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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69249; File No. SR-MSRB-2013-01)

March 28, 2013

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Relating to Amendments to MSRB Rules G-37 and G-8 and Form G-37

I. Introduction

On February 4, 2013, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“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 amendments to MSRB Rules G-37, on political contributions and prohibitions on municipal securities business, and G-8, on books and records, and Form G-37. The proposed rule change was published for comment in the Federal Register on February 14, 2013.³ The Commission received four comment letters on the proposal.⁴ The MSRB submitted a response on March 26, 2013.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 68872 (February 8, 2013), 78 FR 10656 (“Notice”).

⁴ See Letters to Elizabeth M. Murphy, Secretary, Commission, from Robert W. Doty, President, AGFS and Senior Advisor, Government Financial Strategies, Inc., dated February 20, 2013 (“AGFS Letter”) and Jeanine Rodgers Caruso, President, National Association of Independent Public Finance Advisors, dated March 12, 2013 (“NAIPFA Letter”). See also, Letters to Ronald W. Smith, Corporate Secretary, MSRB, from Ellen S. Miller, Co-Founder and Executive Director, The Sunlight Foundation, dated March 5, 2013 (“Sunlight Letter”) and Kamala Harris, Attorney General, Department of Justice, from Bill Lockyer, Treasurer, State of California, dated March 18, 2013 (“AG Letter”).

⁵ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Gary L. Goldsholle, General Counsel, MSRB, dated March 26, 2013.

MSRB Rule G-37 requires dealers to disclose on Form G-37 certain contributions to issuer officials, contributions to bond ballot campaigns, and payments to political parties of states and political subdivisions, made by brokers, dealers and municipal securities dealers (“dealers”), their municipal finance professionals (“MFPs”), political action committees controlled by the dealer or their MFPs or non-MFP executive officers (collectively, “covered parties”). Further, MSRB Rule G-37 prohibits dealers from engaging in municipal securities business with an issuer within two years after contributions are made by certain covered parties (other than certain permitted de minimis contributions) to an official of such issuer. The rule’s prohibition on engaging in municipal securities business, however, is currently not triggered by contributions made to bond ballot campaigns by covered parties. MSRB Rule G-37 also requires dealers to maintain records of reportable contributions to bond ballot campaigns pursuant to MSRB Rule G-8.

The MSRB proposes to revise MSRB Rule G-37(e)(i)(B)(2) to provide that, in disclosing the contribution amount made to a bond ballot campaign, the dealer also must include, in the case of in-kind contributions, the value and nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of, the bond ballot campaign. The proposed rule change also requires dealers to disclose the specific date on which such contributions to bond ballot campaigns were made.

The MSRB also proposes to revise MSRB Rule G-37(e)(i)(B) to require dealers to disclose the full issuer name and full issue description of any primary offering resulting from voter approval of a bond ballot measure to which a contribution required to be disclosed has been made. All information is required to be reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot measure occurred. The proposed rule

change also contains a look-back provision for bond ballot campaign contributions that are made by an MFP or a non-MFP executive officer during the two years prior to an individual becoming an MFP or a non-MFP executive officer of a dealer. The look-back provision limits the additional disclosures required under proposed MSRB Rule G-37(e)(i)(B) to those items that would have been required to be disclosed if such individual had been an MFP or a non-MFP executive officer at the time of the contribution. The proposed revisions to MSRB Rule G-37(e)(i)(B) also require dealers to disclose the reportable date of selection on which the dealer was selected to engage in municipal securities business. Furthermore, proposed revisions to MSRB Rule G-37(e)(i)(B) require dealers to disclose both the amount and source of any payments or reimbursements related to any bond ballot contribution received by a dealer or its MFPs from any third party.⁶

The MSRB also proposes to revise MSRB Rule G-37(g) to expand the definition of “contribution” and add a new defined term, the “reportable date of selection.” The proposed amendments to the definition of “contribution” would distinguish between contributions made to an official of an issuer and contributions made to a bond ballot campaign. The term “reportable date of selection” would be defined to mean to the date of the earliest to occur of: (1) the execution of an engagement letter; (2) the execution of a bond purchase agreement; or (3) the receipt of formal notification (provided either in writing or orally) from or on behalf of the issuer that the dealer has been selected to engage in municipal securities business.

Lastly, the MSRB proposes conforming amendments to MSRB Rule G-8(a)(xvi)(H) and (I) to require dealers to maintain records of the supplemental information related to bond ballot

⁶ Third parties include issuers.

campaign contributions that are required to be disclosed on Form G-37 under the proposed rule change.

