

Nos. 16-3360/3732

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Oct 04, 2016  
DEBORAH S. HUNT, Clerk

TENNESSEE REPUBLICAN PARTY; GEORGIA )  
REPUBLICAN PARTY; NEW YORK )  
REPUBLICAN STATE COMMITTEE, )

Petitioners, )

v. )

UNITED STATES SECURITIES AND )  
EXCHANGE COMMISSION; MUNICIPAL )  
SECURITIES RULEMAKING BOARD, )

Respondents. )

ORDER

Before: BATCHELDER, MOORE, and DONALD, Circuit Judges.

The Petitioners seek review of the approval by the Securities and Exchange Commission (“SEC” or the “Commission”) of an amendment to Rule G-37 of the Municipal Securities Rulemaking Board (“MSRB”). The SEC moves to dismiss the petitions for lack of jurisdiction. The Petitioners oppose the motion to dismiss, and the SEC replies.

The MSRB, a self-regulatory organization, proposed amendments to its Rule G-37, which governs political contributions and prohibitions on municipal securities businesses. The proposed amendment could not become effective “unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.” 15 U.S.C. § 78s(b)(1). By statute, the SEC had 45 days in which to either 1) approve or disapprove the proposed changes by an order, or 2) institute a proceeding in which it notified the MSRB of the grounds for disapproval under consideration and provided an opportunity for a hearing.

Nos. 16-3360/3732

-2-

§ 78s(b)(2). The SEC took no action on the proposed amendments, and they were “deemed to have been approved by the Commission” pursuant to § 78s(b)(2)(D). The SEC asserts that it was precluded from taking any action with respect to the proposed amendments by the 2016 Consolidated Appropriations Act, Pub. L. No. 114-113, Div. O, Title VII, § 707, 129 Stat. 2242, 3029–30.

A party aggrieved by a final order of the SEC may petition this court for review of the order. 15 U.S.C. § 78y(a)(1). The SEC argues that because the amendments were deemed approved by operation of the statute and it did not issue any order with respect to the amendments, § 78y(a)(1) does not confer jurisdiction in this court. *See Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007); *AT&T Corp. v. FCC*, 369 F.3d 554 (D.C. Cir. 2004) (per curiam). The petitioners distinguish *Sprint* and *AT&T* and assert that there is no clear and convincing evidence of a Congressional intent to preclude judicial review. The parties also dispute whether the “deemed” approval is reviewable as an agency action under the Administrative Procedure Act.

The jurisdictional questions raised involve issues of first impression based on recently amended statutes. The motion to dismiss for lack of jurisdiction is referred to the merits panel.

ENTERED BY ORDER OF THE COURT



---

Deborah S. Hunt, Clerk