

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"/>
			Rule		
Pilot <input type="checkbox"/>	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	<input type="text" value="Ernesto"/>	Last Name	<input type="text" value="Lanza"/>
Title	<input type="text" value="Senior Associate General Counsel"/>		
E-mail	<input type="text" value="elanza@msrb.org"/>		
Telephone	<input type="text" value="(703) 797-6600"/>	Fax	<input type="text" value="(703) 797-6700"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	<input type="text" value="03/17/2006"/>
By	<input type="text" value="Ernesto A. Lanza"/>
	(Name)
	<input type="text" value="Senior Associate General Counsel"/>
	(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.

1. Text of Partial Amendment

(a) The Municipal Securities Rulemaking Board (the “MSRB”) is hereby filing with the Securities and Exchange Commission (the “Commission”) a partial amendment consisting of a second amendment to File No. SR-MSRB-2005-11, originally filed on June 8, 2005 and subsequently amended on December 7, 2005 (as amended, the “original proposed rule change”). The original proposed rule change consists of an interpretive notice relating to the definition of solicitation for purposes of Rule G-37, on political contributions and prohibitions of municipal securities business, and Rule G-38, on solicitation of municipal securities business. The original proposed rule change, as amended by this second amendment, is hereinafter referred to as the “Solicitation Guidance.” The changes made by this second amendment to the original proposed rule change are indicated below:*

INTERPRETIVE NOTICE ON THE DEFINITION OF SOLICITATION UNDER RULES G-37 AND G-38

Municipal Securities Rulemaking Board (“MSRB”) Rule G-38, on solicitation of municipal securities business, defines “solicitation” as any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business. This definition is important for purposes of determining whether payments made by a broker, dealer or municipal securities dealer (“dealer”) to persons who are not affiliated persons of the dealer are prohibited under Rule G-38.¹ In addition, the definition is central to determining whether communications by dealer personnel would result in such personnel being considered municipal finance professionals (“MFPs”) of the dealer for purposes of Rule G-37. This notice provides interpretive guidance relating to the status of certain types of communications as solicitations for purposes of Rules G-37 and G-38.

Purpose of Communication

The concept of solicitation under Rules G-37 and G-38 includes as a central element the notion that the communication occurs with the purpose of obtaining or retaining municipal securities business. The determination of whether a particular communication is a solicitation is dependent upon the specific facts and circumstances relating to such communication. As a general proposition, any communication made under circumstances reasonably calculated to obtain or retain municipal securities business for the dealer may be considered a solicitation

* Underlining indicates additions made by the second amendment to the original proposed rule change; brackets indicate deletions made by the second amendment from the original proposed rule change.

¹ The term “affiliated person” is defined in Rule G-38(b)(ii).

unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining municipal securities business. This notice provides examples of circumstances in which a communication may or may not be considered a solicitation. These examples are illustrative only and are not the only instances in which a solicitation may be deemed to have or have not occurred.

Limited Communications with Issuer Representative

If an issuer representative asks an affiliated person of a dealer whether the dealer has municipal securities capabilities, such affiliated person generally would not be viewed as having solicited municipal securities business if he or she provides a limited affirmative response, together with either providing the issuer representative with contact information for an MFP of the dealer or informing the issuer representative that dealer personnel who handle municipal securities business will contact him or her. Similarly, if an issuer representative is discussing governmental cash flow management issues with an affiliated person of a dealer who concludes, in his or her professional judgment, that an appropriate means of addressing the issuer's needs may be through an issue of municipal securities, the affiliated person generally would not be viewed as having solicited business if he or she provides a limited communication to the issuer representative that such alternative may be appropriate, together with either providing the issuer representative with contact information for an MFP or informing the issuer representative that dealer personnel who handle municipal securities business will contact him or her.

In the examples above, if the affiliated person receives compensation such as a finder's or referral fee for such business or if the affiliated person engages in other activities that could be deemed a solicitation with respect to such business (for example, attending presentations of the dealer's municipal finance capabilities or responding to a request for proposals), the affiliated person generally would be viewed as having solicited the municipal securities business.^[2] **The MSRB has long regarded receipt of a finder's fee for bringing municipal securities business to the dealer and activities such as attending presentations to issuer personnel of the dealer's municipal finance capabilities or responding to issuer requests for proposals as presumptively constituting solicitations of municipal securities business and does not view this notice as altering such presumption.**

Promotional Communication

The MSRB understands that an affiliated person of a dealer may provide information to potential clients and others regarding the general capabilities of the dealer through either oral or written communications. Any such communication that is not made with the purpose of obtaining or retaining municipal securities business would not be considered a solicitation.

