Subject: File No. SR-MSRB-2010-08
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Under the Dodd-Frank Regulatory Reform Act of 2010 (the "Act") and as noted in the SEC's release No. 34-62827, "[f]or the first time, the MSRB has been authorized to promulgate rules governing the conduct of municipal advisors who must be fairly represented on the Board." *See* 15 U.S.C. §78o-4(b)(2)(B). As the term is defined under the Act, Municipal Advisors will include "Independent Municipal Advisors" (municipal advisors that are not associated with any firm that is a broker, dealer, bank or underwriter of municipal bonds). I am commenting on the proposed composition of the MSRB's Board in my capacity as an Independent Municipal Advisor.

1) Additional Representation of Independent Municipal Advisors is Recommended.

Under the Act, the Board will regulate municipal advisors who are required to serve in a fiduciary capacity to issuers. The MSRB's Board should reflect a fair representation of municipal advisors (including Independent Municipal Advisors) to protect the interests of all parties regulated by the Board as well as to protect the interests of municipal issuers. Under the Act, the MSRB's Board is to be comprised of "public representatives" and "regulated representatives" that include "broker-dealer representatives," "bank representatives" and "advisor representatives." The MSRB is proposing that the Board be comprised of 21 members, 10 of which will be "regulated representatives" and 11 of which will be "public representatives" As discussed further below, although the "public representatives" are to be "independent," under the proposed Amendment to Rule A-3 such members could be individuals who were previously employed by a municipal securities broker or dealer.

At this time, it is unclear whether there will be <u>any</u> Independent Municipal Advisors appointed to the Board. When considering what constitutes fair representation of Independent Municipal Advisors, it should be kept in mind that a number of the Board's broker-dealer representatives and bank representatives may be from firms that serve in both the capacity of municipal advisor and as underwriter. For example, the newly elected president of the Board, Michael Bartolotta, is vice chairman of First Southwest Co., a firm that serves as both a municipal advisor and as an underwriter of municipal bonds. The fact that a "number of municipal securities dealers are also municipal financial advisors" was noted by the Bond Dealers of America in their comment to File Number SR-MSRB-2010-08. Consequently, and as also noted by the Bond Dealers of America, although municipal advisors are guaranteed 30% of the memberships within the "regulated representative" category all of these members could be municipal securities brokers or dealers. Yet, even if 30% of the "regulated representatives" are all Independent Municipal Advisors this would constitute only 14% of the entire Board.

Furthermore, under the proposed Rule A-3, the term "independent" is defined by the MSRB as an individual that has not been associated with a broker, dealer or advisor within the last two years and as not having a material business relationship with a broker, dealer or underwriter. Therefore, between the two groups which are to comprise the Board, "public representatives"

and "regulated representatives," potentially **100%** of the members could be or previously could have been associated with or employed by a municipal securities broker or municipal securities dealer.

Accordingly, I respectfully recommend that 5 of the "regulated representatives" be "advisor representatives" of which at least 4 would be Independent Municipal Advisors. Although the Board is now provided with the authority to regulate all Independent Municipal Advisors, representation by 4 Independent Municipal Advisors would constitute only 19% of the Board. Therefore, in compliance with the Act, and to "assure fair representation" on the Board, at least 4 Board members should be Independent Municipal Advisors.

2) "Public Representatives" Should Not Include Former Employees of Municipal Securities Brokers, Municipal Securities Dealers, or Municipal Advisors.

In order to comply with the mandate of the Dodd-Frank Regulatory Reform Act of 2010 ("Act"), individuals who are "public representatives," as described under the Act, are to be "independent of any municipal securities broker, municipal securities dealer, or municipal advisor."

The Act does not define the term "independent." Notably, the Supreme Court has stated that when a word is not defined by statute, the word is to be construed "in accord with its ordinary or natural meaning." Smith v. United States, 508 U.S. 223, 228 (1993). As such, it is important to take into consideration the historic context of the term "independent." Derived from French and Italian, the term "independent" literally translates to "not dependent." Thus, to understand "independent," we must understand the term "dependent." Merriam-Webster dictionary defines the term "dependent" as being "determined or conditioned by another." Merriam-Webster dictionary defines the term "independent" as "not looking to others for one's opinions or for guidance in conduct" and as "not requiring or relying on others."

With guidance from these definitional understandings of the term "independent" it is hard to imagine a scenario under which an individual who has been affiliated or employed by a municipal securities broker, municipal securities dealer, or municipal advisor could ever be "not conditioned by" their prior employment with a broker, dealer or advisor. Nor could such an individual likely ever "not rely on" or "not look to" their prior affiliation or employment with a broker, dealer or advisor.

Under the proposed changes to Rule A-3, although individuals would not be currently employed by a municipal broker, municipal securities dealer, or municipal advisor, they may possess an alignment with a particular company to such an extent that they would likely be unable to act independently from that constituency. There is no time period that can make individuals previously affiliated with or employed by a municipal securities broker, municipal securities dealer, or municipal advisor, truly "independent."

Individuals who have at one point been employed by a broker, dealer or advisor, are likely to view their decisions through the lens of their former employers and what would be in their former employers' best interest. The reasons include, among others, the following: First, individuals who may have spent a lifetime as an employee of a broker, dealer or advisor would

likely feel a sense of loyalty to, or willingness to repay, a former employer regardless of the amount of time in which they have not been employed by that particular company. Second, individuals who have been employed by a broker, dealer or advisor may likely have friends and/or family members who remain in the employ of brokers, dealers or advisors and would likely base their decision, not on what is right or wrong or based on the facts, but instead based on what is best for their family and friends. Finally, individuals who have been employed by a broker, dealer or advisor may receive compensation from their former employer for many years after their employment has ceased in the form of pension and healthcare benefits, and would most certainly not take an action that may harm their ability to continue to receive those benefits.

Although the proposed rule seeks to eliminate the dependence that past employment with a broker, dealer or advisor would bring by imposing a two-year moratorium, any moratorium based on a specified period of time is unlikely to result in any meaningful dilution of the taint that such employment would bring to the decision making process. For individuals to be truly independent from municipal securities brokers, municipal securities dealers, or municipal advisors, such individuals must never have been affiliated with or employed by a broker, dealer or municipal advisor.

The Act requires that "public members" include <u>at least</u> one member that is (i) a representative of institutional or retail investors in municipal securities, (ii) a representative of municipal entities, and (iii) a member of the public with knowledge of or experience in the municipal industry. I believe that there are an ample number of individuals available and qualified to serve on the Board who fall within one of these three categories who have never been associated with a broker, dealer or advisor. Consequently, I am respectfully recommending that the "public representative" members be comprised entirely of individuals, from these three categories, who have never been associated with, employed by and do not otherwise possess a material business relationship with a municipal securities brokers, municipal securities dealers, or municipal advisors.