

(1) Develops a single written training plan, if such training plan is consistent with the separate evaluations of the training needs as required under subparagraphs (i)(i)(B)(2)(a) and (i)(ii)(B)(1); and

(2) Conducts annual training for both covered persons and covered registered persons, if such training is consistent with the written training plan(s) and such training meets the minimum standards for training programs required by subparagraphs (i)(i)(B)(2)(b) and (i)(ii)(B)(2).

### Supplementary Material

**.01 Solicitations of Sales to and Purchases from Customers.** In each instance in which the rule references sales of municipal securities or sales to and purchases from customers, such activities may also include the solicitation of sales to and/or purchases from customers.

**.02 Waivers.** The Board will consider waiving the requirement to become qualified as a municipal advisor representative or municipal advisor principal in extraordinary cases where: (1) the applicant participated in the development of the Municipal Advisor Representative Qualification Examination or the Municipal Advisor Principal Qualification Examination, as applicable, as a member of the Board's Professional Qualifications Advisory Committee; or (2) the applicant was previously qualified as a municipal advisor representative by passing the Municipal Advisor Representative Qualification Examination and/or was previously qualified as a municipal advisor principal by passing the Municipal Advisor Representative Qualification Examination and the Municipal Advisor Principal Qualification Examination and such qualifications lapsed pursuant to subparagraphs (d)(ii)(B) or (e)(ii)(B) of this rule.

**.03 Permissive Qualification.** A broker, dealer or municipal securities dealer shall be permitted to make application for, or maintain the qualification of, a municipal securities representative, municipal securities principal or municipal fund securities limited principal for any associated person, including persons whose functions are solely clerical or ministerial or engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary. Any person maintaining a permissive qualification shall be considered a "registered person" for purposes of MSRB rules to the extent relevant to their activities.

**.04 Waiver from Requalification by Examination for Individuals Working for a Financial Services Industry Affiliate of a Broker, Dealer or Municipal Securities Dealer.** The requirement to requalify by examination for a lapsed qualification pursuant to subparagraphs (a)(ii)(C), (b)(ii)(C) and (b)(iv)(B)(3) of this rule shall be waived upon request to the proper registered securities association or the appropriate regulatory agency consistent with paragraph (h) of this rule for an individual if the following conditions are satisfied:

(1) An individual must have been registered with a broker, dealer or municipal securities dealer for a total of five years within the most recent 10-year period, including the most recent year with the broker, dealer or municipal securities dealer having designated the individual as eligible for a waiver by having met the requirement of this subparagraph;

(2) The waiver request is made within seven years of the individual's initial designation.

(3) The individual continuously worked for a financial services industry affiliate(s) of a broker, dealer or municipal securities dealer since terminating association with a broker, dealer or municipal securities dealer;

(4) The individual has completed the Regulatory Element portion of continuing education consistent with the requirements in Rule G-3(i)(i)(A) based on the person's most recent registration status and on the same Regulatory Element cycle had the person remained registered; and

(5) The individual does not have any pending or adverse regulatory matters or terminations and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was working for a financial services industry affiliate(s) of a broker, dealer or municipal securities dealer.

As used under this Supplementary Material, the term "financial services industry affiliate of a broker, dealer or municipal securities dealer" means any legal entity that controls, is controlled by or is under common control with a broker, dealer or municipal securities dealer and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

### **.05 Status of Qualified Persons Serving in the Armed Forces of the United States.**

#### *(a) Inactive Status for Current Associated Persons*

(1) An associated person of a broker, dealer, municipal securities dealer or municipal advisor who volunteers for or is called into active U.S. military service shall be deemed inactive for purposes of qualification for the period that such person is on active U.S. military service. If applicable, such person will not be required to requalify by examination upon such person's return to employment with a broker, dealer, municipal securities dealer or municipal advisor so long as such person returns to employment with a broker, dealer, municipal securities dealer or municipal advisor within 30 calendar days upon the conclusion of such person's active U.S. military service.

(2) An associated person, as identified in subparagraph (a)(1) of this Supplementary Material, shall remain eligible to receive transaction-related compensation, including continuing commissions. The employing broker, dealer, municipal securities dealer or municipal advisor of such associated person may also allow another associated person of the broker, dealer, municipal securities dealer or municipal

advisor to enter into an arrangement to take over and service the clients' accounts of such associated person and to share transaction-related compensation based upon the business generated by such accounts with the associated person who is placed on inactive status pursuant to subparagraph (a) of this Supplementary Material.

(3) An associated person who is placed on inactive status pursuant to subparagraph (a) of this Supplementary Material shall not be required to complete continuing education program requirements as set forth in Rule G-3(i) during the pendency of the person's inactive status.

