

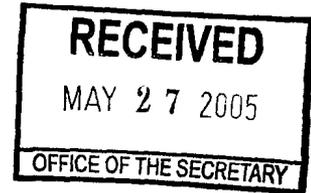


May 24, 2005

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VIA OVERNIGHT MAIL

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609



Re: File Number (SR-MSRB-2005-04) Relating to Notice of Filing of Proposed Rule Change Relating to Solicitation of Municipal Securities Business Under Municipal Securities Rulemaking Board's Rule G-38

Dear Mr. Katz:

Raymond James & Associates, Inc. ("Raymond James") appreciates this opportunity to comment on the proposed amendment to Rule G-38 which the Municipal Securities Rulemaking Board ("MSRB") submitted to the Securities and Exchange Commission ("Commission") on March 17, 2005.¹ This proposed amendment prohibits a broker-dealer from paying anyone, other than the broker-dealer's or an affiliated company's partner, director, officer or employee, for soliciting municipal securities business on behalf of the broker-dealer, thus eliminating the use of any outside consultants.

Raymond James participated in the TBMA letter of May 5, 2005 and we fully support that letter. That letter addresses several issues, including the definition of an "affiliated person of the broker, dealer or municipal securities dealer." We would like to specifically address that issue.

We are concerned that the proposed amendment prohibiting a broker-dealer from paying anyone other than a "partner, director, officer or employee" of the broker-dealer or an affiliate for soliciting municipal securities business does not recognize the important role that independent contractor financial advisors play in the market today, and believe that

¹ 70 Fed. Reg. 20,782 (April 21, 2005).

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definition of affiliated person should be expanded to include independent contractor registered representatives, by including "NASD licensed representatives" within the definition.

As I am sure you are aware, an increasing number of registered representatives subject to the jurisdiction and oversight of the Commission and the NASD are not partners, directors, officers or employees of broker-dealers, but instead are independent contractors. In fact, we understand that as many as 40% of the registered representatives in this country are independent contractors, not employees, and that number is increasing. Raymond James, as well as other banks and brokerage firms, have, along with their affiliates, registered representatives in both the traditional, employee model as well as the independent contractor model. In fact, approximately 85% of the over 5,500 registered representatives who currently work under the Raymond James banner are independent contractors who work for Raymond James Financial Services, Inc. ("RJFS"), an affiliated broker-dealer.

The RJFS registered representatives are subject to the same supervision, compliance and regulatory requirements as employees, but are treated as independent contractors for compensation and/or economic reasons.² In fact, as NASD licensed representatives of the broker-dealer these independent contractors are also subject to the full array of Commission, NASD and MSRB rules. Given that these individuals are subject to, among other things, the broker-dealer's supervision and compliance procedures as well as the fair practice and professionalism standards under MSRB rules, allowing independent contractor registered representatives of affiliated broker-dealers to solicit municipal securities business should be entirely consistent with the MSRB's policy goal of applying "basic standards of fair practice and professionalism embodied in MSRB rules to all persons who solicit municipal securities business on behalf of dealers" and ensuring "that all solicitations are undertaken in accordance with the ethical standards that govern dealer personnel." MSRB Notice 2005-16 at p.1 (March 15, 2005).

²As the Commission has consistently held, "a broker-dealer's supervisory responsibilities under the federal securities laws are not affected by whether the broker-dealer treats its representatives as "employees" or as "independent contractors" for other purposes. The broker-dealer is responsible for supervising the representatives' securities activities regardless of the representatives' status under state law." *Investacorp Group, Inc. and Investacorp, Inc.*, No-Action Letter dated September 26, 2003 at n.5 (citation omitted).

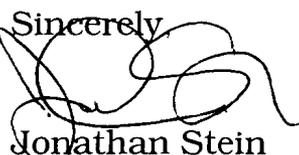
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In fact, the MSRB's concurrently proposed amendment to Rule G-37, at section (g)(iv)(B), defines "municipal finance professional" ("MFP") to include those individuals defined as affiliated persons under the proposed amendment to Rule G-38. Thus, if the minor change proposed herein to the G-38 definition of affiliated persons is adopted, independent contractor registered representatives who are deemed MFP's and will continue to be subject to the same political contribution reporting requirements as broker-dealer employee registered representatives who are MFP's, helping to ensure that the MSRB's policy goals in proposing a new Rule G-38 are met.

In conclusion, modifying the proposed amendment to Rule G-38 to permit a broker-dealer to pay independent contractor registered representatives of affiliates to solicit municipal securities business is consistent with the MSRB's policy goal in amending Rule G-38. Because of the extensive regulatory and supervisory schemes to which these individuals are subject, this modification should afford the same, if not more, protection to the integrity of the municipal finance process as allowing employees of affiliated entities to be paid for soliciting such business.

We look forward to discussing these issues further with the Commission staff, and appreciate your attention to our comments. Please contact the undersigned at 727-567-5181 or via e-mail at Jonathan.Stein@RaymondJames.com with any questions that you might have.

Sincerely,



Jonathan Stein

Director of Regulatory Affairs - Fixed Income

JHS/be

cc: **Securities and Exchange Commission**

The Honorable William H. Donaldson, Chairman

The Honorable Cynthia A. Glassman, Commissioner

The Honorable Harvey J. Goldschmid, Commissioner

The Honorable Paul S. Atkins, Commissioner

The Honorable Roel C. Campos, Commissioner

Giovanni P. Prezioso, General Counsel, Office of the General Counsel

Annette L. Nazareth, Director, Division of Market Regulation

Martha Mahan Haines, Director, Office of Municipal Securities

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