

evidence that some dealers had been withdrawing from, or considering limiting their offerings in, the 529 college savings market at least in part due to the proposal in the 2005 Notice. Further, the MSRB stated that, as noted in the filing, there is a potential for over-emphasizing the importance of a particular state's beneficial state tax treatment of an investment in its 529 college savings plan.

NASAA's comment letter also stated that while they are encouraged by the point-of-sale disclosures outlined in the Commission's Notice, they believe that these disclosures would better serve the interests of investors if they were provided in a more effective and timely manner. NASAA questioned the effectiveness of providing the out-of-state plan disclosures at the time of the transaction. NASAA stated that they believe the out-of-state disclosures should be made well before the trade to achieve maximum effectiveness, and that the mechanism for this disclosure should be more specific and concrete.

The proposal provides that the out-of-state disclosure obligation may be met if the disclosure appears in the program disclosure document, so long as the program disclosure document has been delivered to the customer at or prior to the time of trade and the disclosure appears in the program disclosure document in a manner that is reasonably likely to be noted by an investor. NASAA stated that it is left open to question whether or not customers will, in fact, take note of these disclosures. NASAA recommended that broker-dealers be required to make a disclosure separate from the plan document before their disclosure obligations are deemed fulfilled.

The MSRB's Response Letter stated that with respect to the manner and timing of the proposed time-of-trade disclosures to customers, the MSRB believes that it has achieved an appropriate balance that ensures that the required disclosures are made in a timely and balanced manner without potentially over-emphasizing the home state tax element as compared to the other numerous items of important information provided to customers. The MSRB stated that it continues to monitor the Commission's proposed point-of-sale disclosure obligations in connection with mutual fund, variable annuity and 529 college savings plan sales under proposed Exchange Act Rule 15c2-3, which under certain circumstances could provide for the making of disclosures at a time prior to the time-of-trade. The MSRB stated that it has taken NASAA's suggestions in

this regard under advisement pending final action by the SEC on proposed Rule 15c2-3.

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<sup>8</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.<sup>9</sup> Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with the Act because it will further investor protection by strengthening and clarifying dealers' customer protection obligations relating to the marketing of 529 college savings plans, including but not limited to the duty to provide important disclosures to customers investing in out-of-state 529 college savings plans relating to state tax treatment and other benefits and to undertake active suitability analyses for recommended transactions based on appropriately weighted factors.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-MSRB-2006-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53960, File No. SR-MSRB-2006-01]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Amendment No. 1 Relating to Withdrawal of Obsolete Question-and-Answer Interpretive Guidance Under Former Rule G-38, on Consultants, and Certain Question-and-Answer Interpretive Guidance Relating to the Definition of "Solicitation" Under Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business

June 8, 2006.

On March 28, 2006, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to delete 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. On April 20, 2006, the MSRB filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on May 5, 2006.<sup>4</sup> The Commission received no comment letters regarding the proposal.

The proposed rule change deletes obsolete 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 August 29, 2005, new Rule G-38, on solicitation of municipal securities business, became effective, superseding former Rule G-38 on consultants.<sup>5</sup> The MSRB had previously published a number of Q&A interpretations on the former rule, none of which continue to apply to new Rule G-38 since the consultant provisions to which they relate are no longer in effect.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 deletes one additional Q&A providing interpretive guidance under Rule G-37 and former Rule G-38.

<sup>4</sup> See Securities Exchange Act Release No. 53746 (May 1, 2006), 71 FR 26577 (May 5, 2006).

<sup>5</sup> Securities Exchange Act Release No. 52278 (August 17, 2005); 70 FR 49342 (August 23, 2005).

Accordingly, the MSRB is deleting all obsolete Rule G-38 Qs&As.

The MSRB filed a related proposed rule change<sup>6</sup> relating to the definition of solicitation under MSRB Rules G-37 and G-38 (the "companion proposed rule change"). The companion proposed rule change inserts the substantive language of the Rule G-37 solicitation Qs&As deleted in this proposal into the text of the solicitation guidance provided in the companion proposed rule change. Accordingly, the proposed rule change and the companion proposed rule change consolidate the MSRB's guidance on the definition of solicitation for purposes of Rules G-37 and G-38.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>7</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act<sup>8</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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.<sup>9</sup> In particular, the Commission finds that the proposed rule change will help 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-MSRB-2006-01), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53964; File No. SR-NASDAQ-2006-005]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Modify Nasdaq's Delisting Procedures To Conform to Recent Amendments To Commission Rules Regarding Removal From Listing and Withdrawal From Registration

June 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 4, 2006, The NASDAQ Stock Market LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 5, 2006, Nasdaq filed Amendment No. 1 to the proposal.<sup>3</sup> On May 17, 2006, Nasdaq filed Amendment No. 2 to the proposal.<sup>4</sup> 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq's delisting procedures to comply with Rule 12d2-2 under the Act,<sup>5</sup> which became effective on April 24, 2006.

Nasdaq would implement the proposed rule change upon the later of its approval or the date Nasdaq begins to operate as a national securities exchange.

The text of the proposed rule change is below. Proposed new language is in

*italics*; proposed deletions are in brackets.<sup>6</sup>

#### Rules of The NASDAQ Stock Market LLC

\* \* \* \* \*

[4480.] 4380. Termination Procedure

(a) Failure to maintain compliance with the *applicable* provisions of [Rules 4350, 4450, or 4360] *the Rule 4300, 4400 and 4500 Series* will result in the termination of an issue's listing unless an exception is granted as provided in the Rule 4800 Series. Termination shall become effective in accordance with the procedures set forth in the Rule 4800 Series, *including IM-4800.*

(b)  
(1) An issuer may voluntarily terminate its listing upon [written notice to Nasdaq and application to the Commission.] *compliance with all requirements of Rule 12d2-2(c) under the Exchange Act. In part, Rule 12d2-2(c) requires that the issuer may delist by filing an application on Form 25 with the Commission, provided that the issuer: (i) Complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Nasdaq Rules; (ii) provides notice to Nasdaq no fewer than 10 days before the issuer files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to Nasdaq, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the issuer's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The issuer must also provide a copy of the Form 25 to Nasdaq simultaneously with its filing with the Commission. Nasdaq will provide notice on its web site of the issuer's intent to delist as required by Rule 12d2-2(c)(3).*

(2) *An issuer that seeks to voluntarily delist a class of securities pursuant to Rule 4380(b)(1) that has received notice from Nasdaq, pursuant to the Rule 4800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from*

<sup>6</sup> See File No. SR-MSRB-2005-11.

<sup>7</sup> 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).

<sup>8</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced the original proposed rule change in its entirety.

<sup>4</sup> In Amendment No. 2, Nasdaq amended the implementation date of the proposed rule change to the later of Commission approval or the date Nasdaq begins to operate as a national securities exchange.

<sup>5</sup> 17 CFR 240.12d2-2.

<sup>6</sup> Changes are marked to the rule text that appears in the electronic manual of The NASDAQ Stock Market, LLC found at <http://www.nasdaqtrader.com>. These rules will become effective when Nasdaq fulfills certain conditions and commences operations as a national securities exchange as set forth in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).