(4) Notice must be provided electronically to the MSRB within 30 calendar days, upon the conclusion of active U.S. military service and such person's return to employment with such broker, dealer, municipal securities dealer or municipal advisor with which the person was associated with during the period of active U.S. military service or employment with another broker, dealer, municipal securities dealer or municipal advisor. The notice required shall be on firm letterhead and include the following information:

- (a) Firm's MSRB ID number;
- (b) Individual's name;
- (c) Individual's CRD number, if applicable;
- (d) Start and end dates of the individual's active U.S. military service; and
- (e) Branch of service.

(b) *Inactive Status for Sole Proprietors*

(1) A broker, dealer, municipal securities dealer or municipal advisor that is a sole proprietor who temporarily closes his or her business because of volunteering for or being called into active U.S. military service shall be placed on inactive status after proper notification to the registered securities association with which the broker, dealer, municipal securities dealer or municipal advisor is registered or the Board with respect to any other broker, dealer, municipal securities dealer or municipal advisor. Such sole proprietor will not be required to requalify by examination upon such person's return to his or her municipal securities or municipal advisory business.

(2) A sole proprietor placed on inactive status as set forth in this paragraph (b) shall not be required to pay fees assessed under Rule A-11 and Rule A-12, as applicable, that accrue during such period of inactive status.

(3) Notice must be provided electronically to the MSRB within 30 calendar days, upon the conclusion of active U.S. military service and such person's return from active U.S. military service to his or her municipal securities or municipal advisory business. The notice required shall be on firm letterhead and include the following information:

- (a) Firm's MSRB ID number;
- (b) Individual's name;
- (c) Individual's CRD number, if applicable;

d) Start and end dates of the individual's active U.S. military service; and

(e) Branch of service.

Absent notice to the MSRB, former associated persons of a broker, dealer, municipal securities dealer or municipal advisor will not have such person's lapse in qualification requirements deferred and such person's period of time while on active U.S. military service will not be tolled.

(c) *Status for Former Associated Persons*

(1) If a person who was formerly associated with a broker, dealer, municipal securities dealer or municipal advisor volunteers for or is called into active U.S. military service at any time within the two-year period after the date such person ceases to be associated with a broker, dealer, municipal securities dealer or municipal advisor, the lapse of such person's representative and principal-level qualifications, pursuant to subparagraphs (a)(ii)(C), (b)(ii)(C) and (b)(iv)(B) (3) of this rule, shall be deferred (i.e., tolling of the two-year expiration period).

(2) The deferral of the lapse in qualification requirements for associated persons of a broker, dealer, municipal securities dealer or municipal advisor would commence on the date the person begins active U.S. military service, provided that notice is provided to the MSRB.

(3) Notice must be provided electronically to the MSRB within 90 calendar days upon such person's completion of active U.S. military service and include the following information:

- (a) Individual's name;
- (b) Individual's CRD number, if applicable;
- (c) Start and end dates of the individual's active U.S. military service; and
- (d) Branch of service.

Absent notice to the MSRB, former associated persons of a dealer or municipal advisor will not have such person's lapse in qualification requirements deferred and such person's period of time while on active U.S. military service will not be tolled.

## Rule G-3 Interpretations

### *Interpretive Notice on Professional Qualifications*

January 27, 1977

On December 23, 1976, the Municipal Securities Rulemaking Board (the "Board") issued an interpretive notice addressing certain questions received by the Board with respect to its professional qualifications rules (rules G-2 through G-7). Since that time, the Board has received additional questions concerning rule G-3 which are discussed in this interpretive notice.

## 1. Requirements for Financial and Operations Principals.

Under the rule G-3(b)(ii)<sup>1</sup>, every municipal securities broker and municipal securities dealer other than a bank dealer is required to have at least one qualified financial and operations principal. As defined in the rule, this person is responsible for the overall supervision and preparation of financial reports to the Securities and Exchange Commission and self-regulatory organizations and for the processing, clearance, safekeeping and recordkeeping activities of the firm. If more than one person shares these overall supervisory responsibilities, each such person must be qualified as a financial and operations principal.

The question has been asked whether a financial and operations principal whose duties relate solely to financial and operational matters and not, for example, to underwriting, trading, or sales functions must qualify also as a municipal securities principal by passing the Board's municipal securities principal examination when it is prescribed. The Board does not intend to impose such a requirement on persons whose functions are limited to those set forth in the definition of a financial and operations principal.

The question has also been asked whether a person performing only the functions of a financial and operations principal on and after December 1, 1975 would be "grandfathered" as a municipal securities principal for purposes of taking the Board's municipal securities principal examination when prescribed if such person begins supervising underwriting, trading or sales functions. Activities relating to financial and operational matters are substantially different from those relating to underwriting, trading and sales or other categories of activities supervised by municipal securities principals. The Board does not intend, therefore, that financial and operations principals be "grandfathered" for purposes of the Board's examination requirements for municipal securities principals, or that a financial and operations principal would be qualified to engage in such other supervisory activities solely by reason of having met the Board's requirements for financial and operations principals.

