

disclosed pursuant to paragraph (e)(i)(B) of this rule, including the amount paid and the name of the third party making such payment or reimbursement.

(C) listing by state, the municipal entities with which the regulated entity has engaged in municipal securities business or municipal advisory business during such calendar quarter, along with the type of municipal securities business or municipal advisory business, and, in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, the listing of the type of municipal advisory business shall be accompanied by the name of the third party on behalf of which business was solicited and the nature of the business solicited (municipal securities business, municipal advisory business and/or investment advisory services—disclose all applicable categories);

(D) any information required to be included on Form G-37 for such calendar quarter pursuant to subsection (e)(iii) of this rule;

(E) such other identifying information required by Form G-37; and

(F) whether any contribution listed in this subsection (e)(i) of this rule is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G-37 received from any regulated entity.

(ii) No regulated entity shall be required to submit Form G-37 to the Board for any calendar quarter in which either:

(A) such regulated entity has no information that is required to be reported pursuant to paragraphs (e)(i)(A) through (D) of this rule for such calendar quarter; or

(B) such regulated entity has not engaged in municipal securities business or municipal advisory business, but only if such regulated entity:

(1) had not engaged in municipal securities business or municipal advisory business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and

(2) has submitted to the Board completed Form G-37x setting forth, in the prescribed format, (a) a certification to the effect that such regulated entity did not engage in municipal securities business or municipal advisory business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such regulated entity in connection with Forms G-37 and G-37x under subsection (e)(ii) of this rule and Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, and (c) such other identifying infor-

mation required by Form G-37x; provided, however, that if a regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the submission of Form G-37x to the Board, such regulated entity shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any regulated entity.

(iii) If a regulated entity engages in municipal securities business or municipal advisory business during any calendar quarter after not having reported on Form G-37 the information described in paragraph (e)(i)(A) of this rule for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of paragraph (e)(ii)(B) of this rule, such regulated entity shall include on Form G-37 for such calendar quarter all such information (including year and calendar quarter of such contribution(s) or payment(s)) not so reported during such two-year period.

(iv) A regulated entity that submits Form G-37 or Form G-37x to the Board shall submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37, G-37x and G-38t*.

(f) *Voluntary Disclosure to Board.* The Board will accept additional information related to contributions made to officials of municipal entities and bond ballot campaigns and payments made to political parties of states and political subdivisions voluntarily submitted by regulated entities or others, provided that such information is submitted otherwise in accordance with section (e) of this rule.

(g) *Definitions.*

(i) “Regulated entity” means a dealer or municipal advisor and “regulated entity,” “dealer” and “municipal advisor” exclude the entity’s associated persons.

(ii) “Municipal finance professional” means:

(A) any “municipal finance representative” - any associated person primarily engaged in municipal securities representative activities, as defined in Rule G-3(a)(i), other than sales activities with natural persons;

(B) any “dealer solicitor” - any associated person who is a municipal solicitor as defined in paragraph (g)(xiii)(A) of this rule;

(C) any “municipal finance principal” - any associated person who is both (1) a municipal securities principal or a municipal securities sales principal; and (2) a supervisor of any municipal finance representative (as defined in paragraph (g)(ii)(A) of this rule) or dealer solicitor (as defined in paragraph (g)(ii)(B) of this rule);

(D) any “dealer supervisory chain person” - any associated person who is a supervisor of any municipal finance principal up through and including, in the case of

a dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required by Rule G-1(a)(1)(A); or

(F) any "dealer executive officer" — any associated person who is a member of an executive or management committee (or similarly situated official) of a dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1(a)); provided, however, that if the persons described in this paragraph are the only associated persons of the dealer meeting the definition of municipal finance professional, the dealer shall be deemed to have no municipal finance professionals.

Each person designated by dealer as a municipal finance professional pursuant to Rule G-8(a)(xvi) is deemed to be a municipal finance professional and shall retain this designation for one year after the last activity or position which gave rise to the designation.