^[2] See Rule G-37 Questions and Answers IV.10-13, *reprinted in MSRB Rule Book.*

Thus, depending upon the specific facts and circumstances, a communication that merely lists the significant business lines of a dealer without further descriptive information and which does not give the dealer's municipal securities practice a place of prominence within such listing generally would not be considered a solicitation unless the facts and circumstances indicate that it was aimed at obtaining or retaining municipal securities business. To the extent that a communication, such as a dealer brochure or other promotional materials, contains more than a mere listing of business lines, such as brief descriptions of each business line (including its municipal securities capabilities), determining whether such communication is a solicitation depends upon whether the facts and circumstances indicate that it was undertaken for the purpose of obtaining or retaining municipal securities business. The nature of the information provided and the manner in which it is presented are relevant factors to consider. Although no single factor is necessarily controlling in determining whether a communication was undertaken for the purpose of obtaining or retaining municipal securities business, the following considerations, among others, may often be relevant: (i) whether the municipal securities practice is the only business line included in the communication that would reasonably be of interest to an issuer representative; (ii) whether the portions of the communication describing the dealer's municipal securities capabilities are designed to garner more attention than other portions describing different business lines; (iii) whether the communication contains quantitative or qualitative information on the nature or extent of the dealer's municipal securities capabilities that is promotional in nature (*e.g.*, quantitative or qualitative rankings, claims of expertise, identification of specific transactions, language associated with "puffery," etc.); and (iv) whether the dealer is currently seeking to obtain or retain municipal securities business from the issuer.

Work-Related Communications

Communications that are incidental to undertaking tasks to complete municipal securities business for which the dealer has already been engaged generally would not be solicitations. For example, if a dealer has engaged an independent contractor as a cash flow consultant to provide expert services on a negotiated underwriting for which the dealer has already been selected and the contractor communicates with the issuer on cash flow matters relevant to the financing, such communication would not be a solicitation under Rule G-38. Similarly, if a dealer has already been selected to serve as the underwriter for an airport financing and a non-MFP affiliated person of the dealer who normally works on airline corporate matters is used to provide his or her expertise to complete the financing, communications in this regard by the affiliated person with the issuer would not be a solicitation under Rule G-38. In addition, the fact that the work product of persons such as those described above may be used by MFPs of the dealer in their solicitation activities would not make the producer of the work product a solicitor unless such person personally presents his or her work to the issuer in connection with soliciting the municipal securities business.

Communications with Conduit Borrowers

The MSRB understands that dealers often work closely with private entities on their capital and other financing needs. In many cases, this work may evolve into a conduit borrowing through a conduit issuer. Although the ultimate obligor on such a financing is the private entity, if the dealer acts as underwriter for a financing undertaken through a conduit issuer on other than a competitive bid basis, it is engaging in municipal securities business for purposes of Rule G-37. The selection of the underwriter for such a financing frequently is made by the conduit borrower. While in many cases conduit issuers have either formal procedures or an informal historical practice of accepting the dealer selected by the conduit borrower, some conduit issuers may set minimum standards that dealers must meet to qualify to underwrite a conduit issue, and other conduit issuers may have a slate of dealers selected by the conduit issuer from which the conduit borrower chooses the underwriter for its issue. Still other conduit issuers may defer to the conduit borrower's selection of lead underwriter but may require the underwriting syndicate to include additional dealers selected by the issuer or selected by the conduit borrower from a slate of issuer-approved underwriters, often with the purpose of ensuring participation by local dealers or historically disadvantaged dealers. A smaller number of conduit issuers retain more significant control over which dealers act as underwriters, either by making the selection for the conduit borrower or by considering the conduit borrower's selection to be merely a suggestion which in some cases the conduit issuer does not follow. However, in virtually all cases, the conduit issuer will maintain ultimate power to control which dealer underwrites a conduit issue since the conduit issuer has discretion to withhold its agreement to issue the securities through any particular dealer.

From a literal perspective, any communication by a dealer with a conduit borrower that is intended to cause the borrower to select the dealer to serve as underwriter for a conduit issue could be considered a solicitation of municipal securities business. This is because the conduit borrower eventually communicates its selection of the dealer to act as underwriter to the conduit issuer for approval. This series of communications would, by its terms, constitute an indirect communication by the dealer through the conduit borrower to the conduit issuer for the purpose of obtaining or retaining municipal securities business.

However, the MSRB believes that a dealer's communication with a conduit borrower generally should not be deemed an indirect solicitation of the issuer unless a reasonable nexus can be established between the making of contributions to officials of the conduit issuer within the meaning of Rule G-37 and the selection of the underwriter for such conduit financing. A determination of whether such a reasonable nexus could exist depends on the specific facts and circumstances.

Further, if an affiliated person of a dealer who is providing investment banking services and corporate financing advice to a private company concludes, in his or her professional judgment, that an appropriate financing alternative may be a conduit financing, a limited communication to the company by the affiliated person that such financing alternative may be

appropriate, together with the provision to the company of contact information for an MFP of the dealer, generally would not be presumed to be a solicitation. Alternatively, the affiliated person could inform the company that dealer personnel who handle municipal securities business will contact it. In addition, if a dealer has already been selected by the conduit borrower to serve as the underwriter for a conduit financing and a non-MFP affiliated person of the dealer communicates with the conduit borrower in furtherance of the financing, such communications by the affiliated person would not be a solicitation under Rule G-38.

