

authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB believes that the proposed rule change is consistent with this provision because it is concerned solely with the operation and administration of the MSRB.

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 only applies to the operation and administration of the MSRB.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(3) thereunder⁹ because it is concerned solely with the administration of the MSRB. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁰

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. Please include File Number SR-MSRB-2006-04 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-2006-04. 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 principal office of the MSRB. 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-2006-04 and should be submitted on or before July 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53961; File No. SR-MSRB-2005-11]

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

June 8, 2006.

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 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

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.

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 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(3).

¹⁰ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(c).

¹¹ 17 CFR 200.30-(a)(12).

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 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 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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-9347 Filed 6-14-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53959, File No. SR-MSRB-2006-03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Consisting of Interpretive Guidance on Customer Protection Obligations of Brokers, Dealers and Municipal Securities Dealers Relating to the Marketing of 529 College Savings Plans

June 8, 2006.

On March 31, 2006, 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 interpretive guidance on customer protection obligations of brokers, dealers and municipal securities dealers ("dealers") relating to the marketing of 529 college savings plans. The proposed rule change was published for comment in the **Federal Register** on May 2, 2006.³ The Commission received six comment letters regarding the proposal.⁴ On June 1, 2006, the MSRB filed a response to the comment letters.⁵ This order approves the proposed rule change.

The proposed rule change consists of interpretive guidance on customer protection obligations of dealers relating to the marketing of 529 college savings plans. The MSRB proposed an effective date for the proposed rule change of 60 calendar days after Commission approval. A full description of the proposal is contained in the Commission's Notice.

CSF, ICI, FSI and SIA supported the proposed rule change. Mr. Traynor's comment letter requested clarity concerning the meaning of the proposed rule change, stating that the proposal was 34 pages long. The MSRB noted in its response that the Commission's Notice in the **Federal Register**⁶ contains a two-page brief summary of the proposed rule change in Section II.A.1, and that the remainder of the notice consists of information required to be included in the notice under the MSRB's regulatory obligations

established by the Commission, including an extensive discussion of the comments received on earlier draft versions of the proposed rule change that, among other things, explains the rationale for the MSRB's rulemaking determinations. In addition, the MSRB stated that it provides comprehensive information on the regulatory duties of dealers in connection with the marketing of 529 college savings plans and other information useful to investors on its Web site at <http://www.msrb.org/msrb1/mfs>, and that any member of the public seeking an explanation of the proposal or any existing MSRB rule should not hesitate to contact MSRB staff at (703) 797-6600.

NASAA's comment letter expressed support for the efforts made by the MSRB to strengthen the marketing rules and disclosure requirements in connection with the offer and sale of 529 plans. Nonetheless, NASAA said they were concerned that certain key disclosure obligations set forth in earlier drafts of the MSRB's guidance⁷ were omitted from the proposed rule change. NASAA more specifically stated that they believe removing the comparative suitability analysis requirement and alleviating a broker-dealer's obligation to provide specific information regarding home state 529 plan benefits will have a detrimental effect on customers.

The MSRB's Response Letter states that the MSRB noted in its filing the potential adverse impact of the comparative suitability and specific home state disclosure proposals as an important factor in its approval of the disclosure and suitability language included in the proposed rule change. The MSRB stated that the comparative suitability and home state disclosure proposals from the 2005 Notice would have imposed unprecedented new obligations on dealers to become sufficiently knowledgeable about many or potentially all investment options available in the 529 college savings plan market (including a large number of 529 college savings plans that the dealer does not offer) in order to provide accurate disclosures and to arrive at appropriate conclusions in connection with a comparative suitability analysis. The MSRB stated that some state plans expressed objections over a provision that would require dealers that do not market their plans to make disclosures about such plans. The MSRB also noted a number of press reports detailing the negative impact of the comparative suitability proposal and anecdotal

⁷ See MSRB Notice 2005-28 (May 19, 2005) (the "2005 Notice").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53715 (April 25, 2006), 71 FR 25867 (May 2, 2006) (the "Commission's Notice").

⁴ See letter from David J. Pearlman, Chairman, College Savings Foundation ("CSF"), dated April 24, 2006; letter from Frank Traynor, dated April 28, 2006; letter from Patricia D. Struck, President, North American Securities Administrators Association, Inc. ("NASAA"), dated May 22, 2006; letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), dated May 22, 2006; letter from Dale E. Brown, Executive Director & CEO, Financial Services Institute ("FSI"), dated May 23, 2006; and letter from Elizabeth Varley, Vice President and Director of Retirement Policy, and Michael D. Udoff, Vice President, Associate General Counsel and Secretary, Securities Industry Association ("SIA"), dated May 31, 2006.

⁵ See letter from Ernesto A. Lanza, Senior Associate General Counsel, MSRB, to Martha M. Haines, Chief, Office of Municipal Securities, Commission, dated June 1, 2006 ("MSRB's Response Letter"). The MSRB's Response Letter does not address SIA's comment letter because the Commission received SIA's comment letter after the comment period for the filing had closed.

⁶ See *supra* note 3.

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).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).