(iii) "Municipal advisor professional" means:

(A) any "municipal advisor representative" — any associated person engaged in municipal advisor representative activities, as defined in Rule G-3(d)(i)(A);

(B) any "municipal advisor solicitor" — any associated person who is a municipal solicitor (as defined in paragraph (g)(xiii)(B) of this rule) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C) of this rule);

(C) any "municipal advisor principal" — any associated person who is both: (1) a municipal advisor principal (as defined in Rule G-3(e)(i)); and (2) a supervisor of any municipal advisor representative (as defined in paragraph (g)(iii)(A) of this rule) or municipal advisor solicitor (as defined in paragraph (g)(iii)(B) of this rule);

(D) any "municipal advisor supervisory chain person" — any associated person who is a supervisor of any municipal advisor principal up through and including, in the case of a municipal advisor other than a bank municipal advisor, the Chief Executive Officer or similarly situated official, and, in the case of a bank municipal advisor, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, as required by 17 CFR 240.15Ba1-1(d)(4)(i); or

(E) any "municipal advisor executive officer" — any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder); provided,

however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

Each person designated by the municipal advisor as a municipal advisor professional pursuant to Rule G-8(h)(iii) is deemed to be a municipal advisor professional and shall retain this designation for one year after the last activity or position which gave rise to the designation.

(iv) "Bank municipal advisor" means a municipal advisor that is a bank or a separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder.

(v) "Bond ballot campaign" means any fund, organization or committee that solicits or receives contributions to be used to support ballot initiatives seeking authorization for the issuance of municipal securities through public approval obtained by popular vote.

(vi) "Contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made:

(A) to an official of a municipal entity:

(1) for the purpose of influencing any election for federal, state or local office;

(2) for payment of debt incurred in connection with any such election; or

(3) for transition or inaugural expenses incurred by the successful candidate for state or local office; or

(B) to a bond ballot campaign:

(1) for the purpose of influencing (whether in support of or opposition to) any ballot initiative seeking authorization for the issuance of municipal securities through public approval obtained by popular vote;

(2) for payment of debt incurred in connection with any such ballot initiative; or

(3) for payment of the costs of conducting any such ballot initiative. (ii)(vii) The term "issuer" means the governmental issuer specified in section Section 3(a)(29) of the Act.

(vii) "Issuer" means the governmental issuer specified in Section 3(a)(29) of the Act.

(viii) "Municipal advisor" means a municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder.

(ix) "Municipal advisory business" means those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder, including: (A) the provision of advice to or on behalf of a

municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues and (B) the solicitation of a municipal entity or obligated person, within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder.

(x) “Municipal advisor third-party solicitor” means a municipal advisor that is currently soliciting a municipal entity, is engaged to solicit a municipal entity, or is seeking to be engaged to solicit a municipal entity for direct or indirect compensation, on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the municipal advisor undertaking such solicitation.

(xi) “Municipal entity” has the meaning specified in Section 15B(e)(8) of the Act and the rules and regulations thereunder.

(xii) “Municipal securities business” means:

(A) the purchase of a primary offering (as defined in Rule A-13(f)) of municipal securities from a municipal entity on other than a competitive bid basis (*e.g.*, negotiated underwriting);

(B) the offer or sale of a primary offering of municipal securities on behalf of any municipal entity (*e.g.*, private placement);

(C) the provision of financial advisory or consultant services to or on behalf of a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; and

(D) the provision of remarketing agent services to or on behalf of a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

(xiii) “Municipal solicitor” means:

(A) an associated person of a dealer who solicits a municipal entity for municipal securities business on behalf of the dealer;

(B) an associated person of a municipal advisor who solicits a municipal entity for municipal advisory business on behalf of the municipal advisor; or

(C) an associated person of a municipal advisor third-party solicitor who solicits a municipal entity on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with such municipal advisor third-party solicitor.

