

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47969; File No. SR-MSRB-2003-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Require Dealers To Establish Anti-Money Laundering Compliance Programs

June 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 22, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR-MSRB-2003-04) (the "proposed rule change") described in Items I, II, and III below, which Items have been prepared by the Board. 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 filed a proposed rule change, Rule G-41, on anti-money laundering compliance. As further discussed below, section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act")³ required financial institutions, including broker/dealers, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act ("BSA"),⁴ and the regulations promulgated thereunder, by April 24, 2002. The MSRB has proposed new Rule G-41 to ensure that all brokers, dealers and municipal securities dealers ("dealers")⁵ that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities ("sole municipal dealers"), are aware of, and in

compliance with, anti-money laundering program requirements. Thus, proposed Rule G-41 requires that all dealers establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator governing the establishment and maintenance of anti-money laundering programs. The adoption of MSRB Rule G-41 will provide clarity to dealers and examiners concerning the rules and regulations that dealers who effect transactions in municipal securities must comply with concerning the development of anti-money laundering compliance programs, it will not impose any new or different obligations upon such dealers. Below is the full text of the proposed rule change.

Rule G-41: Anti-Money Laundering Compliance Program

No broker, dealer or municipal securities dealer shall be qualified for purposes of Rule G-2 unless such broker, dealer or municipal securities dealer has met the anti-money laundering compliance program rules set forth by either the registered securities association of which the dealer is a member (e.g., NASD Rule 3011), or the rules set forth by the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer (e.g., 12 CFR 21.21 (OCC); 12 CFR 208.63 (FRB); 12 CFR 326.8 (FDIC); and 12 CFR 563.177 (OTS)), to the same extent as if such rules were applicable to such broker, dealer or municipal securities dealer.

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 Board 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 Board has prepared summaries, set forth in section 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 purpose of the proposed rule change is to ensure that all dealers establish minimum standards for the anti-money laundering compliance programs that dealers are required to develop and implement under section 352 of the USA PATRIOT Act. The USA PATRIOT Act, which was signed into law by President Bush on October 26, 2001, is designed to deter and punish terrorists in the United States and abroad and to enhance law enforcement investigating tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws.

Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("AML Act"), imposes certain obligations on dealers through new anti-money laundering provisions and amendments to the BSA. Section 352 of the AML Act requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer with responsibility for a firm's anti-money laundering program; (iii) an ongoing employee training program; and (iv) an independent audit function to test the effectiveness of the anti-money laundering compliance program. Section 352 of the AML Act also required dealers to develop and implement a written anti-money laundering compliance program by April 24, 2002.⁶

Pursuant to pre-existing bank regulations, bank municipal securities dealers already were required to have anti-money laundering programs in place.⁷ Because the bank regulations contain the same elements that are required by section 352, BSA regulation 31 CFR 103.120(b) provides that a financial institution that is subject to regulation by a Federal functional regulator⁸ (including bank municipal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, 115 Stat. 272 (2001).

⁴ 31 U.S.C. 5311, *et seq.*

⁵ The term "dealer" is used herein as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Act. The use of the term does not imply that the entity is necessarily taking a principal position in a municipal security.

⁶ See 31 U.S.C. § 5318(h) (amended by section 352 of the AML Act).

⁷ See 12 CFR 21.21; 12 CFR 208.63; 12 CFR 326.8; and 12 CFR 563.177.

⁸ These are defined in reference to section 509 of the Gramm-Leach-Bliley Act (Public Law 106-102) to include the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency ("OCC"), the Board of Directors of the Federal Deposit Insurance Corporation