The Board has also been asked whether senior officers or general partners of a firm, who may bear ultimate legal responsibility for the financial and operational activities of the firm, must be qualified as financial and operations principals under the Board's rules. Although the answer depends on the particular factual situation, officers or partners not directly involved in the financial and operations affairs of a firm generally would not be required to qualify as financial and operations principals.

## 2. Activities Requiring Qualification as a Municipal Securities Principal.

The question has been asked whether supervisory personnel in the processing and clearance areas must qualify as the municipal securities principals under rule G-3. In a securities firm, the financial and operations principal ordinarily would

be the only person supervising operations-related activities who will be required to pass an examination. With respect to bank dealer supervisory personnel, to whom the financial and operations principal classification does not apply, qualification in a principal capacity in the operations area will not be required unless the person in question exercises policy-making authority. Thus, an individual may supervise a bank dealer's processing activities without qualifying as a municipal securities principal, regardless of the number of persons supervised by such individual, if policy-making functions and discretionary authority are delegated to a higher level.

Somewhat different considerations apply in determining which persons are required to be qualified as municipal securities principals in connection with underwriting, trading, sales or other activities referred to in the Board's rules as municipal securities principal activities. In these areas, the qualification requirements apply to persons having supervisory responsibility with respect to the day-to-day conduct of the activities in question, even though such persons may not have a policy-making role. The Board's conclusions in this regard are based on the fact that in these other areas the supervisory person is responsible for the activities of personnel who communicate directly with issuers, traders, and investors.

## 3. Activities Requiring Qualification as a Municipal Securities Representative.

In certain cases, communications from customers may be received at a time when a duly qualified municipal securities representative or municipal securities principal is unavailable. Similarly, there may be situations in which it becomes important to advise a customer promptly of transactions effected and orders confirmed, even though the individual responsible for the account may not be able to communicate with the customer at that time.

In many cases under the rules of other self-regulatory organizations, communications of this nature, which in essence reflect a mechanical function, may be received and made by properly supervised competent individuals whose clerical and ministerial functions would not otherwise subject them to qualification requirements. The Board believes the principle underlying this practice and the application of other self-regulatory organizations' qualification rules is sound.

Accordingly, the Board interprets rule G-3 to permit the recording and transmission in customary channels of orders, the reading of approved quotations, and the giving of reports of transactions by non-qualified clerical personnel when the duly qualified municipal securities representative or municipal securities principal who normally handles the account or customer is unavailable. The foregoing interpretation is applicable only to clerical personnel who are: (a) deemed capable and competent by a municipal securities principal or general securities principal to engage in such activities; (b) specifically authorized in writing to perform such functions on an occasional basis as necessary or directed to perform such functions in specific instances, in either case by a duly

qualified municipal securities principal or general securities principal; (c) familiar with the normal type and size of transaction effected with or for the customer or the account; and (d) closely supervised by duly qualified municipal personnel.

All orders for municipal securities received by clerical personnel under the foregoing interpretation must be reviewed and approved by duly qualified municipal personnel familiar with the customer or account prior to being accepted or effected by the municipal securities broker or municipal securities dealer. Solicitation of orders by clerical personnel is not permitted. Confirmations of transactions may be given and quotations read by clerical personnel only when approved by duly qualified municipal personnel. Individuals subject to the 90-day apprenticeship requirements of rule G-3(i)<sup>[1]</sup> are not clerical personnel and are not authorized or permitted to engage in such activities with members of the public.

Also, the question has been raised whether a bank's branch office personnel, who are not otherwise required to be qualified under rule G-3, will be required to take and pass the qualification examination for municipal securities representatives in order to respond to a depositor's inquiry concerning possible investments in municipal securities. Insofar as the branch office personnel merely refer the depositor to qualified bank dealer personnel for discussion concerning the merits of an investment in municipal securities and execution of the depositor's order, the branch office personnel would not be required to be qualified under the Board's professional qualifications requirements. However, if branch office personnel seek to advise the depositor concerning the merits of a possible investment, or otherwise perform more than a purely ministerial function, qualification under the Board's rules would be required.

<sup>[1]</sup> [Currently codified at rule G-3(d)(iii).]

<sup>[1]</sup> [Currently codified at rule G-3(a)(iii).]

### **Debriefing of Examination Candidates**

June 2, 1981

Board rule G-3 sets forth standards of qualifications for municipal securities brokers and municipal securities dealers and their associated persons, including examination requirements for municipal securities principals, municipal securities financial and operations principals, municipal securities sales principals, and municipal securities representatives.

In order to assure that its examinations constitute valid tests of the qualifications of persons who take them, the Board has instituted various procedures, in the question writing as well as the administration phases, which are designed to preserve the confidentiality of the examinations. In addition, on one occasion the Board found it necessary to take legal action, alleging copyright violations, against a securities training school which had used in its training material questions and answers that appeared to have been taken from questions contained in Board qualification examinations.