(xiv) “Non-MAP executive officer” means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank, as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder), but does not include any municipal advisor professional, as defined in subsection (g)(iii) of this rule; provided, however, that if no associated person of the municipal advisor meets the definition of municipal advisor professional, the municipal advisor shall be deemed to have no non-MAP executive officers. Each person listed by the municipal advisor as a non-MAP executive officer pursuant to Rule G- 8(h)(iii) is deemed to be a non-MAP executive officer.

(xv) “Non-MFP executive officer” means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G 1(a)), but does not include any municipal finance professional, as defined in subsection (g)(ii) of this rule; provided, however, that if no associated person of the dealer meets the definition of municipal finance professional, the dealer shall be deemed to have no non-MFP executive officers. Each person listed by the dealer as a non-MFP executive officer pursuant to Rule G- 8(a)(xvi) is deemed to be a non-MFP executive officer.

(xvi) “Official of such municipal entity” or “official of a municipal entity,” without further specification, means any person who meets the definition of at least one of paragraphs (g)(xvi)(A), (g)(xvi)(B), or (g)(xvi)(C) of this rule.

(A) “Official of a municipal entity with dealer selection influence” or “official of such municipal entity with dealer selection influence” means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of a dealer for municipal securities business; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a dealer for municipal securities business.

(B) “Official of a municipal entity with municipal advisor selection influence” or “official of such municipal entity with municipal advisor selection influence” means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the

outcome of, the hiring by the municipal entity of a municipal advisor for municipal advisory business; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a municipal advisor for municipal advisory business.

(C) “Official of a municipal entity with investment adviser selection influence” or “official of such municipal entity with investment adviser selection influence” means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of an investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for investment advisory services; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of an investment adviser for investment advisory services.

(xvii) “Payment” means any gift, subscription, loan, advance, or deposit of money or anything of value.

(xviii) “Reportable date of selection” means the date of the earliest to occur of: (A) the execution of an engagement letter; (B) the receipt of formal notification (provided either in writing or orally) from or on behalf of the municipal entity that the dealer or municipal advisor has been selected to engage in municipal securities business or municipal advisory business; or, (C) solely in the case of a dealer, the execution of a bond purchase agreement.

(xix) “Solicit,” or “soliciting,” except as used in section (c) of this rule, means to make, or making, respectively, a direct or indirect communication with a municipal entity for the purposes of obtaining or retaining an engagement by the municipal entity of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for municipal securities business, municipal advisory business or investment advisory services; provided, however, that it does not include advertising by a dealer, municipal advisor or investment adviser.

(h) *Operative Terms.* The prohibitions under this rule on engaging in municipal securities business and municipal advisory business, shall result from a contribution and be of the scope and length of time as provided under Rule G-37 as in effect at the time that such contribution is made.

(i) *Application for Exemption.* Upon application, a registered securities association with respect to a dealer that is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other dealer, may, conditionally or unconditionally, ex-

empt such dealer from a prohibition on municipal securities business in subsection (b)(i) of this rule. Upon application, a registered securities association with respect to a municipal advisor that is a member of such association, or the Commission, or the Commission’s designee, with respect to any other municipal advisor, may, conditionally or unconditionally, exempt such municipal advisor from a prohibition on municipal advisory business in subsection (b)(i) of this rule. In determining whether to grant such exemption, among other factors, the following shall be considered:

(i) whether such exemption is consistent with the public interest, the protection of investors, municipal entities and obligated persons and the purposes of this rule;

(ii) whether regulated entity (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the contributor involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the regulated entity;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or a municipal advisor professional or otherwise an employee of the regulated entity, or was seeking such employment, or was a municipal advisor professional or otherwise an employee of a municipal advisor third-party solicitor engaged by the regulated entity or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g, federal, state or local); and

(vi) the contributor’s apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) *Automatic Exemptions.*

(i) A regulated entity that is prohibited from engaging in municipal securities business or municipal advisory business with a municipal entity pursuant to subsection (b) (i) of this rule as a result of a contribution made by a municipal finance professional or a municipal advisor professional, or a municipal advisor professional of a municipal advisor third-party solicitor on behalf of such regulated entity may exempt itself from such prohibition, subject to subsection (j) (ii) and subsection (j)(iii) of this rule, upon satisfaction of the following requirements: (A) the regulated entity must have

discovered the contribution which resulted in the prohibition within four months of the date of such contribution; (B) such contribution must not have exceeded \$250; and (C) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the regulated entity.

