change proposed in this Notice would unjustifiably undermine the important reforms made in the Dodd-Frank Act to the membership of the MSRB. The issue is not, or should not be, that the existing independence standards preclude otherwise qualified candidates from serving as public members. The issue is whether truly independent candidates exist who have the expertise to serve effectively in those positions. Permitting employees of banks or other financial institutions with an affiliated municipal securities broker, dealer, or municipal advisor to qualify as Public Members of the board does not align with any reasonable standard of independence. For these reasons, we urge the Commission to reject the change proposed in this Notice, and we urge the Board to improve their outreach efforts to find genuinely independent Public Members who qualify under the 2010 standard. CFA would be glad to assist in such outreach efforts.

Respectfully submitted,



Barbara Roper  
Director of Investor Protection

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<sup>3</sup> SR-MSRB-2013-06– Proposed Rule Change Consisting of Amendments to MSRB Rule A-3, on Membership on the Board, to Modify the Standard of Independence for Public Board Members, (July 3, 2013) (“SR-MSRB-2013-06”).