

Proposed Rule Change by Municipal Securities Rulemaking Board
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,
Municipal Securities Rulemaking Board
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date
 By Corporate Secretary
 (Name)
 (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

The Municipal Securities Rulemaking Board (the “MSRB”) is hereby filing with the Securities and Exchange Commission (“Commission”) this partial amendment to File No. SR-MSRB-2006-01, originally filed on March 28, 2006 (the “proposed rule change”). The original proposed rule change deletes 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 securities business. This amendment deletes one additional Q&A interpretive guidance under Rule G-37 and former Rule G-38, as described below. In all other respects, the proposed rule change as filed in SR-MSRB-2006-01 remains as originally filed.

Amendment

The text of the amendment is as follows, with brackets indicating deletions:

[Bank Affiliates: Individuals as Municipal Finance Professionals or Consultants

June 6, 2001

Q: In a Question and Answer Notice relating to rule G-38 dated May 20, 1998, the MSRB discussed a scenario in which a bank and its employees communicate with an issuer on behalf of an affiliated broker, dealer or municipal securities dealer (a “dealer”) to obtain municipal securities business for that dealer in return for certain “credits.” These credits, which do not involve any direct or indirect cash payments from the dealer to the bank or its employees, are used for internal purposes to identify the source of business referrals. The MSRB observed that, even if there is no immediate transfer of funds or anything of value to an affiliate or individual employed by the affiliate, the referral credits would still be considered payment for purposes of rule G-38 if such credits eventually (e.g., at the end of the fiscal year) result in compensation to the affiliate or individual employed by the affiliate for referring municipal securities business to the dealer. The MSRB concluded that if the dealer or any other person eventually gives anything of value (e.g., makes a “payment”) to the affiliate or individual based, even in part, on the referral, then the affiliate or individual is a consultant for purposes of rule G-38. Does this mean that in all cases where a bank’s employee refers municipal securities business to an affiliated dealer, such bank employee is necessarily a consultant under rule G-38 rather than a municipal finance professional of the dealer under rule G-37?

A: No. The purpose of the Question and Answer Notice was to illustrate that the term “payment” as used in rule G-38 is not limited to cash payments but also includes anything of value, such as referral credits, that ultimately results in cash or non-cash compensation to the bank employee.

The MSRB was not providing guidance as to whether such bank employee should be considered a consultant rather than a municipal finance professional of the dealer. As the MSRB noted in footnote 1 to the Question and Answer Notice, municipal finance professionals are excluded from the definition of consultant. If a dealer has an arrangement whereby referral credits are given to an employee of a bank affiliate in exchange for a referral of municipal securities business, the dealer should first determine whether the bank employee is a municipal finance professional of the dealer. As a threshold question, the dealer must determine whether such bank employee is a person associated with the dealer within the meaning of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). If the bank employee is an associated person of the dealer and has solicited municipal securities business on behalf of the dealer, the employee would be a municipal finance professional of the dealer subject to the provisions of rule G-37, regardless of whether such employee has received a referral credit or any other payment. Such employee, as a municipal finance professional of the dealer, is excluded from being a consultant of the dealer under rule G-38. If the bank employee is not an associated person of the dealer and has received such referral credits as a result of a solicitation of municipal securities business for the dealer, the employee would be a consultant of the dealer subject to the provisions of rule G-38.

ENDNOTES

- ¹ Questions regarding the scope of the term “person associated with a broker or dealer” under Section 3(a)(18) of the Exchange Act or “person associated with a municipal securities dealer” under Section 3(a)(32) of the Exchange Act should be addressed to staff of the Securities and Exchange Commission.
- ² The definition of municipal finance professional in rule G-37 is not dependent upon whether the associated person has received payment in exchange for the solicitation of municipal securities business.]