The Board wishes to point out that the practice of "debriefing" persons who have taken a municipal securities qualifications examination (*i.e.* requesting or encouraging such persons to reveal the contents of the examinations) may not only give rise to an infringement of the Board's copyright but would, if engaged in by members of the municipal securities industry, constitute a violation of the Board's rules. In this regard, rule G-3(g)<sup>[1]</sup> provides that no person associated with a municipal securities broker or municipal securities dealer shall (i) disclose to any person any question on any municipal securities qualification examination or the answers to any such questions, (ii) engage in any activity inconsistent with the confidential nature of any such qualification examination or its purpose as a test of the qualifications of persons taking such examination, or (iii) knowingly sign a false certification concerning any such qualification examination.

<sup>[1]</sup> [Currently codified at rule G-3(e).]

### **Use of Nonqualified Individuals to Solicit New Account Business**

December 21, 1984

The Board has received inquiries whether individuals who solicit new account business on behalf of municipal securities dealers must be qualified under the Board's rules. In particular, it has come to the Board's attention that nonqualified individuals are making "cold calls" to individuals and, by reading from prepared scripts, introduce the services offered by a municipal securities dealer, prequalify potential customers, or suggest the purchase of specific securities currently being offered by a municipal securities dealer.

Board rule G-3(a) defines municipal securities representative activities to include any activity which involves communication with public investors regarding the sale of municipal securities but exempts activities that are solely clerical or ministerial. In the past, the Board has permitted nonqualified individuals, under the clerical or ministerial exemption, to contact existing customers in very limited circumstances. In an interpretive notice on rule G-3, the Board permitted certain ministerial and clerical functions to be performed by nonqualified individuals when municipal securities representatives and principals who normally handle the customers' accounts are unavailable, subject to strict supervisory requirements. These functions are: the recording and transmission in customary channels of orders, the reading of approved quotations, and the giving of reports of transactions. In this notice, the Board added that solicitation of orders by clerical personnel is not permitted. The Board is of the view that individuals who solicit new account business are not engaging in clerical or ministerial activities but rather are communicating with public investors regarding the sale of municipal securities and thus are engaging in municipal securities representative activities which require such individuals to be qualified as representatives under the Board's rules.

Finally, under rule G-3(i)<sup>[1]</sup>, a person serving an apprenticeship period prior to qualification as a municipal securities representative may not communicate with public investors regarding the sale of municipal securities. The Board sees no reason to allow nonqualified individuals to contact public investors, except for the limited functions noted above, when persons training to become qualified municipal securities representatives may not do so.

<sup>[1]</sup> [Currently codified at rule G-3(a)(iii).]

### ***Notice Regarding Regulation of Taxable Municipal Securities***

October 6, 1986

Because of recent federal tax law changes which place additional restrictions on the issuance of tax-exempt municipal securities, issuers of municipal securities are issuing, or considering issuing, debt securities that are subject to federal taxation. As a result, the Municipal Securities Rulemaking Board has received numerous inquiries concerning the application of its rules to dealers effecting transactions in taxable municipal securities. The Board wishes to emphasize that its rules apply to transactions effected by brokers, dealers, and municipal securities dealers in all municipal securities. Thus, transactions in taxable municipal securities are subject to the Board's rules, including rules regarding uniform and fair practice, automated clearance and settlement, the payment of the underwriting assessment fee, and the professional qualifications of registered representatives and principals.

### ***Notice Concerning Municipal Securities Sales Activities in Branch Affiliate and Correspondent Banks Which Are Municipal Securities Dealers***

March 11, 1983

The Board has received several inquiries from banks concerning the activities which may be performed in connection with the marketing of municipal securities through branch, affiliate, and correspondent banks. Rule G-2 of the Board provides that no municipal securities dealer may effect transactions in, or induce or attempt to induce the purchase or sale of any municipal security, unless the dealer in question and every individual associated with it is qualified in accordance with the rules of the Board. Board rule G-3 establishes qualification requirements for municipal securities representatives and other municipal securities professionals. Board rule G-27 requires supervision of municipal securities activities by qualified municipal securities principals.

### ***Activities of Branch, Affiliate and Correspondent Bank Personnel***

Bank employees who are not qualified municipal securities representatives may perform certain limited functions in connection with the marketing of municipal securities. Namely, such persons may:

advise customers that municipal securities investment services are available in the bank;

make available to customers material concerning municipal securities investments, such as market letters and listings of issues handled by the bank's dealer department, which has been approved for distribution by the dealer department's municipal securities principal; and,

establish contact between the customer and the dealer department.

Further sales-related activity would be construed as inducing or attempting to induce the purchase or sales of a municipal security, and may only be engaged in by duly-qualified municipal securities representatives.

The Board wishes to emphasize that each bank dealer should take steps to assure that its branch, correspondent, and affiliate bank personnel understand and observe the restrictions outlined above concerning referrals of municipal securities customers to the bank's dealer department.

