

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63309; File No. SR-MSRB-2010-16)

November 12, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendments to Rule G-5, on Disciplinary Actions by Appropriate Regulatory Agencies, Remedial Notices by Registered Securities Associations; and Rule G-17, on Conduct of Municipal Securities Activities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“the Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 1, 2010, the Municipal Securities Rulemaking Board (“Board” or “MSRB”) filed with the Securities and Exchange Commission (“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 is filing a proposed rule change consisting of amendments to Rule G-5, on disciplinary actions by appropriate regulatory agencies, and Rule G-17, the Board’s basic fair practice rule, to apply the rules to municipal advisors. The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section 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

Rule G-5 currently provides that brokers, dealers, and municipal securities dealers (“dealers”) may not engage in municipal securities activities in contravention of restrictions imposed on them by the Commission, a registered securities association, or another appropriate regulatory agency. The purposes of the portion of the proposed rule change consisting of amendments to Rule G-5 are to remove a reference to an outdated NASD rule and to provide that municipal advisors and their associated persons may not engage in the municipal advisory activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act in contravention of restrictions imposed upon them by the Commission.

Rule G-17 currently provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. The purpose of the portion of the proposed rule change consisting of amendments to Rule G-17 is to apply the MSRB’s core fair dealing rule to municipal advisors in the same manner that it currently applies to dealers.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal

entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act provides that the rules of the MSRB shall:

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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Act, because it provides that: (i) municipal advisors shall deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice and (ii) municipal advisors and their associated persons shall not conduct the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act in contravention of restrictions imposed upon them by the Commission.

Section 15B(2)(L) of the Act requires that rules adopted by the Board

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change is necessary for the robust protection of investors against fraud. Many municipal advisors play a key role in the structuring of offerings of municipal securities and the preparation of offering documents used to market those securities to investors. In some cases, they advise on the appropriateness of derivatives entered into by municipal issuers, the effectiveness of which may have a substantial

impact on the finances of those issuers. In other cases, they solicit public pension fund investment advisory business that, if not conducted according to the highest standards, may have a substantial effect on the finances of the state and local governments that control those funds. Investors, therefore, have a substantial interest in municipal advisors conducting their municipal advisory activities fairly, not engaging in fraudulent conduct, and not engaging in municipal advisory activities contrary to disciplinary actions imposed by the SEC.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all municipal advisors. In particular, the MSRB believes that the amendments to Rule G-5 impose no regulatory burden on any municipal advisor because Section 15B(c) of the Act already permits the SEC to limit the activities of municipal advisors in the manner provided for in amended Rule G-5. Further, the MSRB believes that the amendment to Rule G-17 imposes no regulatory burden on any municipal advisor not necessary or appropriate in furtherance of the purposes of the Act since most municipal advisors already comport themselves in accordance with the standards of behavior required by Rule G-17 and no municipal advisor has a legitimate interest in engaging in behavior that is fraudulent or otherwise unfair.

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

Written comments were neither solicited nor received on the proposed rule.

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 (i) as the Commission may designate up to 90 days of such date

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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2010-16 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-16. 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 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 such filing also will be available for inspection and copying at the MSRB's offices. 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-2010-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>3</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>3</sup> 17 CFR 200.30-3(a)(12).