(ii) A regulated entity is entitled to no more than two automatic exemptions per 12-month period.

(iii) A regulated entity may not execute more than one automatic exemption relating to contributions by the same person regardless of the time period.

Rule G-37 Interpretations

Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37

I. Persons/Entities Subject to the Rule

I.1

Q: To whom does Rule G-37 apply?

A: In general, Rule G-37 applies to brokers, dealers and municipal securities dealers (collectively referred to as dealers), municipal finance professionals, and PACs controlled by the dealer or any municipal finance professional. In addition, the recordkeeping and disclosure provisions apply to non-MFP executive officers of the dealer.

(May 24, 1994)

II. Prohibition on Engaging in Municipal Securities Business (Rule G-37(b))

II.1

Q: What actions would cause a dealer to be prohibited from engaging in municipal securities business with an issuer?

A: Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer, (ii) any municipal finance professional associated with such dealer; or (iii) any PAC controlled by the dealer or any municipal finance professional.

(May 24, 1994)

II.2

Q: Is there an exception to this prohibition on engaging in municipal securities business?

A: There is one exception to Rule G-37(b). The prohibition does not apply if the only contributions to officials of issuers are made by municipal finance professionals entitled to vote for such officials, and provided such contributions, in total, are not in excess of \$250 by each such municipal finance professional to each official of such issuer, per election.

(May 24, 1994)

II.3

Q: What is the municipal securities business that a dealer would be banned from engaging in with an issuer if certain political contributions are made to officials of such issuers?

A: The term “municipal securities business” is defined in Rule G-37(g)(vii) to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), financial advisors and consultants, placement agents, and negotiated remarketing agents. The rule does not prohibit a dealer from engaging in competitive underwritings or competitive remarketing services for the issuer.

(May 24, 1994)

II.4

Q: If a non-MFP executive officer makes a contribution to an official of an issuer, is the dealer prohibited from engaging in municipal securities business with that issuer?

A: No. The prohibition section applies only to contributions made by the dealer, its municipal finance professionals, or any PAC controlled by the dealer or any of its municipal finance professionals. The definition of non-MFP executive officer does not include any municipal finance professional. However, contributions by non-MFP executive officers are subject to the reporting/disclosure provisions of the rule. In addition, pursuant to section (d), dealers are prohibited from using non-MFP executive officers (as well as any other person or entity) as a conduit for making contributions to officials of issuers.

(May 24, 1994)

II.5

Q: Would a dealer be prohibited from engaging in municipal securities business with a state agency, whose board members are appointed by the governor, if the dealer makes contributions to the governor?

A: Yes, the definition of “official of an issuer” in Rule G-37(g)(vi) includes any person who was, at the time of the contribution, an incumbent, candidate or successful candidate for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

(May 24, 1994, revised October 30, 2003)

II.6

Q: May a municipal finance professional who is entitled to vote for an issuer official make contributions to pay for such official’s transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer?

A: Yes, under certain conditions. The *de minimis* exception allows a municipal finance professional to contribute up to \$250 per candidate per election if the municipal finance professional is entitled to vote for that issuer official. The *de minimis* exception is keyed to an election cycle; therefore, if a municipal finance professional contributed \$250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to \$250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

(September 9, 1997)

II.7

Q: Are any payments made to issuer officials, other than political contributions, covered by the rule?

A: No. However, any other payments may be subject to rule G-20 on gifts and gratuities.

(May 24, 1994)

Primary, State Caucus or Convention

II.8

Q: If an issuer official is involved in a primary election prior to the general election, may a municipal finance professional who is entitled to vote for such official contribute \$250 to the issuer official's primary as well as general election?

A: Yes, the municipal finance professional could contribute up to \$500 to each such official (*i.e.*, \$250 per election).

