

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	<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="08/09/2005"/>
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.

Ernesto A. Lanza, elanza@msrb.org

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

Add Remove View

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 (“MSRB”) is filing this partial amendment to File No. SR-MSRB-2005-04, originally filed on March 17, 2005 with respect to a proposed rule change relating to solicitation of municipal securities business. This amendment modifies portions of the previously filed proposed rule language of MSRB Rule G-38, as well as proposed new Form G-38t, in response to comments received by the Securities and Exchange Commission (“Commission”) from commentators on Exchange Act Release No. 51561 (April 15, 2005).¹ The proposed amendments to Rule G-8, Rule G-37, Form G-37/G-38 and Form G-37x as filed in SR-MSRB-2005-04 remain as originally filed.

Description of Amendment

This amendment provides that the proposed rule change would become effective on the first business Monday at least five business days after Commission approval. This amendment also deletes the requirement in section (c), relating to transitional payments, that the broker, dealer or municipal securities dealer (“dealer”) must be selected by the issuer for municipal securities business on or prior to the effective date of the proposed rule change while adding a requirement that dealers include on their initial and all subsequent Form G-38t submissions each item of municipal securities business for which a transitional payment remains pending and the amount of such pending payment for each item of business. Form G-38t is modified to reflect the required reporting of pending payments. Finally, this amendment modifies the definition of “affiliated person” and adds a definition of “registered person” so that affiliated persons would include independent brokers who are duly qualified registered persons of a dealer under MSRB or NASD professional qualification requirements.

Discussion of Comments

Transitional Payments. BMA expressed concern that, “as a practical matter, broker-dealers will have no meaningful notice as to when the SEC will approve this amendment and thus will not have an opportunity to effectively close out their relationship with Consultants under the current provision.” BMA suggested the elimination of the provision in amended Rule G-38 prohibiting payment for prior services if the dealer had not been selected for the business at the time the Commission approves the proposed amendments. BMA pointed to concerns that this provision of the proposed rule change would require dealers to fail to fulfill their contractual payment obligations for actual work previously performed by consultants.²

¹ The Commission received letters from Lynette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, Bond Market Association (“BMA”), to Jonathan G. Katz, Commission Secretary, dated May 5, 2005; Jonathan Stein, Director of Regulatory Affairs – Fixed Income, Raymond James & Associates, Inc. (“Raymond James”), to Mr. Katz, dated May 24, 2005; Chris Charles, President, Wulff, Hansen & Co. (“Wulff Hansen”), to Mr. Katz, dated May 6, 2005; and the Honorable Rick Santorum, United States Senate (“Sen. Santorum”), to the Honorable William H. Donaldson, Commission Chairman, dated March 31, 2005.

² BMA also suggested that, to avoid the possibility that payments may be made for purposes other than past services, such payments could be required to be made within 30

(continued . . .)

The MSRB believes that the new effective date and modified transitional payment provisions, as well as the modification to Form G-38t, will address this concern and will facilitate dealer compliance with revised Rule G-38 in an orderly and timely manner while reducing the opportunity for circumvention of the purposes of the proposed rule change. As modified, the transitional payment provision should avoid the potential for exposing dealers to legal liability under their contracts with consultants for failure to pay for services rendered.

Independent Registered Representatives. BMA and Raymond James argued that the definition of “affiliated person” should include registered representatives of dealers who are independent contractors, rather than employees of such dealers, noting that such independent registered representatives “are subject to the same supervision, compliance and regulatory requirements as employees.” Raymond James stated that “as many as 40% of the registered representatives in this country are independent contractors, not employees, and that number is increasing,” and that 85% of its own registered representatives are independent contractors. Raymond James stated:

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.”

The MSRB believes that the modified definition of affiliated person will address this concern and will further minimize the potential burden on competition of the proposed rule change in that it would treat dealer business models using independent brokers equally with dealer business models using directly employed brokers without reducing the effectiveness of the proposed rule change. Registered persons included in the definition of affiliated person under this amendment are subject to federal securities laws on the same basis as directly employed brokers and therefore their inclusion is consistent with the purposes of the proposed rule change.

Other Comments. BMA sought further clarification on the definition of “solicitation” as used in the proposed rule change. The MSRB has filed with the Commission a proposed interpretation providing such further clarification and will address comments on this definition in conjunction with such rule filing.³ Sen. Santorum opposed changing Rule G-38. The MSRB

(. . . continued)

days of the effective date. The MSRB believes the modification provided in this amendment adequately addresses this concern.

³ File No. SR-MSRB-2005-11.

previously addressed the Senator's comments in the proposed rule change. Wulff Hansen generally supported the proposed amendments.

The MSRB reminds dealers that the proposed rule change, as modified by this amendment, will cover direct and indirect communications that serve as solicitations of municipal securities business for dealers, as well as direct and indirect payments by dealers in return for such solicitations. The MSRB urges the enforcement agencies to remain vigilant to efforts by dealers to enter into arrangements that may superficially comply with the letter of revised Rule G-38 but which may be designed to benefit dealers by means of indirect communications with issuers on behalf of such dealers or to reward those who recommend such dealers with indirect payments. In particular, dealers should exercise caution when hiring solicitors who may retain other business ties that present opportunities for their business associates to act indirectly on such solicitors' behalf.