### ***Placement and Supervision of Municipal Securities Representatives***

Bank dealers have also directed inquiries to the federal bank regulators and to the Board concerning whether qualified municipal securities representatives in affiliates or branches of a bank dealer may respond to customer inquiries concerning municipal securities and take customer orders for municipal securities if no municipal securities principal is located in such affiliates or branches. Board rule G 27 places on each broker, dealer, and municipal securities dealer the obligation to supervise the municipal securities activities of its associated persons and the conduct of its municipal securities business. The rule requires that municipal securities dealers designate a municipal securities principal as responsible for the supervision and review of municipal securities transactions and other activities. There is no requirement that a municipal securities principal be located in each office or branch of a municipal securities dealer, provided that adequate supervision of all municipal securities activities can be assured. For purposes of the Board rules, each employee of a branch or affiliate of a bank dealer who communicates with public customers on investment opportunities in municipal securities and who takes customers' orders for such securities would be considered an "associated person" to whom the Board's qualification and supervision requirements would apply.

See also:

**Rule G-23 Interpretation — Notice on Application of Board Rules to Financial Advisory Services Rendered to Corporate Obligors on Industrial Development Bonds**, May 23, 1983

### ***Interpretive Letters***

**Apprenticeship.** This will acknowledge receipt of your letter dated January 30, 1978 and will confirm our recent telephone conversation.

In your letter you seek clarification of the applicability of the requirements of rule G-3(i)<sup>[1]</sup> relating to apprenticeship periods to a municipal securities representative who has previously qualified as a general securities representative. As I indicated in our conversation, an individual who was previously qualified as a general securities representative is not required to serve the 90-day apprenticeship period. *MSRB interpretation of February 17, 1978.*

<sup>[1]</sup> [Currently codified at rule G-3(a)(iii).]

**Municipal securities principal.** This will acknowledge receipt of your letter of June 10, 1981. In your letter you indicate that the dealer department of [the bank] has recently been inspected by examiners from the Office of the Comptroller of the Currency, and that, during the course of such inspection, the examiners indicated that they believed certain persons should be qualified as municipal securities principals. You indicate your disagreement with the examiners' conclusions, and request an opinion from the Board concerning the need to qualify these personnel.

The two cases you describe are as follows:

- (1) Mr. "X", as head of the Operations Division of the bank's Financial Markets Group, is in charge of the operational support services for the bank's securities activities, including the Tax-Exempt Operations Department. The Tax-Exempt Operations Department is under the immediate supervision of yourself. For purposes of bank organizational structure you report to Mr. "X"; however, you also report to the head of the Tax-Exempt Securities Division in connection with "supporting the Tax-Exempt business operation." You are qualified as a municipal securities principal, as is the head of the Tax-Exempt Securities Division; Mr. "X", however, is not. The national bank examiners have expressed the view that he should be.
- (2) Two "senior traders" in the Municipal Dealer Department act under the supervision of the department head with regard to the trading and positioning of municipal securities. In connection with these activities they "direct more junior traders" in their municipal securities activities. These persons are not qualified as municipal securities principals; the national bank examiners contend that they should be.

As a general matter we would hesitate to disagree with the opinion expressed by an on-site examiner in a matter of this sort. The examiner is, of course, in direct contact with the matter in question, and has access to the full details of the situation, rather than an abstraction or summary of the particulars. Accordingly, we are unable to express a view that the examiner's conclusions are incorrect in the circumstances you describe.

With respect to the specific situations presented in your letter, it is certainly not impossible to establish a reporting and supervisory structure such that a person who is in charge of

the division which includes the operational aspects of a bank's municipal securities dealer department need not be qualified as a municipal securities principal. As is indicated in a Board interpretive notice concerning qualifications matters, qualification as a municipal securities principal is required of a person who supervises a bank dealer's processing and clearance activities with respect to municipal securities only to the extent that such person has policy-making authority over such activities. If such person does not have policy-making authority, or if such person's authority extends to the establishment of general guidelines or an overall framework for activities, with the specific function of making policy within that framework reserved for other persons, then such person would not be deemed to be a municipal securities principal.

Further, it is a not uncommon arrangement to have the policy-making authority with respect to the municipal dealer operations activities of a bank allocated between the immediate supervisor of the municipal operations function and a principal in the dealer department itself. In these circumstances the operation supervisor reports to the principal in connection with the municipal dealer activities, and also reports to other, non-qualified persons in connection with bank organizational requirements.

Therefore, the arrangement which you describe would not necessarily require that Mr. "X" be qualified as a municipal securities principal. Whether he should, in fact, be qualified as a municipal securities principal depends, of course, on the extent to which he does exercise policy-making authority over the municipal dealer operations functions; this is a determination that, we suggest, is most appropriately made by yourselves and the national bank examiners.