(May 24, 1994)

II.9

Q: If the locality in which the incumbent or candidate is seeking election as an issuer official holds a convention or caucus (instead of a primary election) prior to the general election, may a municipal finance professional entitled to vote in that locality contribute \$250 to the incumbent or candidate's convention or caucus election campaign, as well as \$250 to the incumbent or candidate's general election, without causing a ban on municipal securities business with the issuer?

A: Yes, if the issuer official has been qualified to be considered at the state caucus or convention.

(June 15, 1995)

MFP as Incumbent or Candidate

II.10

Q: If a municipal finance professional also is an incumbent or candidate for political office in a municipality in which the municipal finance professional's employer (*i.e.*, the dealer) conducts municipal securities business, must the dealer terminate the municipal finance professional or are there any restrictions on the kind of business a dealer can engage in with that issuer?

A: No. However, the dealer, any municipal finance professional and any PAC controlled by the dealer or municipal finance professional must ensure that the dealer does not engage in municipal securities business with the issuer if contributions (other than the *de minimis* contributions allowed under section (b)) are made to an official of the issuer. The municipal finance professional who is an incumbent or candidate for office is not limited to contributing the *de minimis* amount to his or her own campaign in such instances.

(May 24, 1994)

Attendance at Fund-Raising Dinner

II.11

Q: May a dealer continue to engage in municipal securities business with an issuer if a municipal finance professional pays for and attends a fund-raising dinner for a candidate who is seeking election to a position as an official of such issuer?

A: A municipal finance professional who contributes funds in this instance would subject the dealer to a prohibition on municipal securities business with the issuer unless the municipal finance professional is entitled to vote for such candidate and any contributions do not exceed \$250 to such candidate per election. In addition, any municipal finance professional who attends the dinner for the purpose of soliciting contributions by others for the issuer official would violate Rule G-37's prohibition on soliciting contributions. *See also* Rule G-37(c).

(May 24, 1994)

Two-Year Look Back

II.12

Q: A municipal finance professional (*i.e.*, a municipal investment banker subject to the two year look back) was associated with dealer X at the time he made a contribution which resulted in the dealer being prohibited from engaging in municipal securities business with the issuer. Then, less than two years after making the contribution, the municipal finance professional becomes associated with dealer Y. Is dealer Y also subject to the prohibition on business?

A: Both dealers are subject to the prohibition for two years from the date the municipal finance professional made the contribution. Of course, dealer Y's prohibition on business only begins when the municipal finance professional becomes associated with that dealer.

(May 24, 1994, revised October 30, 2003)

II.13

Q: Prior to becoming associated with any dealer, a person makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (i.e., a municipal investment banker subject to the two year look back). Would the hiring dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business by prohibiting the dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. As noted above, the dealer's prohibition on business would begin when the municipal finance professional becomes associated with that dealer. Thus, if the individual was hired, for example, six months after making the contribution, then the dealer's prohibition on business would extend for one and one half years.

(May 24, 1994, revised October 30, 2003)

II.14

Q: If a dealer hires an individual as a retail sales person, would the contributions made by that person prior to being hired subject the dealer to the two-year prohibition on municipal securities business?

A: The rule's two-year prohibition is triggered by contributions by dealers, municipal finance professionals, and political action committees controlled by a dealer or a municipal finance professional. If a retail sales person is not a municipal finance professional and does not become a municipal finance professional within two years after making a contribution to an issuer official, then such contributions will not trigger the ban on business. However, if the retail sales person is, or within two years becomes, a municipal finance professional (e.g., by solicitation of officials of an issuer), then contributions made by that person will subject the hiring dealer to the two-year ban on business. A retail sales person would not be considered to be a municipal finance professional solely because of his or her municipal securities retail sales activities. (See Rule G-37(g)(iv)).

(December 7, 1994, revised October 30, 2003)

II.15

Q: A person is associated with a dealer in a non-municipal finance professional capacity, and makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (i.e., a municipal investment banker subject to the two year look back). Would the dealer be prohibited from engaging in a negotiated underwriting with that issuer?

