

[Release No. 34-35953; File No. SR-MSRB-95-4]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Customer Confirmations

July 11, 1995.

On April 3, 1995,¹ the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-95-4) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1). The proposed rule change amends rule G-15(a), on customer confirmations. Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35700, May 10, 1995) and by publication in the **Federal Register** 60 FR 26747, May 18, 1995). Two comment letters were received. The Commission is approving the proposed rule change.

I. Background

In response to market developments and regulatory concerns, the present rule G-15(a) has been subject to numerous amendments and Board interpretive notices since it was adopted in 1977. In November 1994, the SEC approved amendments to Rule 10b-10 under the Act, governing confirmation disclosure in securities other than municipal securities.² At the same time, the SEC deferred consideration of proposed Rule 15c2-13 that would have established confirmation disclosure requirements applicable to transactions in municipal securities.³ In response to revisions by the SEC to Rule 10b-10, to the SEC's proposed Rule 15c2-13 and to promote better compliance with the MSRB's rule, the MSRB is amending rule G-15(a).

¹ The Municipal Securities Rulemaking Board initially submitted the proposed rule change on March 30, 1995. Amendment No. 1, submitted on April 3, 1995, extended the delay for effectiveness of the rule to 120 days following Commission approval. See letter from Marianne I. Dunaitis, Assistant General Counsel, MSRB, to Karl Varner, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, dated April 3, 1995.

² Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

³ Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

II. Description

The change to rule G-15(a) will: (1) Clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule to promote better compliance; (2) revise certain requirements in areas to provide more disclosure; and (3) include modifications to the current confirmation disclosure requirements.

The rule change reorganizes the rule and incorporates previous Board interpretations into the rule. Most requirements are subdivided by subject matter into three board categories that comprised the content of municipal securities confirmations—terms of the transactions, securities identification, and securities confirmations—terms of the transactions, securities identification, and securities description (listing the features of the security). Under each category, Board rules and interpretations are organized by the specific confirmation requirement.

The rule change clarifies the confirmation format with the requirement that all disclosures, with certain exceptions, clearly and specifically be indicated on the front of the confirmation. To address concerns about the "crowding" of information on the front of the confirmation, certain requirements can be met by statements on the back of the confirmation, namely: (1) the required legend for zero coupon bonds; (2) the requirement that permits a dealer in agency transactions to include a statement that the name of the person from whom the securities were purchased or sold will be furnished upon the written request of the customer; (3) the requirement that permits a dealer, rather than indicating the time of execution, to include a statement that the time of execution will be furnished upon the written request of the customer; and (4) the requirements for the disclosure statement of actual yield and factors affecting yield of municipal collateralized mortgage obligations ("CMOs") in rule G-15(a)(i)(D)(2).

The rule change revises customer confirmation requirements to provide that dealers disclose on the confirmation: (1) If a security has not been rated by a nationally recognized statistical rating organization; (2) if a letter of credit is used, the identity of the bank issuing the letter of credit; (3) if call features exist in addition to the next pricing call, that the additional call features will be provided on request; (4) if necessary for the calculation of final money, the first interest payment date;

(5) if there is one additional obligor, the identity of the additional obligor; and (6) if there is more than one additional obligor, indication that there are "multiple obligors."

Furthermore, the rule change revises customer confirmation requirements to provide that dealers disclose on the confirmation: (1) A specific date and price for the next pricing call; (2) the primary revenue source for revenue bonds; (3) the amount of the dealer's "discount" or concession in an agency transaction; (4) the amount of any premium paid over accreted value for callable zero coupon bonds; (5) the initial public offering price for an original issue discount ("OID") security; (6) that the actual yield of municipal CMOs may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (7) that information concerning factors that affect yield of the municipal CMOs (including, at a minimum, estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon the customer's written request.

However, the revisions to the customer confirmation requirements will: (1) Retain the specific confirmation requirements for zero coupon bonds; (2) delete the requirement for the "limited tax" and "ex-legal" designations of certificates; and (3) provide specific exemptions for statement of yield on transactions in defaulted bonds, bonds that prepay principal and variable rate securities that are not sold on basis of yield to put.

Finally, the rule change modifies the confirmation requirement to require that a separate confirmation be provided for each municipal securities transaction whenever several transactions are done at one time.

III. Summary of Comments

As noted above, the Commission received two comment letters on the proposal.⁴ Latham's clients generally support the proposed reorganization of rule G-15(a). However, Latham's clients believed the proposal should be modified to allow the issuance of a master confirmation that would not aggregate information nor omit any information that proposed rule G-15(a) requires to be included in a confirmation. Latham stated that the

⁴ Letter from Roger M. Zaitzeff and Carlos Alvarez, Esq., Latham and Watkins ("Latham"), on behalf of unnamed clients to Jonathan G. Katz, Secretary, Commission (June 8, 1995); Letter from Robert B. Mayers, Senior Vice President/Group Executive, Wachovia Bank of North Carolina, N.A. ("Wachovia Bank") to Jonathan G. Katz, Secretary, Commission (June 6, 1995).