Communications by Non-Affiliated Professionals

So long as non-affiliated persons providing legal, accounting, engineering or other professional services in connection with specific municipal securities business are not being paid directly or indirectly by a dealer for communicating with an issuer for the purpose of obtaining or retaining municipal securities business for the dealer (*i.e.*, they are paid solely for their provision of legal, accounting, engineering or other professional services with respect to the business), they would not become subject to Rule G-38. Dealers are reminded that the term “payment” as used in Rules G-37 and G-38 refers to anything of value and can, depending on the specific facts and circumstances, include *quid pro quo* arrangements whereby a non-affiliated person solicits municipal securities business for the dealer in exchange for being hired by the dealer to provide other unrelated services.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

This second amendment was adopted by the MSRB at its February 15-16, 2006 meeting. Questions concerning this filing may be directed to Ernesto A. Lanza, Senior Associate General Counsel, at (703) 797-6600.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Partial Amendment

(a) Purpose

The MSRB previously filed the original proposed rule change to provide guidance on the definition of “solicitation” as used in Rules G-37 and G-38. Among other things, the original proposed rule change 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 certain Question and Answer interpretations (the “Rule G-37 solicitation Qs&As”). In response

to comments received by the Commission from a commentator on the original proposed rule change,³ the MSRB has determined to file this second amendment and simultaneously withdraw the Rule G-37 solicitation Qs&As. The MSRB has also determined to withdraw simultaneously obsolete guidance previously provided in Question and Answer interpretations under former Rule G-38 relating to consultants (the “former Rule G-38 Qs&As”) since, as a result of the adoption of current Rule G-38 in 2005, the consultant provisions to which the former Rule G-38 Qs&As relate have been superseded and are no longer in effect.⁴

The commentator on the original proposed rule change stated that, in certain respects, the guidance on solicitation and related matters provided in the original proposed rule change may not be wholly consistent with guidance previously provided by the MSRB and that such prior guidance should be withdrawn. The commentator noted in particular an apparent inconsistency between the original proposed rule change and a former Rule G-38 Q&A published on March 4, 1999 relating to circumstances where joint ventures between dealers might give rise to one of the dealers being considered a consultant under former Rule G-38.

The MSRB agrees that it would be appropriate to consolidate its guidance on the definition of solicitation for purposes of Rules G-37 and G-38 in the Solicitation Guidance and therefore is filing this second amendment. This second amendment deletes the footnote in the original proposed rule change referencing the Rule G-37 Solicitation Qs&As (which are being withdrawn in a companion filing with the Commission) and instead inserts the substantive language of such Qs&As into the text of the Solicitation Guidance. This second amendment and the withdrawal of the Rule G-37 solicitation Qs&As and former 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 original proposed rule change.

With respect to the commentator’s discussion of former Rule G-38 Q&A of March 4, 1999, the range of professionals covered by the final paragraph of the Solicitation Guidance relating to communications by non-affiliated professionals is broader than the range of professionals previously designated within an exception to the definition of consultant under former Rule G-38.⁵ Such professionals would not be subject to current Rule G-38 under the

³ See Exchange Act Release No. 52948 (December 13, 2005), 70 FR 75514 (December 20, 2005). The Commission received a comment 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.

⁴ See SR-MSRB-2006-1 (March 17, 2006) relating to the withdrawal of the Rule G-37 solicitation Qs&As and the former Rule G-38 Qs&As.

⁵ Former Rule G-38 identified only those persons providing legal, accounting or engineering advice as qualifying for the exception under appropriate conditions, whereas
(continued . . .)

Solicitation Guidance only so long as they are not being paid directly or indirectly by the dealer for communicating with an issuer for the purpose of obtaining or retaining municipal securities business for the dealer (*i.e.*, the professionals are paid solely for the provision of professional services with respect to the business). Professional services provided by a non-affiliated person in connection with municipal securities business for which payments may be made under the final paragraph of the Solicitation Guidance must in fact constitute *bona fide* services and not be illusory in nature. Finally, the MSRB notes that the application of the Solicitation Guidance is dependent upon the specific facts and circumstances and the MSRB has no opinion on how the Solicitation Guidance would be applied in any particular scenario.

(b) Statutory Basis

The MSRB has adopted the original proposed rule change, as modified by this second amendment, pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which provides that MSRB 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 original proposed rule change, as modified by this second amendment, is consistent with the Exchange Act because 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 practice and professionalism, thereby helping to maintain public trust and confidence in the integrity of the municipal securities market.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The MSRB does not believe that the original proposed rule change, as modified by this second amendment, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

(. . . continued)

the Solicitation Guidance identifies those non-affiliated persons providing legal, accounting, engineering or other professional services as not being subject to current Rule G-38 under appropriate conditions.

5. Self-Regulatory Organization's Statement on Comments Received on the Partial Amendment by Members, Participants, or Others

Written comments on this second amendment were neither solicited nor received.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The MSRB requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Exchange Act, for approving this second amendment (simultaneously with the original proposed rule change) prior to the thirtieth day after publication of the notice of filing of this second amendment in the Federal Register. The MSRB believes that the Commission has good cause for granting accelerated approval of this second amendment because it does not substantively change the original proposed rule change, which the Commission has already published for comment. The MSRB also requests that the Commission approve this second amendment and related original proposed rule change simultaneously with SR-MSRB-2006-1.

8. Partial Amendment Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

None.