

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53746; File No. SR-MSRB-2006-01)

May 1, 2006

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to Withdrawal of Obsolete Question-and-Answer Interpretive Guidance under Former Rule G-38, on Consultants, and Certain Question-and-Answer Interpretive Guidance Relating to the Definition of “Solicitation” under Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 28, 2006, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) 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. On April 20, 2006, the MSRB filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The MSRB is filing with the Commission a proposed rule change to delete obsolete Question-and-Answer (“Q&A”) interpretive guidance under former Rule G-38, on consultants, and certain Q&A interpretive guidance relating to the definition of “solicitation” under Rule G-37, on political contributions and prohibitions on municipal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 deletes one additional Q&A providing interpretive guidance under Rule G-37 and former Rule G-38.

securities business. The text of the proposed rule change, as amended, is available on the MSRB's Web site (<http://www.msrb.org>), 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections 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

On August 29, 2005, new Rule G-38, on solicitation of municipal securities business, became effective, superseding former Rule G-38 on consultants.⁴ The MSRB had previously published a number of Q&A interpretations on the former rule, none of which continue to apply to new Rule G-38 since the consultant provisions to which they relate are no longer in effect. Accordingly, the MSRB is deleting all obsolete Rule G-38 Qs&As. In addition, the MSRB is deleting three Qs&As and partially deleting a fourth Q&A under Rule G-37 relating to the definition of solicitation of municipal securities business (the "Rule G-37 solicitation Qs&As").⁵

⁴ SEC Release No. 34-52278 (August 17, 2005); 70 FR 49342 (August 23, 2005).

⁵ The three deleted Rule G-37 solicitation Qs&As are published as Qs&As IV.10, IV.11 and IV.13 in MSRB Rule Book (January 1, 2006). In addition, the last sentence of Q&A IV.18, published in MSRB Rule Book (January 1, 2006), is deleted.

In December 2005, the Commission published for comment the MSRB's proposed interpretive notice on the definition of "solicitation" under Rules G-37 and G-38 (the "Solicitation Notice").⁶ Among other things, the Solicitation Notice incorporated, by means of footnote 2 thereof and the text accompanying such footnote, guidance on the meaning of solicitation under Rule G-37 previously provided in the Rule G-37 solicitation Qs&As. The Commission received one comment letter in response to the Solicitation Notice.⁷ The commentator supported the Solicitation Notice but suggested that the MSRB withdraw all of its prior published Q&A guidance regarding the definition of solicitation of municipal securities business in order to avoid potential conflicts between such prior Q&A guidance and the Solicitation Notice.⁸

The MSRB believes that it would be appropriate to consolidate its guidance on the definition of solicitation for purposes of Rules G-37 and G-38 by amending its Solicitation Notice and simultaneously deleting (1) the Rule G-37 solicitation Qs&As, and (2) all obsolete Rule G-38 Q&A guidance relating to consultants. Thus, in addition to the Q&A deletions which are the subject of this filing, the MSRB has submitted to the Commission a companion filing consisting of an amendment to the Solicitation Notice that would delete footnote 2 in the Solicitation Notice, which contains references to the

⁶ SEC Release No. 34-52948 (December 13, 2005); 70 FR 75514 (December 20, 2005).

⁷ See Letter from Leslie M. Norwood, Vice President and Assistant General Counsel, The Bond Market Association, to Jonathan G. Katz, Commission Secretary, dated January 10, 2006.

⁸ The commentator stated that, in certain respects, the guidance on solicitation and related matters provided in the Solicitation Notice may not be wholly consistent with guidance previously provided by the MSRB and that such prior guidance should be withdrawn. The MSRB addresses this and other statements and concerns in the companion filing to this filing. See Amendment No. 2 (March 17, 2006) to File No. SR-MSRB-2005-11 (June 8, 2005).

Rule G-37 solicitation Qs&As, and would instead insert the substantive language of those Qs&As into the text of the Solicitation Notice.⁹ Thus, the language of the Rule G-37 solicitation Qs&As which had previously been incorporated by reference would now be explicitly included within the Solicitation Notice. The amendment to the Solicitation Notice and the withdrawal of the Rule G-37 solicitation Qs&As and obsolete Rule G-38 Qs&As do not effect a substantive change in the MSRB's guidance on the definition of solicitation as set forth in the Solicitation Notice.

2. Statutory Basis

The MSRB believes that the proposed rule change, as amended, is consistent with Section 15B(b)(2)(C) of the Act,¹⁰ which provides that the MSRB's rules 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, 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.

The MSRB believes that the proposed rule change is consistent with these provisions in that it will further investor protection and the public interest by ensuring that dealers understand their obligations under MSRB rules designed to maintain standards of fair

⁹ See Amendment No. 2 (March 17, 2006) to File No. SR-MSRB-2005-11 (June 8, 2005).

¹⁰ 15 U.S.C. 78o-4(b)(2)(C).

practice and professionalism, thereby helping to maintain public trust and confidence in the integrity of the municipal securities market.

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

The MSRB does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 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 such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested accelerated approval of the proposed rule change. The Commission is not granting accelerated approval at this time in order to allow interested persons to comment on this proposal and on Amendment 2 to a companion proposed rule change relating to the definition of solicitation under MSRB Rules G-37 and G-38.¹¹ The MSRB also requested that the Commission approve the proposal simultaneously with the

¹¹ See File No. SR-MSRB-2005-11 (the “companion proposed rule change”).

companion proposed rule change. The Commission expects to consider these proposals simultaneously after the close of their respective comment periods.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-MSRB-2006-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2006-01. 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 Internet Web site (<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 inspection and copying in the Commission's Public Reference Room. 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-2006-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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).