Furthermore, as noted in MSRB Notice 2005-15 (March 15, 2005), Rule G-27 (on supervision) will obligate dealers to take the necessary steps to ensure that payments are not directly or indirectly being paid to any person other than an affiliated person of the dealer in exchange for such person's solicitation of municipal securities business on the dealer's behalf in violation of revised Rule G-38. This will entail, among other things, understanding the true nature of the services provided by non-affiliated persons for which payments may be made. The MSRB expects that, once the proposed rule change becomes effective, dealers will have in place the necessary policies and procedures relating to the new provisions of Rule G-38 to ensure both the achievement of compliance with such provisions and the accuracy of the required annual chief executive officer certification under NASD Rule 3013 and IM-3013 concerning compliance and supervisory policies and procedures, including those established for revised Rule G-38.

Request for Accelerated Approval

The MSRB requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, for approving this amendment (simultaneously with the proposed rule change) prior to the thirtieth day after publication of the notice of filing of this partial amendment in the Federal Register. The MSRB believes that the Commission has good cause for granting accelerated approval of this amendment because (i) the new effective date and modified transitional payment provisions, as well as the modification to Form G-38t, will facilitate dealer compliance with revised Rule G-38 in an orderly and timely manner while reducing the opportunity for circumvention of the purposes of the proposed rule change, and (ii) the modified definition of affiliated person would further minimize the potential burden on competition of the proposed rule change in that it would treat dealer business models using independent brokers equally with dealer business models using directly employed brokers without reducing the effectiveness of the proposed rule change.

* * * * *

Partial Amendment to File No. SR-MSRB-2005-04⁴

Rule G-38. Solicitation of Municipal Securities Business

(a) No change.

(b) *Definitions.* For purposes of this rule, the following terms shall have the following meanings:

(i) No change

(ii) The term “affiliated person of the broker, dealer or municipal securities dealer” means any person who is a partner, director, officer, ~~or~~ employee **or registered person** of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, any person occupying a similar status or performing similar functions for the bank dealer) or of an affiliated company of the broker, dealer or municipal securities dealer.

(iii) No change.

(iv) The term “registered person” means any associated person of the broker, dealer or municipal securities dealer duly qualified in one or more categories of qualification under Rule G-3 or duly qualified and registered in one or more categories of registration under the rules of a registered securities association.

(v) [(iv)] No change.

(c) *Transitional Payments.*

(i) A broker, dealer or municipal securities dealer may make payments to a person other than an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer if such payment is made with respect solely to solicitation activities undertaken by such person on or prior to the effective date of this rule pursuant to a Consultant Agreement under former Rule G-38, but only if:

[(A) the broker, dealer or municipal securities dealer had been selected by the issuer on or prior to the effective date of this rule to engage in such municipal securities business;]

(A) [(B)] such person has not solicited municipal securities business from any issuer on behalf of the broker, dealer or municipal securities dealer at any time after the effective date of this rule; and

⁴ Underlining indicates additions to the original proposed rule change; brackets indicate deletions from the original proposed rule change.

(B) [(C)] the broker, dealer or municipal securities dealer sends to the Board, by the last day of the month following the end of each calendar quarter during which payments to such person are made or remain pending, Form G-38t, setting forth, in the prescribed format, the information required to be disclosed to the Board pursuant to section (e) of former Rule G-38; **provided that each item of municipal securities business for which payment remains pending (together with a specific dollar amount or objective formula for determining the specific dollar amount of the pending payment) must be listed on the first quarterly Form G-38t due after the effective date of this rule and on each subsequent quarterly Form G-38t until such quarter in which payment is finally made.** The broker, dealer or municipal securities dealer shall send two copies of Form G-38t to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending. The Board shall make public a copy of each Form G-38t received from any broker, dealer or municipal securities dealer.

(ii) For purposes of this section (c), the term “effective date of this rule” means [INSERT DATE OF **FIRST MONDAY THAT IS A BUSINESS DAY AT LEAST FIVE BUSINESS DAYS AFTER** COMMISSION APPROVAL OF PROPOSED RULE CHANGE] and the term “former Rule G-38” means Rule G-38 of the Board in effect on the day prior to the effective date of this rule.

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FORM G-38t

MSRB

Page One – No change.

ATTACHMENT TO FORM G-38t

(submit a separate attachment sheet for each consultant listed during reporting period)

Name of Consultant (pursuant to Consultant Agreement): _____

Consultant’s Business Address: _____

Role Performed by Consultant (including the state or geographic area in which the consultant worked on behalf of the broker, dealer or municipal securities dealer): _____

Compensation Arrangement: _____

Municipal Securities Business Obtained or Retained by Consultant for Which Payment is Made or is Pending (list each such business separately **and specific dollar amount or objective formula for determining amount of pending payment for each; [and,] if any payments are made [paid]** during such reporting period, indicate **specific** dollar amounts paid to consultant connected with particular municipal securities business):

Total Dollar Amount Paid to Consultant during Reporting Period: _____

Contributions Made to Issuer Officials by Consultant and Any Partner, Director, Officer or Employee of the Consultant Who Communicates with An Issuer Official to Obtain Municipal Securities Business for the Broker, Dealer or Municipal Securities Dealer or Any PAC Controlled by Any of These Entities or Persons:

State	Complete name and title (including any city/county/state or other political subdivision) of issuer official	For each contribution, list contribution amount and contributor category (i.e., company, individual, company controlled PAC or individual controlled PAC)
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Payments Made to Political Parties of States and Political Subdivisions by Consultant and Any Partner, Director, Officer or Employee of the Consultant Who Communicates with An Issuer Official to Obtain Municipal Securities Business for the Broker, Dealer or Municipal Securities Dealer or Any PAC Controlled by Any of These Entities or Persons:

State	Complete name (including any city/county/state or other political subdivision) of political party	For each payment, list payment amount and contributor category (i.e., company, individual, company controlled PAC or individual controlled PAC)
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