A: Yes, the dealer is subject to the prohibition for two years from the date the contribution was made.

(May 24, 1994, revised October 30, 2003)

II.16

Q: A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G-37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer.

The Board notes, however, that Rule G-37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of rule G-37. Thus, the dealer may wish to seek an exemption from the ban on business pursuant to Rule G-37(i) from its appropriate regulatory authority.

(June 29, 1998, revised October 30, 2003)

Refund of Inadvertent Contribution

II.17

Q: A disgruntled municipal finance professional made a contribution purposely to subject the dealer to the two-year prohibition on business. When the contribution is discovered by the dealer, a refund of the contribution is requested and obtained. Is the dealer still banned from engaging in business with that issuer? In addition, does the contribution have to be disclosed on Form G-37?

A: Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer by any municipal finance professional associated with such dealer if the contribution does not meet the *de minimis* exemption. Section (i) of the rule provides a procedure whereby dealers may seek relief from the appropriate enforcement agency of the rule G-37 prohibition on business. In determining whether to grant such an exemption, one of the factors the enforcement agency will consider is whether the dealer has taken all available steps to obtain a return of the contribution. Even if a refund of the contribution has been obtained, dealers are required to seek an exemption from the ban on business. In addition, dealers also must disclose the contribution on Form G-37. Dealers may wish to indicate on the form (and in their own records) that a refund of the contribution was obtained. See Rule G-37(i).

(August 18, 1994)

Volunteer Work

II.18

Q: Is a municipal finance professional prohibited from performing volunteer work on an issuer official's behalf?

A: Rule G-37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work. However, soliciting and bundling of contributions would invoke application of the rule. In addition, if the municipal finance professional uses the dealer's resources (e.g., a political position paper prepared by dealer personnel) or incurs expenses in the conduct of such volunteer work (e.g., hosting a reception), then the value of such resources or expenses would constitute a contribution. Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (e.g., cab fares and personal meals), would not constitute a contribution.

(May 24, 1994)

Dealer Resources

II.19

Q: If an employee of a dealer is donating his or her time to an issuer official's campaign, does the dealer have to disclose this as a contribution to such official? In addition, would the fact that the employee is taking a leave of absence from the dealer cause a different result?

A: An employee of a dealer generally can donate his or her time to an issuer official's campaign without this being viewed as a contribution by the dealer to the official, as long as the employee is volunteering his or her time during non-work hours, or is using previously accrued vacation time or the dealer is not otherwise paying the employee's salary (e.g., an unpaid leave of absence).

(August 18, 1994)

Making Contributions to Issuer Officials on Behalf of Other Persons

II.20

Q: A municipal finance professional signs a check drawn on a joint account, which is owned by the municipal finance professional and another person, and submits it to an issuer official as a contribution along with a writing which states that the contribution is being made solely by the other holder of the joint account. Would any portion of this contribution be attributable to the municipal finance professional under Rule G-37?

A: If a municipal finance professional signs a check, whether the check was drawn on a joint account or not, and submits it as a contribution to an issuer official, then the municipal finance professional is deemed to have made the full contribution, regardless of any writing accompanying the check that provides or directs otherwise. Moreover, if this amount exceeds, or does not qualify for, the *de minimis* exception,

then by making such a contribution the municipal finance professional will trigger the rule's ban on business thereby prohibiting his dealer/employer from engaging in municipal securities business with the particular issuer for two years.

(February 16, 1996)

II.21

Q: If a municipal finance professional and another person (e.g., her spouse) both sign a check drawn on their joint account and submit the check to an issuer official as a contribution, would the contribution amount be attributable equally between them (i.e., 50% to each person) for purposes of Rule G-37?

A: Yes. If a municipal finance professional and any other person both sign a check drawn on their joint account and submit it to an issuer official as a contribution, then each person is deemed to have made half of the contribution, regardless of any writing accompanying the check that provides or directs otherwise.