In the second situation you describe it appears to us clear that the "senior traders" are functioning as municipal securities principals and should be qualified as such. As you may know, the Board's rule defines the term "municipal securities principal" to include persons "who [are] directly engaged in the . . . direction or supervision of. . . underwriting, trading or sales of municipal securities. . ." Your description of the activities of these "senior traders" indicates that they "direct" other persons in trading activities. This certainly supports the conclusion that they are functioning as municipal securities principals. *MSRB interpretation of June 24, 1981.*

**Municipal securities principal: numerical requirements.** This is in response to your letter of September 28, 1982 concerning the numerical requirements for municipal securities principals in Board rule G-3 . . . Rule G-3(b)(i)(B)<sup>[1]</sup> requires that

every municipal securities broker or municipal securities dealer having fewer than eleven persons associated with it in whatever capacity on a full-time or full-time equivalent basis who are engaged in the performance of its municipal securities activities, or, in the case of a bank

dealer, in the performance of its municipal securities dealer activities, shall have at least one municipal securities principal.

You inquired as to the meaning of “full-time equivalent basis” in the reference language. This phrase is intended to require the inclusion of individuals who should be considered as full-time employees, but because of some distinctive employment arrangement do not fit the norm of a full-time employee. For example, a municipal securities representative who usually works out of his home which is in a remote location might not fit the firm’s norm for “full-time employment” but should nevertheless be counted for purposes of the rule as an associated person.

You also inquired as to whether a bank dealer is required to have only one municipal securities principal even if it has fifteen full-time persons working in the municipal securities business. The provisions of the rule apply equally to securities firms and to bank dealers. Therefore, a bank dealer with eleven or more associated persons “engaged in the performance of its municipal securities dealer activities” is required to have at least two municipal securities principals.

<sup>[1]</sup> [Currently codified at rule G-3(b)(iii)(B).]

**Municipal securities principal: MSRB registered dealer.**

This is in response to your March 21, 1994 letter to [name deleted] of the National Association of Securities Dealers, a copy of which you sent to my attention. The issue in question is whether [name deleted] (the “Dealer”) is required at this time to have someone qualified as a municipal securities principal.

You note in your letter that the activities that the Dealer will be engaging in currently do not involve municipal securities, therefore, you concluded that the Dealer is not subject to the Board’s requirement that the dealer have at least one municipal securities principal.

Board rules apply only to brokers, dealers and municipal securities dealers who have registered as such with the Securities and Exchange Commission (“SEC”) and who engage in municipal securities activities. A dealer “registers” with the Board, pursuant to rule A-12, on the Board’s initial fee, by submitting a letter with certain information and paying the ... initial fee along with the ... annual fee pursuant to rule A-14, on the Board’s annual fee. Rule A-12 requires that the information and fee be submitted to the Board prior to the dealer engaging in municipal securities activities. Once a dealer is “registered” with the Board all Board rules are applicable to that dealer including the requirement in rule G-3, on professional qualifications, that every dealer shall have at least one municipal securities principal.<sup>1</sup>

Regardless of whether the Dealer is currently engaging in municipal securities activities, the dealer has “registered” with the Board and is subject to the Board’s requirement that the dealer have a municipal securities principal.<sup>2</sup> If the Dealer determines that it does not wish to remain “registered” with

the Board upon its conclusion that it is not engaging in municipal securities activities, rule A-15(a), on notification to Board of termination, requires that the Dealer submit a letter to the Board with a statement of its termination. In the future, should the dealer remain a registered broker or dealer with the SEC and make a determination that it will be engaging in municipal securities activities, the dealer will have to “register” with the Board pursuant to the requirements of rules A-12 and A-14 prior to engaging in municipal securities activities and, of course, meet the Board’s numerical requirements concerning municipal securities principals. *MSRB interpretation of March 30, 1994.*

<sup>1</sup> Rule G-3(b)(iii) requires that a dealer have two municipal securities principals if the dealer performs only municipal securities activities and it employs eleven or more persons associated with it in whatever capacity on a full-time or full-time equivalent basis who are engaged in the performance of its municipal securities activities.

<sup>2</sup> I have enclosed a copy of the December 14, 1993 letter you submitted to the Board pursuant to rule A-12.

**Municipal securities principal: bank operations.** I am writing in response to your letter of April 26, 1983 concerning the results of a recent examination of your bank’s municipal securities dealer department by examiners from the Office of the Comptroller of the Currency. In your letter you indicate that the examiners expressed the view that the bank’s present organizational structure did not comport with the definition of a “separately identifiable department or division of a bank” set forth in Board rule G-1. You note that the examiners’ basis for this conclusion was their belief that the municipal securities processing functions of the bank were not under the supervision of a qualified municipal securities principal. You state that you disagree with the examiners’ conclusions, and you request that the Board indicate whether, in its view, the organizational structure through which the bank presently carries on its municipal securities activities is satisfactory for purposes of compliance with Board rules.

