

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63073, File No. SR-MSRB-2010-07)

October 12, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business

I. Introduction

On August 25, 2010, the Municipal Securities Rulemaking Board (“MSRB”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change which consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business. The proposed rule change was published for comment in the Federal Register on September 9, 2010.³ The Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business.⁴ Under Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62830 (September 2, 2010), 75 FR 54930 (the “Commission’s Notice”).

⁴ Rule G-37 defines municipal securities business as: (i) the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive

G-37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers (“dealers”), municipal finance professionals (“MFPs”) associated with dealers, and political action committees (“PACs”) controlled by dealers and their MFPs (“dealer-controlled PACs”)⁵ may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G-37 requires dealers to disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.⁶

bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

⁵ The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24 – Dealer Controlled PAC).

⁶ Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

Due to changes in the financial markets since the adoption of Rule G-37 and recent market turmoil, many dealers have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs (“affiliated PACs”) and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs. A more complete description of the proposal is contained in the Commission’s Notice.

The MSRB has requested an effective date for the proposed rule change of sixty days after Commission approval of the proposed rule change.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the

rules and regulations thereunder applicable to the MSRB⁷ and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act⁸ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.⁹ The Commission believes that the proposed rule change is consistent with the Exchange Act because it will help to inhibit practices constituting real and perceived attempts to influence the awarding of municipal securities business through contributions made by or through dealer-affiliated PACs. The Commission also believes that the proposed rule change will facilitate dealer compliance with Rule G-37 and Rule G-27, on supervision. The proposal will become effective sixty days after Commission approval of the proposed rule change, as requested by the MSRB.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁹ Id.

Act,¹⁰ that the proposed rule change (SR-MSRB-2010-07), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).