(February 16, 1996)

Making Contributions to a Candidate Who Later Loses the Election

II.22

Q: If a municipal finance professional made a political contribution which was not subject to the *de minimis* exception to an issuer official candidate who subsequently did not win the election, is the dealer banned from engaging in municipal securities business with that issuer (i.e., the governmental entity)?

A: Yes. Rule G-37 defines the term "official of such issuer" or "official of an issuer" as "any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, **candidate** or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in subparagraph (A), above." It is clear from the rule that, at the time the contribution is made, if the recipient of that contribution is an "official of an issuer," then the dealer is subject to the two-year ban on business with the issuer, regardless of whether the candidate wins or loses the election. Any other result would mean that municipal finance professionals could make contributions to issuer officials, but the ban on business would not be triggered (if at all) until election results were known.

(February 16, 1996)

III. Indirect Contributions (Rule G-37(d))

Contributions by Spouses and Household Members

III.1

Q: Are contributions to issuer officials by municipal finance professionals' spouses and household members covered by the rule?

A: No, unless these contributions are directed by the municipal finance professional, which is prohibited by section (d) of the rule.

(May 24, 1994)

III.2

Q: If a municipal finance professional directs a retail sales person (who is not a municipal finance professional) to make a political contribution to an issuer official, would this trigger the rule's two-year prohibition on business with that issuer?

A: Yes. Section (d) of the rule prohibits municipal finance professionals (and dealers) from using any person or means to do, directly or indirectly, any act which would violate the rule. In other words, a municipal finance professional is prohibited from using a sales person (or any other person not otherwise subject to the rule) as a conduit to circumvent the rule. Thus, contributions made, directly or indirectly, by a municipal finance professional (or a dealer) to an issuer official will subject the dealer to the rule's two-year prohibition on municipal securities business with that issuer. In addition to triggering the prohibition, the municipal finance professional in this case has violated section (d) of the rule.

(December 7, 1994)

Political Parties

III.3

Q: Are contributions to national, state or local political parties covered by the rule?

A: Any such contributions would not trigger the prohibition on business portion of the rule (section (b)) unless such entities are used as a conduit to indirectly contribute to an issuer official, which is prohibited by section (d) of the rule. However, contributions to state or local political parties must be recorded under Rule G-8(a)(xvi) and disclosed in summary form under Rule G-37(e), except for those contributions which meet the *de minimis* exemption. See also Rule G-37(e).

(May 24, 1994)

Contributions to a Non-Dealer Associated PAC and Payments to a State or Local Political Party

III.4

Q: Could contributions to a non-dealer associated PAC or payments to a state or local political party lead to a ban on municipal securities business with an issuer under Rule G-37?

A: Rule G-37(d) prohibits a dealer and any municipal finance professional from doing any act indirectly which would result in a violation of the rule if done directly by the dealer or municipal finance professional. A dealer would violate Rule G-37 by doing business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on business. For example, in certain instances, a non-dealer associated PAC or a local political party may be soliciting funds for the purpose of supporting a limited number of issuer officials. Depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

III.5

Q: If a dealer receives a fund raising solicitation from a nondealer associated PAC or a political party with no indication of how the collected funds will be used, can the dealer make contributions to the non-dealer associated PAC or payments to the political party without causing a ban on municipal securities business?

A: Dealers should inquire of the non-dealer associated PAC or political party how any funds received from the dealer would be used. For example, if the non-dealer associated PAC or political party is soliciting funds for the purpose of supporting a limited number of issuer officials, then, depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

Making Payments to a National Political Party for its Non-Federal Account (Rule G-37(e))

III.6

Q: If a national political party accepts payments in which contributors have designated that their payments be deposited into the account for a state or local political party, must the dealer record such payments and report them on Form G-37?

A: Yes. Rule G-37 requires that dealers record and report payments made to state and local political parties and the ultimate recipient in the above scenario is a state or local political party so designated by the contributor.