Discussion of Purpose of Amendment

On August 29, 2005, new Rule G-38, on solicitation of municipal securities business, became effective, superseding former Rule G-38 on consultants.¹ In connection with this rule change, the MSRB filed with the Commission, and the Commission published in December 2005, a proposed interpretive notice on the definition of

¹ See Exchange Act Release No. 52278 (August 17, 2005); 70 FR 49342 (August 23, 2005).

solicitation of municipal securities business under Rules G-37 and G-38 (the “Solicitation Notice”).²

The MSRB had previously published a number of Q&A interpretations under former Rule G-38, none of which continue to apply to new Rule G-38 since the consultant provisions to which they relate are no longer in effect. In addition, the MSRB had previously published certain Q&A interpretations under Rule G-37 relating to the definition of solicitation of municipal securities business. The MSRB felt that it would be appropriate to (i) consolidate its guidance on the definition of solicitation for purposes of Rules G-37 and G-38 by amending the Solicitation Notice³ and (ii) delete the Rule G-37 solicitation Qs&As and all obsolete Rule G-38 Qs&As. Thus, the MSRB filed the proposed rule change with the Commission on March 28, 2006.

In the filing of the proposed rule change, the MSRB indicated that it was not withdrawing a Q&A interpretation published on June 6, 2001 entitled “Bank Affiliates: Individuals as Municipal Finance Professionals or Consultants” (the “Bank Affiliate Q&A”).⁴ Although the filing indicated that portions of the Bank Affiliate Q&A relating to former Rule G-38 would no longer apply, the guidance on determining whether employees of a bank affiliated with a dealer are municipal finance professionals of such dealer under Rule G-37 would have been retained. This portion of the Bank Affiliate Q&A provided that, if an employee of a dealer-affiliated bank is an associated person of the dealer as defined in the Exchange Act and has solicited municipal securities business on behalf of the dealer, such bank employee would be a municipal finance professional of the dealer.

Commission staff has expressed concern that the Bank Affiliate Q&A, which continues to have language relating to former Rule G-38, may cause unnecessary confusion. In addition, upon further review, the MSRB believes that the Bank Affiliate Q&A is not necessary for determining whether an employee of a dealer-affiliated bank may be a municipal finance professional for purposes of Rule G-37 since the current language of Rule G-37,⁵ as well as other existing guidance and Commission enforcement actions relating to the rule, provide sufficient guidance in this regard.⁶ Thus, based on

² SR-MSRB-2005-11 (June 8, 2005), as amended by Amendment No. 1 (December 7, 2005). *See* Exchange Act Release No. 52948 (December 13, 2005); 70 FR 75514 (December 20, 2005).

³ Amendment No. 2 (March 17, 2006) to SR-MSRB-2005-11.

⁴ Exchange Act Release No. 44459 (June 20, 2001), 66 FR 34501 (June 28, 2001).

⁵ Rule G-37(g)(iv)(B) defines a municipal finance professional as, among other persons, any associated person (including but not limited to any affiliated person of the dealer) who solicits municipal securities business. Rule G-38(b)(ii) defines an affiliated person as a partner, director, officer, employee or registered person of the dealer or of an affiliated company of the dealer. This definition would apply to the scenario described in the Bank Affiliate Q&A.

⁶ The MSRB has previously provided guidance to the effect that, in determining

these considerations, the MSRB is filing this amendment to withdraw the Bank Affiliate Q&A. The withdrawal of the Bank Affiliate Q&A does not effect a substantive change in how dealers should determine whether an associated person of the dealer is a municipal finance professional.

Conforming Changes to Exhibits 1 and 5 to Proposed Rule Change

The Federal Register Notice included as Exhibit 1 to File No. SR-MSRB-2006-01 is amended by (i) including, as deleted language, the text of the Bank Affiliate Q&A in Item I – Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change, and (ii) deleting footnote 4 and renumbering all subsequent footnotes accordingly. The proposed rule change language included as Exhibit 5 to File No. SR-MSRB-2006-01 is amended by including, as deleted language, the text of the Bank Affiliate Q&A.

whether a person is a municipal finance professional of a dealer, the dealer must first determine whether that person is an associated person of the dealer. *See* Q&A IV.6 (dated May 24, 1994, as revised on October 30, 2003) published in *MSRB Rule Book* (January 1, 2006). *See also* In the Matter of Fifth Third Securities, Inc., Exchange Act Release No. 46087 (June 18, 2002).