

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53961; File No. SR-MSRB-2005-11)

June 8, 2006

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Definition of Solicitation under MSRB Rules G-37 and G-38

On June 10, 2005, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of an interpretive notice relating to the definition of solicitation for purposes of MSRB Rules G-37 and G-38. On December 7, 2005, the MSRB filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, incorporating Amendment No. 1 (the “original proposed rule change”), was published for comment in the Federal Register on December 20, 2005.⁴ The Commission received one comment letter regarding the proposal.⁵ On March 17, 2006, the MSRB filed Amendment No. 2 to the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarifies that the central element in determining whether a communication is a solicitation is whether the communication occurs with the purpose of obtaining or retaining municipal securities business, and makes certain other changes.

⁴ See Securities Exchange Act Release No. 52948 (December 13, 2005), 70 FR 75514 (December 20, 2005) (the “Commission’s Original Notice”).

⁵ See letter to Jonathan G. Katz, Secretary, Commission, from Leslie M. Norwood, Vice President and Assistant General Counsel, The Bond Market Association, dated January 10, 2006.

change in response to comments on the original proposed rule change.⁶ The proposed rule change, incorporating Amendment No. 2, was published for comment in the Federal Register on May 5, 2006.⁷ The Commission received no comment letters on the proposed rule change as amended by Amendment No. 2. This order approves the proposed rule change as amended by Amendment Nos. 1 and 2.

The proposed rule change makes clear that the central element in determining whether a communication is a solicitation is whether the communication occurs with the purpose of obtaining or retaining municipal securities business. In addition, the proposed rule change consolidates the MSRB's guidance on the definition of solicitation for purposes of Rules G-37 and G-38.

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 MSRB⁸ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.⁹ Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative

⁶ Amendment No. 2 deletes the footnote in the original proposed rule change referencing guidance on the meaning of solicitation under Rule G-37 previously provided in certain Question and Answer interpretations (the "Rule G-37 solicitation Qs&As") and instead inserts the substantive language of such Qs&As into the text of the solicitation guidance provided in proposed rule change. The MSRB filed a companion proposed rule change (see File No. SR-MSRB-2006-01) to withdraw the Rule G-37 solicitation Qs&As and the former Rule G-38 Question and Answer interpretations relating to consultants.

⁷ See Securities Exchange Act Release No. 53747 (May 1, 2006), 71 FR 26575 (May 5, 2006).

⁸ In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-4(b)(2)(C).

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.¹⁰ In particular, the Commission finds that the proposed rule change will help dealers understand their obligations under MSRB rules designed to maintain standards of fair practice and professionalism, thereby helping to maintain public trust and confidence in the integrity of the municipal securities market.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that

¹⁰ Id.

¹¹ 15 U.S.C. 78s(b)(2).

the proposed rule change (SR-MSRB-2005-11), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).