

securities exchange.¹² Specifically, the Commission finds that these proposed changes are consistent with the requirements of Section 6(b)(5) of the Act¹³ because they are designed to facilitate transactions in securities; to remove impediments to and to perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.¹⁴

The Commission believes that the proposed changes to CHX Article XX, Rule 37(a)(2) providing for an Aggregate Share Threshold achieve an appropriate balance between providing customers with efficient and prompt executions of orders and limiting the risk that specialists are exposed to by guaranteeing automatic executions. The Commission further finds that the proposed changes to CHX Article XX, Rule 37(b)(1) dealing with a specialist's obligations for manually handling market and marketable limit orders are consistent with the Act and the manner in which specialists currently handle orders for listed securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the portion of proposed rule change (SR-CHX-2002-20) relating to CHX Article XX, Rules 37(a)(1), 37(a)(2), 37(b)(1) and 43(d), as discussed above, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47814; File No. SR-MSRB-2002-12]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G-37, on Political Contributions and Prohibitions on Municipal Securities Business, G-8, on Books and Records, Revisions to Form G-37/G-38 and the Withdrawal of Certain Rule G-37 Questions and Answers

May 8, 2003.

I. Introduction

On September 26, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and rule 19b-4 thereunder,¹ a proposed rule change to amend rule G-37, on political contributions and prohibitions on municipal securities business, G-8, on books and records, revisions to Form G-37/G-38 and the withdrawal of certain rule G-37 Questions and Answers. On March 26, 2003, the MSRB amended the proposal. The proposed rule change revises the exemption process and the definition of municipal finance professional. Amendment No. 1 alters the text of the amendments to the rule language as it appears in the original filing. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on April 8, 2003.²

The Commission received two comment letters on the proposed rule change.³ This order approves the proposed rule change as modified by Amendment No. 1.

II. Summary of Comments

The Commission received two comment letters on the proposed rule change, both support the proposal.

The TBMA letter expresses support for the proposal because the TBMA believes that the changes will help

reduce some of the burdens associated with rule G-37. According to the TBMA letter, the proposed rule change, "will not undercut [rule G-37's] goal of maintaining the integrity of the municipal underwriting process."⁴ Furthermore, TBMA believes that the changes are long overdue and urges the Commission to quickly adopt the proposal.⁵ Similar to the TBMA letter, the ABA/ABASA letter provides support for the proposed rule change as a means to limit the costs and burdens associated with regulatory compliance. On the amended definition of municipal finance professional, the ABA/ABASA letter expressed that the changes will limit the "unintended consequences of preventing dealer firms from hiring otherwise qualified employees."⁶ Additionally, the more flexible exemption process will provide some relief for "inadvertent violations" on rule G-37's ban on contributions.⁷

III. Discussion and Commission Findings

Section 19(b) of the Exchange Act⁸ requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. After careful review of the proposed rule change and comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, which govern the MSRB.⁹ The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in 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

The Commission acknowledges the MSRB Long-Range Plan, to assess rule G-37's requirements and resulting

¹² In approving this portion of the rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ The Commission notes that it is not approving proposed Interpretation .01 to CHX Rule 37, nor the corresponding modifications to Rule 37 that would accompany this interpretation.

¹⁵ 15 U.S.C. 78f(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4.

² See Release No. 34-47609 (April 1, 2003), 67 FR 17122.

³ April 25, 2003, letter from John M. Ramsay, Senior Vice President and Regulatory Counsel, The Bond Market Association to Jonathan G. Katz, Secretary, Commission ("TBMA letter"); April 29, 2003, letter from Sarah Miller, American Bankers Association and ABA Securities Association to Jonathan G. Katz, Secretary, Commission ("ABA/ABASA letter").

⁴ See TBMA letter at 1.

⁵ *Id.* at 2.

⁶ See ABA/ABASA letter at 2.

⁷ *Id.*

⁸ 15 U.S.C. 78s(b).

⁹ Additionally, 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).

¹⁰ 1015 U.S.C. 78o-4(b)(2)(C).

compliance concerns. Both the Commission and the MSRB believe that rule G-37 is essential to diminish pay-to-play practices in the municipal securities market. The rule has provided substantial benefit to the industry and the investing public by reducing the direct connection between political contributions to issuer officials and the awarding of municipal securities business.

The comment letters welcome the amendments proposed as a means to reduce industry costs and burdens. The Commission does not believe that the proposed rule change will threaten the purpose and efficacy of the pay-to-play restrictions. The Commission believes that the proposed rule change adequately provides essential protections in the exemption process and the revised definition of municipal finance professional. Furthermore, proposed revision of the look back and look forward periods to better correlate with the municipal finance professionals' role and business activity will continue to safeguard against the potential link between obtaining municipal securities business and contributions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,¹¹ that the proposed rule change (File No. SR-MSRB-2002-12) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47815; File No. SR-MSRB-2003-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Marketing of 529 College Savings Plans in the Workplace

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 19b-4 thereunder,¹ notice is hereby given that

on April 29, 2003, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change (File No. SR-MSRB-2003-03) (the "proposed rule change") described in items, I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of an interpretive notice on marketing by brokers, dealers and municipal securities dealers ("dealers") of 529 college savings plans in the workplace. The entire text of the proposed rule change appears at the end of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The MSRB has received a number of requests for guidance on dealer responsibilities under MSRB rules with respect to the marketing of 529 college savings plans (a type of state program that issues municipal fund securities) through the workplace to employees. Such workplace marketing programs raise unique interpretive issues under MSRB rules. The MSRB has determined to provide interpretive guidance on the application of rule G-8, on recordkeeping, rule G-17, on fair dealing, rule G-19, on suitability, rule G-27, on supervision, and rule G-32, on disclosure, in the context of workplace marketing programs relating to 529 college savings plans.

(2) Basis

The MSRB believes that the proposed rule change is consistent with section

15B(b)(2)(C) of the Exchange 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, 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 proposed rule change will provide guidance to dealers engaged in workplace marketing programs for 529 college savings plans as to how to comply with MSRB rules in a manner that ensures that the investor protection objectives of the rules are met.

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 Exchange Act since it would apply equally to all dealers involved in workplace marketing programs for 529 college savings plans.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On November 18, 2002, the MSRB published for comment draft interpretive notice on marketing of 529 college savings plan employee payroll deduction programs. The MSRB received six comment letters.² After reviewing these comments, the MSRB approved the draft interpretive notice, with certain modifications, for filing with the SEC.³ The comments and the MSRB's responses are discussed below.

² Letter from Robert W. Berta, Jr., Vice President—Compliance, Countrywide Investment Services, Inc. ("Countrywide"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2002; letter from M. Shawn Drefflein, President, National Planning Corporation ("NPC"), to Ernesto A. Lanza, dated January 7, 2003; letter from Natalie A. Kavanaugh, Legal Specialist, Fidelity Investments ("Fidelity"), to Ernesto A. Lanza, dated January 9, 2003; letter from Diana F. Cantor, Chair, College Savings Plan Network ("CSPN") and Executive Director, Virginia College Savings Plan, to Ernesto A. Lanza, dated January 10, 2003; letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA"), to Ernesto A. Lanza, dated January 10, 2003; and letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), to Ernesto A. Lanza, dated January 10, 2003.

³ After reviewing the comments, the MSRB modified the draft interpretive guidance to: (i) Change the term "introducing broker" to "selling broker;" (ii) reflect the existence of other scenarios in which 529 college savings plans are marketed in

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 thereunder.