As a general matter we would hesitate to disagree with the opinion expressed by on-site examiners in a matter of this sort. The examiners are, of course, in direct contact with the matter in question, and have access to the full details of the situation, rather than an abstraction or summary of the particulars. Accordingly, we are unable to express a view that the examiners’ conclusions are incorrect in the circumstances you describe.

With respect to the specific issues which you raise, it is not impossible for a bank to establish a “separately identifiable department or division” for purposes of rule G-1 which includes areas in the bank which, for other purposes (*e.g.*, for general bank organizational and reporting purposes), would be considered separate. To the extent that such areas are engaged in municipal securities dealer activities (as enumerated in rule G-1), however, they must be under the supervision of the person or persons designated by the bank’s board of directors, in accordance with rule G-1(a)(1), as responsible for the conduct of such activities.

As you are aware, the person or persons who are responsible for the management and supervision of the day-to-day activities of the municipal securities processing area need not be qualified as municipal securities principals if they do not have policy-making authority with respect to such activities. However, such activities must be subject to the supervision of a municipal securities principal. Therefore, if those directly involved in the day-to-day supervision of the municipal securities processing activities do not have policymaking authority over such activities and, as a consequence, are not qualified as municipal securities principals, a person who is qualified as a municipal securities principal (whether that person designated by the bank's board of directors pursuant to rule G-1(a)(1) or some other person who is subordinate to that person) must be designated as having responsibility for the supervision of the processing activities. The bank's supervisory procedures should appropriately reflect such designation and set forth the manner in which the designated person will carry out these responsibilities. *MSRB interpretation of May 13, 1983.*

**Disqualification of municipal securities principals.** In our recent telephone conversation you asked whether the Board has interpreted rule G-3(c)(iv)<sup>[1]</sup> as to the qualification status of a municipal securities principal in circumstances where the bank dealer, with which the individual is associated, fails to effect a municipal security transaction for a period of two or more years. You proposed that, if there are no municipal securities transactions for the principal to supervise, the individual would not be considered to be "acting as a municipal securities principal" and, consequently, the individual's qualification as a municipal securities principal would lapse after a two-year period of such inactivity.

The Board has considered a similar situation and given an interpretation in the matter. It reaffirmed the interpretation that an individual whose responsibilities no longer include supervision of municipal securities activities probably will not be able to remain adequately informed in the supervisory and compliance matters of concern to municipal securities principals, and that continuing association with a municipal securities dealer, in a capacity other than that of a municipal securities principal, is not sufficient to maintain qualification as a municipal securities principal. However, the Board also concluded that it did not intend this interpretation of rule G-3(c)(iv)<sup>[1]</sup> to mean that a dealer must necessarily effect transactions in municipal securities in order for its municipal securities principal to maintain such qualification. The Board noted that the definition of a municipal securities principal not only includes supervision of trading or sales, but of other municipal securities activities as well. Consequently, the Board determined that the qualification of a municipal securities principal should not automatically terminate because the individual is associated with a municipal securities broker or dealer which has not effected a municipal securities transaction in two or more years, but that to maintain such qualification the individual must demonstrate clearly that:

- the municipal securities broker or dealer was engaged in municipal securities activity during this period (e.g., determination of suitability involving municipal securities, recommendations to customers, advertising, financial advisory activity with respect to municipal issuers); and
- the individual in question had been designated with supervisory responsibility for such municipal securities activities during this period.

*MSRB interpretation of January 15, 1987.*

<sup>[1]</sup> [Currently codified at rule G-3(b)(ii)(C).]

**"Municipal Securities Principal" defined.** This is in response to your letter of January 28, 1987, and subsequent telephone conversations with the Board's staff, requesting an interpretation of Board rule G-3(a)(i)<sup>[1]</sup>, the definition of the term "Municipal Securities Principal". You ask whether an individual, who has day-to-day responsibility for directing the municipal underwriting activities of a firm, must be qualified as a municipal securities principal. You suggest that such activity seems to meet the definition of a municipal securities principal, namely, an individual who is "directly engaged in the management, direction or supervision of . . . underwriting . . . of municipal securities." You note that this individual has the authority to make underwriting commitments in the name of the firm, but that the firm's president is designated with supervisory responsibility for this individual's underwriting activity. Also, you indicated that this individual does not have supervisory responsibility for any other representative.

Your request for an interpretation was referred to a Committee of the Board which has responsibility for professional qualification matters. The Committee concluded that the individual you describe would not be required to qualify as a municipal securities principal, provided that her responsibilities are limited to directing the day-to-day underwriting activities of the dealer, and provided that these responsibilities are carried out within policy guidelines established by the dealer and under the direct supervision of a municipal securities principal. The Committee is also of the opinion that commitment authority alone is not indicative of principal activity, but rather is inherent in the underwriting activities of a municipal securities representative. *MSRB interpretation of February 27, 1987.*

<sup>[1]</sup> [Currently codified at rule G-3(b)(i).]