(February 16, 1996)

Supervisory Procedures Relating to Indirect Contributions

III.7

Q: Is a broker, dealer or municipal securities dealer (“dealer”) required to have written supervisory procedures reasonably designed to ensure compliance with Rule G-37(d), on indirect contributions and solicitations, with regard to payments to political parties and PACs by a dealer or its municipal finance professionals (“MFPs”)?

A: Yes. The relevant portion of the MSRB’s supervision rule, Rule G-27(c), provides that, “Each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance [with MSRB rules].”

Rule G-37(d) provides that: “No broker, dealer or municipal securities dealer or any municipal finance professional of the broker, dealer or municipal securities dealer shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.” While Rule G-37 was adopted to deal specifically with contributions made to officials of issuers by dealers and municipal finance professionals, and political action committees (“PACs”) controlled by dealers or MFPs, this section of the rule also prohibits MFPs and dealers from using conduits — such as, but not limited to parties, PACs, affiliates, consultants, lawyers or spouses — to contribute indirectly to an issuer official if such MFP or dealer can not give directly to the issuer without triggering the ban on business.

In order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties and non-dealer controlled PACs to contribute indirectly to an official of an issue.¹ For example, a dealer’s written supervisory procedures might provide that, if the dealer or any of its MFPs want to make payments to political parties or PACs, the dealer must perform adequate due diligence prior to allowing political party or PAC payments by the dealer or its MFPs to reasonably ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.² Such due diligence also might include inquiring about and documenting the intent or motive in making the payment, whether the party payment or PAC contribution was solicited by anyone, and if so, the identification of the person soliciting the party payment and a record of written solicitations. This information will assist the dealer in determining whether the facts and circumstances surrounding the payment support the reason given for making the payment.

In addition, to ensure compliance with Rule G-37(d) in connection with contributions by dealers or MFPs to non-controlled (but affiliated) PACs,³ the dealer might adopt information barriers between any affiliated PACs and the dealer or its MFPs. Examples of such information barrier provisions might include such things as:

- a prohibition on the dealer or MFPs from recommending, nominating, appointing or approving the management of affiliated PACs;
- a prohibition on sharing the affiliated PAC’s meeting agenda, meeting schedule, or meeting minutes;
- a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions;
- a prohibition on directly providing or coordinating information about prior negotiated municipal securities business, solicited municipal securities business, and planned solicitations of municipal securities business; and
- other such information barriers as the firm deems appropriate to effectively monitor conflicting interests and prevent abuses.

These examples are not exclusive and are only suggestions for supervisory procedures that dealers could consider. Each dealer is required under Rule G-27, on supervision, to evaluate its own circumstances and develop written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with Rule G-37, on indirect violations.

(September 22, 2005)

¹ In addition, pursuant to MSRB Rule G-8(a)(xx), on Records Concerning Compliance with Rule G-27, each dealer must maintain and keep current the records required under Rules G-27(c) and G-27 (d).

² See Rule G-37 Questions and Answers Nos. III. 4 and III.5, reprinted in MSRB Rule Book.

³ For the purposes of this guidance the term “affiliated PAC” means a PAC controlled by an affiliated entity of a dealer. An “affiliated entity” is an entity that controls, is controlled by or is under common control with the dealer.

III.8

Q: Is a dealer required to have written supervisory procedures in place to ensure compliance with Rule G-37(d) if the dealer only allows the dealer or its municipal finance professionals (“MFPs”) to make political party payments to “housekeeping”, “conference” or “overhead” type accounts of a political party?

A: Yes. There is no safe harbor under Rule G-37 for payments to “housekeeping”, “conference” or “overhead” type political party accounts. The dealer must have adequate supervisory procedures reasonably designed to prevent a violation of Rule G-37(d), on indirect political contributions, even when the payments are being made to a “housekeeping”, “conference” or “overhead” type account. While the political party itself may prohibit direct contributions to issuer official candidates from “housekeeping” accounts, payments to these accounts might be used for political party events that are focused to benefit a specific candidate or a small number of candidates. Additionally, because money is fungible, a payment made to