

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63599; File No. SR-MSRB-2010-16)

December 22, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval 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

I. Introduction

On November 1, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change which consists 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 proposed rule change was published for comment in the Federal Register on November 18, 2010.<sup>3</sup> The Commission received one comment letter about the proposed rule change which supported the proposed rule change.<sup>4</sup>

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Rule G-5 currently provides that brokers, dealers, and municipal securities dealers (“dealers”) may not engage in municipal securities activities in contravention of

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63309 (November 12, 2010), 75 FR 70756 (the “Commission’s Notice”).

<sup>4</sup> See letter from the National Association of Independent Public Finance Advisors, dated December 9, 2010.

restrictions imposed on them by the Commission, a registered securities association, or another appropriate regulatory agency. The purpose of the portion of the proposed rule change consisting of amendments to Rule G-5 are a) to remove a reference to an outdated National Association of Securities Dealers (“NASD”)<sup>5</sup> rule and b) 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.

A more complete description of the proposal is contained in the Commission’s Notice.

The proposed rule change shall be effective upon Commission approval.

### 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 MSRB<sup>6</sup> and, in particular, the

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<sup>5</sup> In 2007, the NASD merged with the New York Stock Exchange's regulation committee to form the Financial Industry Regulatory Authority, or FINRA. *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007).

<sup>6</sup> 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).

requirements of Section 15B(b)(2) of the Exchange Act<sup>7</sup> 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 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.<sup>8</sup> Section 15B(b)(2)(L) of the Exchange Act requires, among other things, that the rules of the MSRB 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.<sup>9</sup>

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange 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 municipal advisory activities in contravention of restrictions imposed upon them by the Commission. Such restrictions are, amongst other things, consistent with Section 15B(b)(2)(C) of the Exchange Act because they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The Commission further

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<sup>7</sup> 15 U.S.C. 78o-4(b)(2).

<sup>8</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>9</sup> 15 U.S.C. 78o-4(b)(2)(L).

believes that the proposed rule change is consistent with Section 15B(b)(2)(L) of the Exchange Act because the proposed rule change does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and the proposed rule change is necessary for the robust protection of investors against fraud as well as the protection of municipal entities and obligated persons. 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 municipal financial products, including municipal derivatives, entered into by municipal entities, the effectiveness of which may have a substantial impact on the finances of those municipal entities. In other cases, they solicit municipal entities and obligated persons for investment advisory business with respect to funds held by or on behalf of such municipal entity or obligated person which, if not conducted according to the highest standards, may have a substantial effect on the finances of the municipal entities and obligated persons 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 Commission.

The proposal will become effective upon Commission approval.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>10</sup> that the proposed rule change (SR-MSRB-2010-16), be, and it hereby is, approved.

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

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).