III. Summary of Comments Received and the MSRB's Response

As previously noted, the Commission received four comment letters on the proposed rule change and a response from the MSRB.⁷ Two commenters expressed general support for the proposed rule change.⁸ One commenter found the proposed disclosure requirements to be inadequate.⁹ One commenter addressed state law matters, which are not the subject of the proposed rule change.¹⁰

A. General Support to the Proposed Rule Change

One commenter noted that the proposed rule change is necessary in order to gather information for evaluation of potential further actions in response to circumstances suggesting corruption and unfair dealing in gaining employment and participating in municipal securities issuances approved by voters.¹¹ Another commenter stated that improving “public disclosure of bond ballot campaign contributions is fundamental to helping citizens be better informed about possible conflicts of interest and any “pay-to-play” schemes that might be occurring in the underwriting of bonds.”¹²

B. Disclosure Requirements are Inadequate

⁷ See supra notes 4 and 5.

⁸ See Sunlight Letter and AGFS Letter.

⁹ See NAIPFA Letter.

¹⁰ See AG Letter. Because the AG Letter relates to subject matters not directly relevant to the proposed rule change, the Commission does not address the comment herein.

¹¹ See AGFS Letter.

¹² See Sunlight Letter.

One commenter also requested that the MSRB “further improve transparency and accountability by making municipal securities information available in an open, standardized format and by using non-proprietary unique identifiers.”¹³ In response, the MSRB stated that none of these requests were the subject of the proposed rule change but that the MSRB will keep these requests under advisement as it considers future enhancements to its political contribution transparency initiatives.

Another commenter stated that the proposed disclosure requirements are inadequate to curtail actual or perceived quid pro quo practices with respect to bond ballot campaign contributions.¹⁴ Moreover, this commenter noted that the MSRB’s First Amendment concerns are unwarranted in light of the Supreme Court’s decision in Citizens United v. FEC.¹⁵ This commenter suggested that additional steps beyond disclosure requirements are necessary to address the issue, either by way of a direct contribution ban, or an indirect expenditure limit.¹⁶ “Contributions to bond ballot campaign committees are, in fact, direct in nature and, because of the evidence of actual or perceived quid pro quo, such contributions should be prohibited in order to prevent quid pro quo from continuing to occur.”¹⁷ If bond ballot campaign committee contributions are determined to be indirect expenditures, this commenter urged the Commission to place limits on such expenditures as a result of past and ongoing quid pro quo. This commenter also suggested that bond ballot campaign committee contributions be limited to \$200 per election and be combined with a ban on business in the event such contributions exceed this

¹³ Id.

¹⁴ See NAIPFA Letter.

¹⁵ 558 U.S. 310 (2010).

¹⁶ Id.

¹⁷ Id.

amount. Furthermore, the commenter suggested that, if the above-referenced recommendations are not implemented, the proposed rule change should be amended to require disclosure of contributions contemporaneously or within a reasonable amount of time after the contribution is made. The commenter argued that the current proposed quarterly disclosure timetable is insufficient to curtail the actual or perceived quid pro quo, because “in all likelihood, an election will have concluded long before the disclosures are ever made, which will diminish whatever informative value such disclosures may have to the voting public.”

In response, the MSRB noted it has previously acknowledged and responded to similar comments, including those received pursuant to a request for comment to the public,¹⁸ which were specifically addressed in the Notice. In addition, the MSRB reiterated that approval of the proposed rule change does not foreclose additional rulemaking in the future.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters received and the MSRB’s response, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.¹⁹ In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB’s 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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open

¹⁸ See MSRB Notice 2012-43 (August 15, 2012).

market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.²⁰

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, because it is intended to protect investors and the public interest and prevent fraudulent and manipulative acts and practices by adding greater specificity to the public disclosures required for contributions made by covered parties to bond ballot campaigns and any municipal securities business awarded pursuant to such bond ballot measure. Market participants will have access to such public information in a centralized format on the MSRB's website through Form G-37, which will increase market transparency and strengthen market integrity of the municipal securities market. The information will help shed light on ongoing market concerns of pay-to-play practices with respect to bond ballot campaign contributions. The MSRB has also represented that the revisions to MSRB Rule G-37 will assist the MSRB in its continuing review of MSRB Rule G-37 and whether any additional disclosure requirements are desirable to address other practices that may present challenges to the integrity of the municipal securities market related to political contributions by dealers and dealer personnel. Furthermore, the MSRB has noted that approval of the proposed rule change does not foreclose additional rulemaking in the future. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

¹⁹ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78o-4(b)(2)(C).

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Section 15B(b)(2)(C) of the Act. The proposal will become effective no later than the start of the second calendar quarter following the date of this order.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-MSRB-2013-01) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill
Deputy Secretary

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²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).