

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50557; File No. SR-MSRB-2004-04)

October 18, 2004

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Amendments to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements

On August 5, 2004, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² to eliminate all currently effective exemptions from the requirement to complete the Regulatory Element of the Continuing Education (“CE”) Program. On August 27, 2004, the MSRB filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on September 14, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

MSRB Rule G-3(h) currently provides, in part, that no member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the CE requirement set forth in this Rule.⁵ The Regulatory Element component of MSRB Rule G-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 26, 2004. Amendment No. 1 replaced the original rule filing in its entirety.

⁴ See Securities Exchange Act Release No. 50328 (September 7, 2004), 69 FR 55482 (September 14, 2004).

⁵ See MSRB Rule G-3(h).

3(h)(i)(1) requires each registered person to complete a standardized, computer-based, interactive CE program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Board. Registered persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

Currently, two classes of persons are exempt from Regulatory Element requirements under MSRB G-3(h). The first class of persons come within the “grandfathered” exemption which applies to persons who were continuously registered, without serious disciplinary action,⁶ for more than ten years as of the Rule’s effective date (i.e., July 1, 1995). The second class of persons come within the “graduated” exemption, which, although discontinued as of July 1998, continues to apply to registered persons who were “graduated” prior to the discontinuation of the exemption.⁷

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the “Council”), MSRB submitted a proposed rule change to eliminate all currently effective exemptions from required participation in Regulatory Element

⁶ For purposes of MSRB Rule G-3(h), a significant disciplinary action generally means a statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension or imposition of a fine of \$5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element. See MSRB Rule G-3(h)(i)(C).

⁷ When MSRB Rule G-3(h) was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was “graduated” from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

programs.⁸ The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

The effective date of the MSRB proposed rule change is dependent upon the effective date of a similar proposed rule change filed by NASD⁹ because NASD administers the Regulatory Element computer-based education program. NASD has stated that it will announce the effective date of its proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. NASD stated that the effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD), or (3) April 4, 2005, whichever date is the latest to occur. The effective date of the MSRB proposed rule change will be the same as the effective date of the NASD's proposed rule change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹¹ which requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission

⁸ The Council recommended at its December 2003 meeting that SRO Rules (e.g., MSRB Rule G-3(h)), be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized CE programs, according to the Rule's prescribed schedule.

⁹ See Securities Exchange Act Release No. 50204 (August 16, 2004), 69 FR 51873 (August 23, 2004) (SR-NASD-2004-098).

¹⁰ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78q-4(b)(2)(C).

believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. Further, the Commission believes that the proposed rule change will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-MSRB-2004-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson
Assistant Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).