**Municipal securities representative.** Your letter dated October 16, 1978, has been referred to me for response. In your letter, you request clarification of whether personnel in your firm will have to take and pass the Board's qualification examination for municipal securities representatives, since they only effect transactions with other municipal securities professionals.

Board rule G-3(a)(iii)<sup>[1]</sup> defines the term "municipal securities representative" to mean a natural person associated with a municipal securities broker or municipal securities dealer who performs certain specified functions, which include "trading

or sales of municipal securities.” A person is deemed to be a municipal securities representative under the rule whether he or she engages in such activities with customers or only other municipal securities professionals. Accordingly, personnel in your firm who only trade with, or sell securities to other municipal securities professionals will have to take and pass the examination for municipal securities representatives, unless they are exempted under the provisions of rule G-3(e)(ii).<sup>[1]</sup> *MSRB interpretation of October 27, 1978.*

<sup>[1]</sup> [Currently codified at rule G-3(a)(i).]

<sup>[2]</sup> [Currently codified at rule G-3(a)(ii)(B).]

**Municipal securities representative: credit department employees.** This will acknowledge receipt of your letter of October 18, 1979, concerning a proposed arrangement for the performance of municipal credit analysis functions at your bank. In your letter you indicate that the bank wishes to have certain basic statistical and data gathering activities with respect to proposed new issues of municipal securities performed by its Credit Department. The Credit Department will provide the information resulting from these activities to registered personnel in the Investment Department, which will evaluate the credit of the issuer and determine the appropriateness of the issue for the bank’s own investment activities and for the bank’s customers. You inquire whether the personnel in the Credit Department would be required to register and qualify as municipal securities representatives due to their performance of these activities.

Your question was referred to a committee of the Board which has the responsibility for administering the professional qualifications program on the Board’s behalf. The Committee concluded that such persons would not be required to register and qualify as representatives if their functions are limited to information gathering and performance of basic statistical computations. However, if such persons engage in any type of evaluative activity or if such persons make recommendations or suggest conclusions with respect to the securities, registration and qualification would be required. Further, should these persons produce any documents or research products intended for distribution or for use in the solicitation of customers, they would be required to register and qualify. *MSRB interpretation of December 10, 1979.*

**Clerical or ministerial duties.** This will acknowledge receipt of your letter in which you request advice concerning whether certain persons employed by [Name deleted] must qualify as municipal securities representatives under rule G-3.

In the case of one of the individuals, you state in your letter that he is responsible for calculating coupon rates for new issue securities, based on information provided to him by persons in [Name deleted] underwriting department. According to your letter, the individual has some discretion to “revise coupon rates to a more marketable figure,” but all of his activities are subject to the approval of, and supervised

by, municipal securities professionals in the department. We understand that he does not communicate with issuers, customers or other municipal securities dealers.

Based upon the facts set forth in your letter, we are of the view that the individual described performs only clerical or ministerial functions in calculating the coupon scale, and he is therefore not a municipal securities representative within the meaning of rule G-3.

In your letter, you also request advice regarding certain individuals whose only function is to receive telephonic orders for municipal securities from municipal securities dealers. We understand that these individuals do not solicit orders, negotiate prices or the terms of transactions, or transmit offers to prospective purchasers, nor do they communicate at any time with customers. Based upon the facts you have provided, we are of the opinion that these individuals perform only clerical or ministerial functions, and they are therefore also not municipal securities representatives within the meaning of rule G-3. *MSRB interpretation of December 8, 1978.*

**Clerical or ministerial duties.** I refer to your letter of June 22, 1979, in which you request advice regarding the applicability of rule G-3 on professional qualifications to an employee of [Company name deleted]. According to your letter, the activities of the employee in question are limited to checking the mathematical accuracy of bids received by an issuer for which [Company name deleted] acts as financial advisor and reporting the results to the issuer.

Based on the facts stated in your letter, the employee is not required to qualify as a municipal securities representative under rule G-3. The Board does not intend the qualification requirements of the rule to apply to persons performing solely clerical or ministerial functions, such as in this case. *MSRB interpretation of July 24, 1979.*

**“Finder” of potential issuers.** This responds to your letter of May 14, 1981 requesting our advice concerning the application of the qualification provisions of rule G-3 to a person employed by a municipal securities broker or dealer whose activities are limited solely to acting as a “finder” of potential issuers. Based upon the facts contained in your letter, and assuming that such person is not providing financial advisory or consultant services for issuers, it would appear that he or she is not performing functions, which are enumerated in rule G-3(a), the performance of which would require qualification as a municipal securities principal or a municipal securities representative. *MSRB interpretation of June 24, 1981.*

**Persons engaged in financial advisory activities.** I am writing to confirm our telephone conversation of this afternoon concerning the registration and qualification requirements applicable to persons in your firm’s public finance department. In our conversation you inquired whether persons who function as financial advisors to municipal issuers, providing advice to such issuers regarding the structure, timing and terms of new issues of municipal securities to be sold by such issuers, are required to be qualified. As I indicated, such persons are